

Insights: Publications

North Carolina Extends Limited, Civil Immunity to Any Individual or Entity and Extends Immunity for Six Months After the COVID-19 Emergency Ends

July 3, 2020

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.

We [previously wrote](#) about limited, civil immunity created by North Carolina's May 4, 2020 COVID-19 Recovery Act (Session Law 2020-3) for three types of businesses: (1) health care facilities and providers, (2) essential businesses, and (3) emergency response entities. This alert summarizes Session Law 2020-89, signed into law on July 2, 2020 and effective immediately, which clarifies and expands COVID-19-related civil immunity in North Carolina.

Limitations and Questions Raised by Session Law 2020-3's Grant of Immunity to Essential Businesses.

Session Law 2020-3 granted limited, civil immunity to “essential businesses” that provide goods or services in the state “with respect to claims from any customer or employee for any injuries or death alleged to have been caused as a result of the customer or employee contracting COVID-19 while doing business with or while employed by the essential business.” This immunity was limited in several respects. First, it applies to only those businesses identified as an “essential business” in the Governor's March 27, 2020 Executive Order (No. 121) including any amendments issued by executive order, as well as any business deemed essential by the Department of Revenue. Second, it does not apply to injuries or deaths caused by an act or omission constituting gross negligence, reckless misconduct, or intentional infliction of harm. Third, the Act does not preclude employees of essential businesses from seeking worker's compensation for injuries or death alleged to have been caused as a result of contracting COVID-19 while employed by the essential business. Finally, the immunity created by Session Law 2020-3 would expire when the COVID-19 emergency declaration is rescinded or expires.

The definition of “essential business,” which could be altered by subsequent executive orders, created uncertainty as to which businesses could claim immunity. The Governor's issuance of Executive Order No. 138 on May 5, 2020, which allowed “most” businesses to re-open and no longer expressly referred to “essential businesses,” created additional uncertainty.

Session Law 2020-89 Provides More Certainty About Who Is Able to Claim Immunity, and Broadens the Immunity Period.

Like Session Law 2020-3's grant of immunity to essential businesses, Session Law 2020-89's grant of civil immunity (a) is limited to claims for injury or death from the transmission of COVID-19 unless based on gross negligence, willful or wanton conduct, or intentional wrongdoing, and (b) applies to claims for worker's compensation for injuries or death alleged to have been caused as a result of contracting COVID-19.

However, there are two notable differences from Session Law 2020-3. First, Session Law 2020-89 expands this grant of limited, civil immunity to *any* "person," which is broadly defined to include individuals, nonprofit corporations, state and local government, and all manner of business organizations and legal entities. Thus, businesses no longer need to prove that they are or were deemed "essential" in order to claim immunity. Second, Session Law 2020-89 extends the immunity beyond the current state of emergency. Specifically, the immunity extends to claims arising on or after July 2, 2020 and no later than 180 days after the expiration or rescission of Executive Order No. 116 which declared the current state of emergency.

Session Law 2020-89 Requires Some Businesses to Provide Notice of COVID-19 Mitigation Efforts, But Not As a Condition of Immunity.

Session Law 2020-89 requires "[e]very person" to provide "reasonable notice of actions taken by the person for the purpose of reducing the transmission of COVID-19 to individuals present on the premises" with respect to any premises owned by the person or under the person's possession, custody, or control. Except for premises used to operate a sole proprietorship, this requirement does not apply to premises owned by an individual. Businesses and entities subject to this provision can likely satisfy the requirement by posting signage on the premises and should also consider posting such information on publicly available websites and social media. However, providing this notice is not required for a person to claim immunity.

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