Georgia Extends Limited COVID-19 Liability Protections

Insights
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Businesses in Georgia now have another year of protection from civil lawsuits arising out of alleged COVID-19 exposure, transmission, infection, or potential exposure. The Georgia COVID-19 Pandemic Business Safety Act (GCPBSA), which has been in effect since last summer, provides some protection to businesses and individuals from COVID-19 exposure claims (and other types of claims). Originally, the law applied to all claims that accrue before July 14, 2021. It now applies to claims that accrue before July 14, 2022. You must take some specific proactive steps to receive this protection, however – so you need to make sure you understand the details of this law. And, you need to understand the limitations of the law and the larger legal landscape applicable to employers.

The Extension of the GCPBSA

The Georgia legislature recently passed House Bill 112, which extends the protections granted to Georgia businesses by the GCPBSA. The protections in the GCPBSA originally had a sunset clause of July 14, 2021, but House Bill 112 extends the law until July 14, 2022. Governor Brian Kemp has now signed House Bill 112, so businesses have continuing protection under this law.

Details Of The GCPBSA

The GCPBSA creates a rebuttable presumption that a plaintiff bringing a civil case in Georgia against a person or business related to COVID-19 assumed the risk of exposure, transmission, infection, or potential exposure related to COVID-19. Assumption of the risk is normally a defense that a business or individual being sued has to prove, requiring proof that a plaintiff (1) has actual knowledge of the risk of danger they claim caused them harm; (2) understood and appreciated the risk and danger; and (3) voluntarily exposed themselves to that risk.

The GCPBSA, however, reverses the burden of proof on this issue, and a plaintiff bringing a COVID-19-related claim will have to show that the plaintiff *did not* assume the risk of exposure, transmission, infection, or potential exposure related to COVID-19. If the plaintiff cannot do this, then a defendant will likely prevail in any such lawsuit. Note, however, that the presumption is rebuttable. In other words, a plaintiff can try to establish that they did not assume the risk, but this must be established before a claim may proceed.

The Specific Language And Acts Necessary To Trigger GCPBSA Protection

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For businesses or individuals who do not sell tickets for entry onto their property, the liability protections under the GCPBSA can be triggered by posting signage **in at least one-inch Arial font** placed apart from any other text at all points of entry to their property that states the following:

Warning

Under Georgia law, there is no liability for an injury or death of an individual entering these premises if such injury or death results from the inherent risks of contracting COVID-19. You are assuming this risk by entering these premises.

Business that sell tickets for entry must include on receipts or proof of purchase for entry in at least 10-point Arial font placed apart from any other text, the following warning:

Any person entering the premises waives all civil liability against this premises owner and operator for any injuries caused by the inherent risk associated with contracting COVID-19 at public gatherings, except for gross negligence, willful and wanton misconduct, reckless infliction of harm, or intentional infliction of harm, by the individual or entity of the premises.

What The GCPBSA Does Not Cover

The existence of this law does not mean that employers can take a laissez-faire attitude toward COVID-19 or safety in the workplace, as the law has important limitations. First, this shifting of the burden of proof discussed above does not apply to allegations of gross negligence, willful and wanton misconduct, reckless infliction of harm, or intentional infliction of harm. Therefore, the law is not as robust as it seems at first blush: any conduct that rises above negligence is arguably not covered by the law. Second, the GCPBSA does not apply to workers' compensation claims. Therefore, while business should seek the protections of the law as discussed above, and it can be useful should an employee sue their employer despite the availability of worker's compensation, employees who get COVID-19 in the workplace will be able to seek redress through the worker's compensation system. Finally, the Federal Occupational Safety and Health Administration (OSHA) has jurisdiction over workplace safety issues in Georgia, and employers could still be cited under OSHA's general duty clause if they fail to follow federal guidance from OSHA and the CDC.

What Should Employers Do?

- Post signage at the entrance to your property with the language above regardless of whether you sell tickets for entry to your premises.
- No amount of signage relieves an employer of its obligations under workers' compensation or the OSH Act, and OSHA continues to target employers for COVID-19 inspections. Therefore, you should continue to follow OSHA's guidance to mitigate COVID-19 in the workplace and the CDC's latest COVID-19 guidelines, including the CDC's latest guidance for vaccinated individuals.

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- You should remain vigilant and continue to protect workers from COVID-19, despite Georgia eliminating certain Georgia-specific requirements related to COVID-19 mitigation.

For steps you can take as your number of vaccinated workers continues to increase, read our alert: Employers May Be Able To Scrap Mask Mandates For Fully Vaccinated Workers: A 7-Step Blueprint to Overcome Risks and Hurdles. And, you should immediately familiarize yourself with our alert discussing Steps You Can Take to Prepare for Possible COVID-19 OSHA Inspections/Citations, which includes the recommendation to create a written COVID-19 program, continue to communicate your COVID-19 policies to employees, and listen to and address any concerns they may have about worker safety.

Conclusion

Fisher Phillips will continue to monitor the rapidly developing COVID-19 situation and provide updates as appropriate. Make sure you are subscribed to Fisher Phillips' Insight System to get the most up-to-date information. For a more thorough analysis of the many issues you may encounter, we recommend you visit our COVID-19 Resource Center for Employers. If you have further questions, contact your Fisher Phillips attorney, the author of this Insight, or any attorney in our Atlanta office.

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