



North Carolina Essential Businesses Receive Partial Liability Cover During COVID-19 Recovery

Insights

5.07.20

North Carolina employers let out a collective sigh of relief yesterday – not just because Phase 1 of the state’s reopening will begin on May 8, but also because essential businesses will receive a form of limited business immunity that could shield them from certain COVID-19-related claims. As part of North Carolina's COVID-19 Recovery Act signed into law on May 4, certain businesses will be protected against potential civil claims from customers and employees for injuries or death purportedly attributable to COVID-19. Which begs the questions: Is our businesses covered? And what kind of protection will we receive?

Is My Business Protected?

First and foremost, it is critical to understand whether you are afforded protection by the Recovery Act. The new law provides immunity to essential businesses, emergency response entities, health care facilities, health care providers, and health care services.

An “essential business” means any entity identified in the COVID-19 essential business executive order issued by Governor Cooper on March 27. The term also includes “any business that the Department of Revenue determines is essential.” Information on requests to obtain an Essential business determination from the Department of Revenue can be found here.

Employers with specific questions about whether they satisfy the Essential business definition should reach out to their Fisher Phillips attorney or a member of the firm’s Essential Business Task Force.

Is My Business Completely Immune From All Potential Lawsuits Related To COVID-19?

Unfortunately, not all potential claims will be shielded by the law. While extraordinarily helpful, the Recovery Act is more akin to a cloth face covering than a surgical mask or N95 respirator. The law provides protection by creating immunity against claims of ordinary negligence, which are the most common claims for injuries in North Carolina. Specifically, the Recovery Act bars all negligence claims against covered businesses:

- Asserted by customers and employees;
- For injuries or death;
- Caused by the contraction of COVID-19;

- While employed by or doing business with an Essential business; and
- Arising from interactions occurring between March 27, 2020 and the eventual rescission/expiration date of [Governor Cooper's State of Emergency](#).

The Recovery Act does not, however, protect essential businesses from individuals asserting claims of gross negligence, reckless misconduct, or infliction of intentional harm. Additionally, the act does not preclude an employee suffering from COVID-19 from filing a workers' compensation claim. We are monitoring two pending House Bills which seek to declare COVID-19 an "Occupational Disease" and to declare that certain employees "shall be presumed" to have contracted COVID19 during their employment.

Workplace Safety Considerations And Other Best Practices For Reopening

While the Recovery Act provides limited immunity to essential businesses for the duration of the stay-at-home order, you should continue to utilize common sense, regularly monitor and ensure continued compliance with state and local ordinances (including those that were required prior to the COVID-19 pandemic), and make continued efforts to comply with recommended best practices and guidance from the [North Carolina Department of Health and Human Services](#) as well as the [CDC](#). Taking these basic steps will go a long way in preventing any possible claims for gross negligence, reckless misconduct, or intentional infliction of harm.

As you begin the process of reopening, you should familiarize yourself with our alert: [5 Steps To Reopen Your Workplace, According To CDC's Latest Guidance](#). You should also keep handy our [4-Step Plan For Handling Confirmed COVID-19 Cases When Your Business Reopens](#) in the event you learn of a positive case at your workplace. For a more thorough analysis of the many issues you may encounter from a labor and employment perspective, we recommend you review our [FP BEYOND THE CURVE: Post-Pandemic Back-To-Business FAQs For Employers](#) and our [FP Resource Center For Employers](#).

Conclusion

We will continue to monitor this rapidly developing situation and provide updates as appropriate. Make sure you are subscribed to [Fisher Phillips' alert system](#) to gather the most up-to-date information. For further information or advice on how to satisfy notice requirements as an employer, contact your Fisher Phillips attorney or any attorney in [our Charlotte office](#), or any member of our [Post Pandemic Strategy Group Roster](#). You can also review our [FP BEYOND THE CURVE: Post-Pandemic Back-To-Business FAQs For Employers](#) and our [FP Resource Center for Employers](#).

This Legal Alert provides an overview of a specific state law. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

Related People



R. Bryan Holbrook

Partner

704.778.4173

Email

Service Focus

Litigation and Trials

Workplace Safety and Catastrophe Management

Trending

COVID-19/Vaccine Resource Center

Related Offices

Charlotte