

# Publications

## Ohio Enacts Broad COVID-19 Immunity Legislation

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### CLIENT ALERT | 9.15.2020

As businesses in Ohio continue to reopen, employers are concerned about potential liability if their employees or customers contract COVID-19 in their workplace or business. Similar concerns exist for colleges and schools as their students return to the classroom. The Ohio General Assembly enacted Amended Substitute House Bill 606 (HB606) which is meant to address – and limit – that potential liability. On September 14, 2020, Governor DeWine signed the legislation. The law becomes effective in 90 days.

HB606 provides qualified civil immunity for claims related to exposure to or transmission or contraction of coronaviruses. The immunity coverage is retroactive to March 9, 2020 and continues through September 30, 2021. Key provisions of HB606 are outlined below.

### General immunity for all “persons”

HB606 generally prevents bringing a civil action for injury, death, or loss to person or property against any “person” if the cause of action on which the action is based, in whole or in part, is that the injury, death, or loss is caused by the exposure to, or the transmission or contraction of “MERS-CoV,” “SARS-CoV,” or “SARS-CoV-2,” or any mutation thereof.

The law broadly defines “person” as an individual, corporation, business trust, estate, trust, partnership, or association; a school; a for-profit, nonprofit entity, governmental entity, or religious entity; and state institution of higher education, the Northeast Ohio Medical University, a community college, state community college, university branch, or technical college.

### Exceptions to general immunity

The general immunity does not apply if it is established that the exposure to, or the transmission or contraction of, any of those viruses or mutations was by “reckless” or intentional conduct or with willful or wanton misconduct of the person against whom the action is brought.

HB606 defines “reckless” conduct as acting with heedless indifference to the consequences by which the person disregards a substantial and unjustifiable risk that his or her conduct is likely to cause an exposure to, or a transmission or contraction of the virus or is likely to be of a nature that results in an exposure to, or a transmission or contraction of, the virus.

## Government orders do not create a duty of care

During the pandemic, federal, state, and local government agencies have issued orders, recommendations, and guidelines concerning health and safety protocols and procedures. These have evolved continually and, at times, have been vague or contradictory. Generally under Ohio law, a person owes a duty to exercise ordinary care for invitees’ (like customers) safety and protection. HB606 states that a government order, recommendation, or guideline does not create a duty of care. There is also a presumption that any such order, recommendation, or guideline is not admissible as evidence during a lawsuit that a duty of care, a new cause of action, or a substantive legal right has been established. This means, for example, that a customer who contracts COVID-19 could not use a public health order recommending or requiring masks to argue that a store breached the “duty of care” by not following the recommendation or enforcing the mandate.

## Class actions prohibited

If the general immunity does not apply, a class action may not be brought against a person alleging liability for damages for injury, death, or loss to person or property on the specified cause of action.

## Temporary immunity for health care providers

HB606 further provides temporary qualified immunity to specified “health care providers” who provide health care services or emergency services during a declared disaster or emergency that results in injury, death, or loss allegedly resulting from: (1) actions or omissions in the provision, withholding, or withdrawal of those services, (2) decisions related to the provision, withholding, or withdrawal of those services, and (3) compliance with an executive order or director’s order. It provides similar immunity from professional discipline. HB606 provides further that it does not create a new cause of action or substantive legal right against a health care provider.

“Health care provider” is broadly defined in HB606 to include a health care professional, health care worker, direct support professional, behavioral health provider, or emergency medical technician or a home health agency, hospice care program, home and community, based services provider, or facility, as well as any agent, board member, committee member, employee, employer, officer, or volunteer of the agency, program, provider, or facility acting in the course of his or her service or employment.

## Exceptions to temporary immunity for health care providers

Temporary immunity for health care providers does not apply if the conduct constitutes a reckless disregard of the consequences or intentional conduct or willful or wanton misconduct on the part of the person against whom the action is brought. Immunity also does not apply to conduct outside the skills, education, or training of the health care provider, unless undertaken in good faith and in response to a lack

of resources caused by a disaster or emergency. As to professional disciplinary actions, immunity does not apply to conduct that constitutes gross negligence.

### Class actions prohibited against health care providers

If the health care provider immunity does not apply, a class action may not be brought against any service provider alleging liability for damages for injury, death, or loss to person or property on the specified cause of action.

### Conclusion

Similar employer immunity and employee-friendly presumptions have been enacted or are being considered in other states as well, as well as in Congress. We have been actively involved in the legislative process concerning HB606. Contact your Vorys lawyer if you have questions about this legislation, about similar legislation in other states, and how they may apply to your operations.

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### Vorys COVID-19 Task Force

Outside of this new law, employers continue to face myriad issues as COVID-19 continues to spread and impact communities and workplaces (some of these issues are addressed in our prior alerts [located here](#)). We will continue to keep you posted on any important developments. In the meantime, if you have any questions regarding this new law or any other aspect of COVID-19, please contact your Vorys lawyer.

We have also established a comprehensive Coronavirus Task Force, which includes attorneys with deep experience in the niche disciplines that we have been and expect to continue receiving questions regarding coronavirus. Learn more and see the latest updates from the task force at [vorys.com/coronavirus](http://vorys.com/coronavirus).