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Insights: Alerts

Georgia Legislature Passes Broad COVID-19 Immunities Legislation

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Please note: The below information may require updating, including additional clarification, as the COVID-19 pandemic continues to develop. Please monitor our main COVID-19 Task Force page and/or your email for updates.

On Friday, June 26, 2020, the Georgia Legislature passed a broad COVID-19 immunities bill that applies to health care providers ***and*** other business entities in the State of Georgia (Georgia SB 359). The protections go into effect on August 7, 2020, or approval by Governor Brian Kemp, whichever occurs first. The Legislation amends Georgia torts law to provide immunities from liabilities regarding COVID-19 and to provide assumption of risk presumptions as a defense to tort claims alleging the plaintiff contracted COVID-19 because negligence by a health facility or worker, or other businesses.

The Legislation would add O.C.G.A. § 51-16-1 *et seq*. to the Georgia Code relating to torts. O.C.G.A. § 51-16-1 defines several key terms in the new section including broadly defining healthcare provider, healthcare facility and other business entities able to assert immunities from liability relating to COVID-19. Section 51-16-2 provides a comprehensive immunity from tort liability relating to COVID-19 for a health care facility, healthcare provider, entity or individual. The only exception is for "gross negligence, willful or wanton misconduct, reckless infliction of harm or intentional infliction of harm." *O.C.G.A. § 51-16-2*.

Section 51-16-3 provides an "assumption of risk" presumption as a defense to any COVID-19 claim against an individual or entity because the plaintiffs allege they contracted, or were exposed to, COVID-19 while on the premises of the defendant individual or entity. The "assumption of risk" presumption applies if the individual or entity has provided an "assumption of risk" warning to the plaintiffs before they enter the premises. The warning can be on the ticket, receipt or wristband issues to allow entry onto the premises or posted the warning on signage at the point of entry. Section 51-16-3 describes the warning that must be provided and the size and type of font that is acceptable and includes an explicit warning that injury or death is an inherent risk of contracting COVID-19. The only exception is for "gross negligence, willful or wanton misconduct, reckless infliction of harm or intentional infliction of harm." *O.C.G.A. § 51-16-3*.

Section 51-16-4 provides an assumption of risk presumption relating to COVID-19 related claims for healthcare providers and healthcare facilities when an assumption of risk warning is posted at the point of entry to the premises. The specific warning must include a warning of injury or death is an inherent risk of contracting

COVID-19, as in Section 51-16-3. The only exception is for “gross negligence, willful or wanton misconduct, reckless infliction of harm or intentional infliction of harm.” *O.C.G.A. § 51-16-4*.

Healthcare facilities, healthcare providers, and Georgia businesses should review the signage requirements and post signage at the points of entry to the premises that meet the requirements of O.C.G.A. § 51-16-1 *et seq*. Providing appropriate signage provides the presumption of an assumption of risk defense against any tort claims relating to COVID-19. Businesses should also be aware that these protections come with a sunset provision and only apply to causes of action accruing until July 14, 2021. Causes of action after this date will not be able to rely on these provisions.

This legislation provides businesses with strong protections against tort claims related to COVID-19. In order to avail themselves of these protections however, businesses will have to provide the requisite notices and signage. Even with these protections, Georgia businesses should consider industry-specific and health risks and take appropriate actions to protect employees and customers alike, such as masks and distancing. The combination of protective action and warnings reduces the likelihood gross negligence will be found. Employers should also consider obligations to maintain a safe and healthy workplace under the federal Occupational Safety and Health Act and other federal obligations. Our Reopening Guidebook provides a discussion of various topics to consider. For additional information please reach out to your regular Kilpatrick Townsend contact or one of the authors.

Related People



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