



South Carolina Passes COVID-19 Liability Immunity Act

Insights

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South Carolina Governor Henry McMaster just signed the “South Carolina COVID-19 Liability Immunity Act” into effect, providing legal immunity to businesses that reasonably adhered to public health guidance applicable at the time a coronavirus-related claim arose. This new law, just signed on April 28 but retroactive all the way back to March 13, 2020, aims at providing “liability protections for a limited time period for health care providers and businesses that follow public health guidance in response to the coronavirus public health emergency.” The law is applicable to for-profit and not-for-profit business entities, South Carolina state agencies, healthcare facilities, and individuals who are directors, officers, employees, and representatives of the business or state agency. What do South Carolina employers need to know about this new law?

Overview of COVID-19 Shield Law

This immunity is expansive – covering *any act or omission resulting in a coronavirus claim*. The law specifically defines “coronavirus claim” as any claim or cause of action arising from the actual, alleged, or feared exposure or contraction of coronavirus from the premises of a business, that business’ operations, products or services (performed on premises or off the business’ premises) or the acts or omissions of a covered individual or covered entity.

The law also provides immunity for medical services, including the prescription and distribution of medicines for the off-label use to attempt to combat coronavirus, providing health care services related to coronavirus outside of a provider’s professional scope of practice, utilizing equipment or supplies to combat or treat coronavirus in a manner outside of the equipment’s or supplies’ normal use in medical practices, and the manufacture or donation of precautionary equipment or supplies, including personal protective equipment, due to shortages that occurred during the coronavirus pandemic.

Exceptions

Importantly, there are exceptions to the immunity, largely centered on whether the business acted in a grossly negligent manner. In the context of the provision of medical services, including the dispensing of medicine, and utilization of equipment for purposes not typically use, the immunity would not apply if a claimant proves by a preponderance of the evidence that the business caused injury or damage by grossly negligent, reckless, willful, or intentional misconduct, or failing to make

an attempt to adhere to public health guidance. The standard of proof for the exception differs from all other coronavirus claims, with a claimant needing only to prove by a “clear and convincing” evidentiary standard that the business caused the injury or damage by being grossly negligent, reckless, willful, intentional misconduct, or a failure to make any attempt to adhere to public health guidance.

The law also specifically states it does not apply is intended to preclude actions or remedies under South Carolina’s Workers’ Compensation law. It is also not intended to limit any defense or right that exists under the law or to limit defenses or rights for claims that arise from actions not related to a coronavirus claim.

Importantly, the law only covers those claims arising between March 13, 2020 and June 30, 2021, or 180 days after the final state of emergency is lifted for COVID-19 in South Carolina, so it is definite in scope.

What Should You Do?

The language used in the law is expansive. South Carolina Employers faced with claims alleging liability related to COVID-19 should discuss with their legal counsel to determine the applicability of this immunity as a defense to claims that may be being brought against them. At a minimum, however, this law should be cheered by the business community as the potential for liability related to the novel coronavirus and companies’ varying responses remains a looming concern.

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 [Columbia](#) office.

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