

INDIANA BUSINESSES ARE NOW PROTECTED FROM COVID-19 LIABILITY – BUT WHAT ABOUT EMPLOYMENT CLAIMS?

Insights
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At the beginning of its 2021 legislative session, the Indiana General Assembly vowed to fast track a bill to provide civil tort immunity to businesses for damages arising on their premises from COVID-19. On February 15, less than two months into its session, lawmakers made good on their word with [Senate Bill 1](#), which was signed into law by Governor Eric Holcomb last week. Senate Bill 1 shields certain Indiana businesses and individuals that permit the public to enter their premises from personal injury liability for damages arising from COVID-19. The new law also protects individuals and businesses from liability for COVID-19 damages that occur during activities they manage, organize, or sponsor. The good news for businesses is that the scope of the bill is quite sweeping and applies retroactively to all activity since March 1, 2020 – the beginning of the COVID-19 pandemic. The bad news is that the new law is vague with respect to protections in employment settings. What do Indiana employers need to know?

Quick Recap Of New Law

As noted above, certain Indiana businesses and individuals are protected from civil liability related to COVID-19 lawsuits. Unsurprisingly, Senate Bill 1 does not provide protections for businesses or individuals who engage in grossly negligent or willful or wanton misconduct. This provides an additional incentive for businesses and individuals to follow federal and state guidelines and recommendations pertaining to COVID-19, such as guidelines from the Centers for Disease

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Control and Prevention (CDC) – doing so will help shield your business from potential liability.

Senate Bill 1 also protects manufacturers of personal protective equipment, and medical devices/equipment used to treat COVID-19, from civil tort liability from harm that results from the design, manufacture, labeling, sale, distribution, or donation of such equipment or products.

Senate Bill 1 Is Vague Regarding Employment Scenarios

Of note, however, Senate Bill 1 does not specifically shield employers from personal injury claims made by employees. As a result, workers' compensation benefits are likely still available to employee claims for work-related COVID-19 injuries. Moreover, Senate Bill 1 does not curtail enforcement action by Indiana's Occupational Safety and Health Administration.

It's possible, however, that the scope of protections for employers (if any) will be addressed in [House Bill 1002](#), a civil immunity companion bill which is still winding its way through the General Assembly. As currently drafted, House Bill 1002 provides immunity for health care providers from certain professional discipline matters for acts or omissions arising from a disaster emergency, such as COVID-19, unless the act or omission constitutes gross negligence, willful or wanton misconduct, or intentional misrepresentation.

If not addressed in a future iteration of House Bill 1002, civil immunity in employment settings will likely need to be determined by court proceedings. However, no employer wants to serve as the test case in such litigation – and it may take many months (if not years) to completely understand the contours of Senate Bill 1. For these reasons, employers should work with their employment law counsel to craft defenses in current and future litigation matters to reserve the right to use the new law as a shield, but should also take precautionary measures ahead of time to ensure the greatest possible safety standards for employees and guests alike.

What Should Employers Do?

In light of the ambiguity surrounding Senate Bill 1 in the employment setting, employers should continue monitoring their safety policies and procedures to ensure they are

compliant with CDC guidance, including these often-misunderstood guidelines: (1) returning exposed employees to work too early after a negative test; (2) miscalculating the appropriate quarantine period for those exposed to an infected household member; (3) not notifying employees of a confirmed COVID-19 case in your workplace; and (4) incorrectly believing that wearing face coverings trumps the [6-15-48 analysis](#).

Make sure you are subscribed to [Fisher Phillips' Alert System](#) to get the most up-to-date information. For further information about COVID-19-related litigation being filed across the country, you can visit Fisher Phillips' [COVID-19 Employment Litigation Tracker](#), contact your Fisher Phillips attorney, or any attorney in our [Louisville](#) office.

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