



Florida's New Law Shields Various Businesses, Institutions, and Healthcare Providers Against COVID-19 Liability

Insights

3.31.21

With the click of a pen, Florida Governor Ron DeSantis signed a new law — the most aggressive of its kind compared to others passed across the country — that protects businesses, educational and religious institutions, governmental entities, and healthcare providers from COVID-19 lawsuits. The new law, which became effective on March 29, shields those covered under it if they can essentially demonstrate a good effort to follow guidelines to prevent the spread of COVID-19. The law is designed to reduce potential liability for COVID-19 claims by imposing high evidentiary burdens and will provide a powerful deterrent to suits filed arising from or related to COVID-19. What do employers need to know about this new law?

Florida's COVID-19 Shield Law, Explained In A Nutshell

To ensure plaintiffs think twice before filing a lawsuit alleging injuries due to COVID-19, the new law requires that plaintiffs meet the standard for gross negligence and plead any allegations claiming a COVID-19 legal violation “with particularity.” This heightened requirement imposes a higher standard on an individual than if they were merely filing a general negligence or intentional tort claim.

This means that a plaintiff cannot generally point the finger and claim they experienced some COVID-19 injury while working, visiting, or performing some task at or with a covered establishment. From now on, a plaintiff will have to allege facts that identify the who, what, when, where, and how the injury happened in specific detail or their case will be bounced from court.

Before a plaintiff can even access the doors of the courthouse, the law requires that a plaintiff show on the face of the complaint that the defendant deliberately ignored COVID-19 prevention guidelines. Further, they will need to submit into evidence a signed affidavit from a doctor stating with reasonable medical certainty that an injury or death caused by COVID-19 was a result of the defendant's actions. If a court determines that the plaintiff has not met their duty, the case will be dismissed and can only be refiled if the plaintiff complies with this provision.

As a result of the new law, if a plaintiff is able to survive the statutory immunity, they must still show by clear and convincing evidence that the defendant was at least grossly negligent and that the defendant's gross negligence was the proximate cause of their alleged COVID-19 related injury,

which is not an easy showing. Prior to the new law, proof of liability for COVID-19 claims could have already been challenging largely due to the difficulty of proving causation.

Key Takeaways for Employers

Entities covered by the law should be aware that it is retroactive – but does not apply to cases that have already been filed. The new law provides a one-year statute of limitations from the date that the alleged injury accrues.

You should first make sure that you fall under the definition of the entities that are protected by the new law if you wish to be protected by this litigation shield. Additionally, you will need to be able to objectively demonstrate that you complied with federal, state, and local COVID-19 prevention guidelines. Critically, you will not just be expected to comply with the guidelines but should also focus on the ability to demonstrate compliance in the event compliance is disputed.

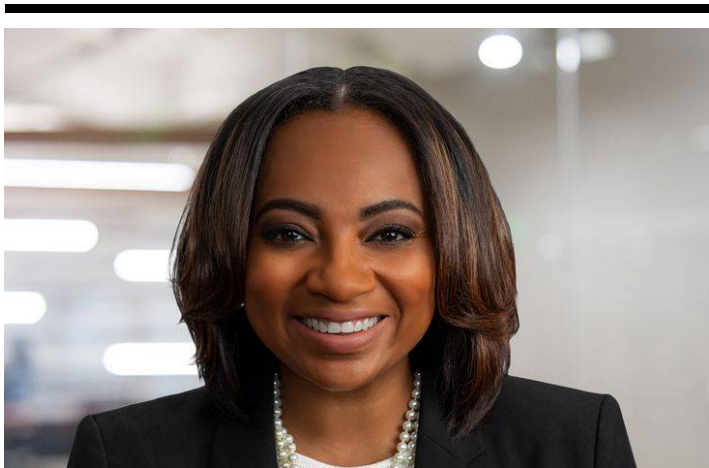
You can demonstrate your compliance by publishing written policies and procedures designed to implement the latest CDC guidance to reduce the potential for the spread of COVID-19, providing training to all employees regarding effective COVID-19 mitigation efforts, and designing your workplaces to allow for appropriate social distancing.

Conclusion

For a more thorough analysis of the many issues you may encounter from a labor and employment perspective, we recommend you review our [FP BEYOND THE CURVE: Post-Pandemic Back-To-Business FAQs For Employers](#) and our [FP Resource Center For Employers](#).

We will continue to monitor the rapidly developing COVID-19 situation and provide updates as appropriate. Make sure you are subscribed to [Fisher Phillips' Alert System](#) to get the most up-to-date information. For further information, contact your Fisher Phillips attorney or any attorney in any of our [Florida offices](#).

Related People





LaKisha M. Kinsey-Sallis
Partner
813.769.7516
Email



Brett P. Owens
Partner
813.769.7512
Email

Service Focus

Litigation and Trials

Industry Focus

Healthcare

Trending

COVID-19/Vaccine Resource Center

Related Offices

Tampa

Fort Lauderdale

Orlando