Florida's Tort Reform Will Have an Impact on Employment Litigation – 5 Takeaways for Employers

Insights
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Florida Governor Ron DeSantis and state lawmakers recently enacted significant tort reforms designed to restrict plaintiffs pursuing negligence claims – but which could give an unexpected boost to those pursuing costly employment litigation against their employers. While the tort reform legislation, signed into effect on March 24, provides good news for employers by addressing key issues such as physician referrals, statutes of limitation, and the introduction of evidence related to medical treatment costs, it may end up pushing aggrieved individuals into filing employment-related statutory lawsuits rather than the now more perilous path they can expect with negligence claims. What are the five biggest takeaways for Florida employers?

1. The Admissibility of Medical Evidence Will Be Restricted

The new law restricts new types of admissible evidence in establishing past, present, and future medical expenses. Damages sought for medical expenses can no longer exceed amounts that are actually paid, necessary to satisfy charges not yet satisfied, and reasonable and necessary to satisfy the cost of care in the future. The law also permits evidence of the amount paid to healthcare providers by private insurance, Medicare, or Medicaid for medical treatment.

This is good news for employers facing negligent infliction of emotional distress claims or other types of workplace-related tort claims. They can now rely on this change to preclude inflated medical bills from being presented to a jury. Additionally, employers will now have the opportunity to engage in additional discovery to determine the reasonableness of treatment for alleged emotional distress.

2. Attorney Referrals for Treating Physicians Will Be Disclosed

Another piece of good news. Employers now have statutory authority to discover whether attorneys referred their plaintiffs to physicians for emotional distress treatment. Under the new law, defendants are entitled to uncover any such referrals, to healthcare providers, which may enable employers may to demonstrate improper bias on the part of treating physicians.

3. Statute of Limitations for Negligence Claims Shrunk

The law reduces the statute of limitations for actions founded on negligence from four years to two years. As a result, employees pursuing negligence claims against their employers will need to file claims within two years from the date on which the cause of action accrued.

Additionally, employers may now be able to argue that claims are time-barred if an employee fails to take legal action from the onset of a negligence-based claim. For example, if an employee asserts a negligent infliction of emotional distress claim, employers may now be able to argue that the claim accrued at the time an employee first incurred damages.

While that may seem like a welcome development for employers, this restriction could have the unintended consequence of encouraging employees to file tort claims prior to exhausting administrative remedies for employment claims brought pursuant to Title VII of the Civil Rights Act of 1964.

4. Florida's Business Community Could See an Increase in Employment Litigation

A variety of employment-related tort claims will be impacted by these key changes. Employers may face claims of wrongful termination, infliction of emotional distress, negligence, negligent hiring, negligent retention, and vicarious liability claims arising out of workplace conduct.

How will the new law impact these claims? Florida can look to other states that have passed tort reform, to gauge the overall impact it may have on employment claims. In California, for example, there was an uptick in employment-related statutory lawsuits because of the increased difficulty in bringing negligence claims pursuant to the new law. We could soon expect to see the same thing result here in Florida.

Some may wonder whether there is any real difference in shifting the general nature of litigation from tort-based claims to statutory ones. The answer is there is a dramatic difference: prevailing employees are entitled to recover their attorney's fees in statutory claims under both state and federal law. Those plaintiffs who are now be reluctant to pursue tort claims due to these restrictions may feel compelled to pursue more-expensive statutory claims as an alternative – an unwelcome and unintended consequence of the new law.

5. Employers Should Have Their Guards Up

This in turn should give Florida employers more incentive than ever to ensure compliance with the many employment-related obligations confronting their businesses. A good way to start includes ensuring employee handbooks and job descriptions are up to date, confirming employees are being paid properly, and training managers regarding applicable policies and procedures and employment laws.

Also, employers faced with tort-related litigation will want to ensure that they are working closely with legal counsel to engage in the additional discovery that is now permitted by the new law to

determine referral relationships, the true cost of medical care, and when negligence claims accrued.

Conclusion

Because the new law establishes new methods for employers to respond to negligence-based claims, we expect to see additional litigation interpreting the new statutes. We will continue to monitor workplace law developments as they apply to Florida's tort reform, including litigation shaping the new law, so make sure you are subscribed to Fisher Phillips' Insight system to get the most up-to-date information directly to your inbox. If you have questions, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in our three Florida offices.

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