



Kentucky Becomes Latest State to Protect Businesses from Pandemic-Related Liability

Insights

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On the final day of the Kentucky General Assembly's 2021 session, it fulfilled one of its top legislative priorities: enacting a new law that provides personal injury liability protections against COVID-19-related claims to certain Kentucky businesses, schools, and individuals. In doing so, Kentucky joins many other states that have enacted similar laws, including its neighbor to the north, Indiana.

Specifically, businesses and individuals that directly or indirectly invite or permit another person onto their premises are shielded from liability for injuries, loss, or other damages to that person arising from conditions subject to a declared emergency – including, of course, the ongoing pandemic. The scope of the law is quite sweeping in that it applies retroactively to all injury or harm since March 6, 2020 – the beginning of the coronavirus pandemic. Governor Andy Beshear failed to approve or veto Senate Bill 5 within 10 days after it was sent to his office, so it became law on April 11 without his signature. What do Kentucky employers need to know about this new law?

Senate Bill 5 Lacks Clarity on Employment Scenarios

Unsurprisingly, Senate Bill 5 does not provide protections for businesses or individuals that act in a malicious or grossly negligent manner, or intentionally ignore executive orders or guidelines relating to a declared emergency. 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 Control and Prevention – doing so will help shield your business from potential liability. Senate Bill 5 also provides that, to the extent a claim for personal injury is made against a business or individual for injuries arising from a declared emergency, such claim must be filed within one year after the injury is first discovered.

Senate Bill 5 also protects essential businesses and individuals from liability, absent willful, gross negligence, or intentional misconduct, from any death of or injury to an individual or damage to property resulting from an act or omission related to the provision of an essential service. Such protection would be afforded during the period from when an emergency is declared until one year after the emergency declaration is withdrawn, revoked, or lapses.

Of note, Senate Bill 5 does not specifically shield employers from personal injury claims made by employees. As a result, workers' compensation benefits still appear to be available to employees for work-related COVID-19 injuries. Moreover, Senate Bill 5 does not curtail enforcement action by

Kentucky's Occupational Safety and Health Administration. These issues might be addressed in future legislative sessions if the coronavirus pandemic continues to persist.

Conclusion

Make sure you are subscribed to [Fisher Phillips' Insight 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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