



2 New Missouri Laws Require Employer Action on Pandemic Liability and Employee Leave

Insights

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Missouri employers should take note that two bills recently signed into law by Governor Mike Parson that impose new employee leave obligations but also provide a liability shield for employers when it comes to pandemic claims. A COVID-19 liability bill and the Victim's Economic Safety and Security Act (VESSA) both went into effect on August 28 and impact most Missouri employers. What do employers need to know to remain compliant with and take advantage of the protections offered by these two laws?

COVID-19 Liability Laws

The COVID-19 liability bill includes three provisions to limit COVID-19-related liability for Missouri businesses – but you need to take affirmative steps to avail your organization of the protection it creates. Your business can avoid such liability in incidences where a guest, vendor, or contractor alleges a claim of:

1. COVID-19 exposure;
2. COVID-19 medical liability, and
3. COVID-19 products liability.

Under the new law, plaintiffs seeking to recover for any of these claims must prove “recklessness” or “willful misconduct,” which is a higher standard than traditional tort claims that businesses commonly face. The statute defines “recklessness” as a voluntary act or omission in reckless disregard of both a legal duty and the consequences to another. “Willful misconduct” is conduct that intentionally achieves a wrongful purpose or “In disregard of a known or obvious risk that is so great as to make it highly probable that the harm will outweigh the benefit.”

The COVID-19 exposure liability provision – unlike the other two provisions specific to health care providers and COVID-19 products – applies to **all employers** with physical locations in Missouri.

COVID-19 Exposure Liability

Section 517.1005 – which limits COVID-19 exposure liability for Missouri businesses – defines “COVID-19 exposure actions” as civil actions brought by a person (or their representative) who

suffered personal injury, brought against an individual or entity engaged in business, alleging that an actual, feared, or potential for exposure for COVID-19 caused the risk of personal injury that occurred in the course of businesses, services, activities, or accommodations. This would apply to actions brought by guests, vendors and contractors of businesses.

The statute states that no individual or entity shall be liable in any COVID-19 exposure action unless the plaintiff can prove by clear and convincing evidence that the individual or entity engaged in recklessness or willful misconduct that caused an actual exposure to COVID-19 and the exposure caused injury to the Plaintiff. For religious organizations, liability is limited in COVID-19 exposure actions unless the plaintiff can prove intentional misconduct.

Significantly, the statute provides that if a Missouri business (or any individual providing any service, activity, accommodation or product) posts a conspicuously written warning at the entrance of the business, there is a rebuttable presumption that the plaintiff assumed the risk of COVID-19 exposure by entering the premises. The written warning must be substantially similar to the following:

WARNING

Under Missouri law, any individual entering the premises or engaging the services of the business waives all civil liability against the individual or entity for any damages based on inherent risks associated with an exposure or potential exposure to COVID-19, except for recklessness or willful misconduct.

Religious organizations are not required to post the above notice to avoid COVID-19 exposure actions. Employers should note that this new law does not change the exclusive remedy provisions of Missouri's workers' compensation laws. In other words, employers with employees who contract COVID-19 in the course and scope of their employment will not be able to avoid workers' compensation liability by virtue of the above warning sign.

Victim's Economic Safety and Security Act (VESSA)

Missouri's Victim's Economic Safety and Security Act (VESSA) is the new employment law imposing unpaid leave and accommodation obligations on employers of victims of domestic and sexual violence. The following are common questions to assist employers with understanding how this new law affects their businesses.

What can VESSA be used for?

The new law has two primary protections: job-protected leave, and safety accommodations.

Job Protected Leave

Employees who are victims of domestic or sexual violence and who work for a VESSA-covered business may request a job protected leave for a qualifying reason for themselves or a family or household member to address such violence for the following reasons:

- Seeking medical attention for, or recovering from, physical or psychological injuries caused by such violence;
- Obtaining services from a victim services organization;
- Obtaining psychological counseling;
- Participation in safety planning, temporary or permanently relocating, or taking other actions to increase the safety of the employee or employee's family or household member; or
- Seeking legal assistance or remedies to ensure health and safety.

Employers must maintain the group health plan for the duration of the leave and must restore an employee to their position following a VESSA leave.

Safety Accommodations

VESSA-covered employers are required to make reasonable safety accommodations for employees (or their household or family members), who are victims of domestic or sexual violence unless such an accommodation would cause an undue hardship to the employer. VESSA accommodations may include:

- Adjustment to a job structure, workplace facility, or work requirement including a transfer or reassignment;
- modified schedule;
- time off work;
- a changed telephone number or seating assignment;
- installation of a lock or implementation of a safety procedure; or
- assistance in documenting domestic violence that occurs at the workplace or in work-related settings, in response to actual or threatened domestic violence.

Does VESSA apply to your business?

VESSA coverage is defined by the number of your Missouri employees. Specifically, businesses with 20 or more Missouri employees must comply with VESSA's three coverage categories: (1) job protected leave; (2) reasonable safety accommodations; (3) no retaliation against employees for exercising their rights under the statute.

However, the amount of job protected leave varies by your business size. Businesses with 20-49 Missouri employees are required to provide up to one workweek (based on the employee's standard

Missouri employees are required to provide up to one workweek (based on the employee's standard workweek) of unpaid leave per 12-month period. Businesses with 50 or more Missouri employees are required to provide up to two workweeks of unpaid leave per 12-month period. But for those businesses also covered by the Family Medical Leave Act (FMLA), VESSA does not add to the 12 weeks already available under FMLA – but the VESSA leave can be taken intermittently or on a reduced work schedule.

Who can use VESSA?

Missouri employees working at a VESSA covered business are eligible for leave (1) if the employee is a victim of domestic violence or sexual abuse; or (2) one or more of the employee's family or household members are victims of domestic violence or sexual abuse. There is no length of service requirement under VESSA.

What can an employer require from employees?

Employees seeking leave under VESSA must provide their employers with at least 48 hours advance notice of the intention to take leave, unless giving notice is not practicable. Employers can require the employee provide certification for their need for leave. For safety accommodations, employers can require a written statement from the employee certifying the need for the safety accommodation is for a purpose authorized under VESSA.

Employer Action Items for Both COVID-19 Liability and VESSA

You should immediately update your policies and signage to reflect both the COVID-19 liability law as well as VESSA.

1. Next Steps to Comply with the COVID-19 liability law

- You should create and post signage as described in detail above in order to create the liability shield offered by this statute.
- However, just because you may be able to gain the benefit of a new liability shield, you should remain vigilant when it comes to your pandemic-related safety measures for guests, vendors, and contractors.
- Although the COVID-19 liability statute does not directly address your obligation to update your internal COVID-19 policies, it is prudent to communicate with employees before any signage is posted to ensure employees understand the purpose and reason for the sign. Importantly, you should consider advising employees that this new law does not affect an employee's workers' compensation rights.

2. Next Steps to Comply with VESSA

- Before October 27, 2021 – Post the VESSA notice for your employees, available from the Missouri DOL [here](#).

- After October 27, 2021 – Issue the VESSA notice to all new hires at the beginning of their employment.
- Train your management and human resources professionals on the process and procedures for employees to request and use VESSA.

We will continue to monitor further developments and provide updates on this and other labor and employment issues affecting Missouri employers, so make sure you are subscribed to [Fisher Phillips' Insight system](#) to gather the most up-to-date information. If you have questions, please contact your Fisher Phillips' attorney, the authors of this Insight, or any attorney in our [Kansas City Office](#).

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