

Publications

Pending Ohio Legislation Provides Immunity from COVID-19 Claims and Presumptions of Employee Injury from COVID-19

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CLIENT ALERT | 6.8.2020

As businesses in Ohio reopen and employees return to work, employers are concerned about potential liability if their employees or customers contract COVID-19 in their workplace or business. Two bills pending in the Ohio General Assembly are meant to address – and limit – that potential liability.

Substitute Senate Bill 308 (SB308) grants a qualified civil immunity for health care providers and certain defined “service providers”, which would include most for profit and not-for-profit businesses, in the context of disasters, provides health care providers with immunity from professional disciplinary action, and makes these immunity provisions retroactive to the date a disaster is declared. SB308 was passed by the Senate and is pending in the House.

Amended Substitute House Bill 606 (HB606) makes temporary changes related to qualified civil immunity for health care and emergency services provided during a government-declared disaster or emergency and for exposure to or transmission or contraction of certain coronaviruses. HB606 also creates a rebuttable presumption that certain defined employees who contracted COVID-19 did so in the course of and arising out of their employment, thereby transferring the burden of proof to employers to disprove the workers’ compensation entitlement. The coverage is retroactive to March 9 and continues through December 31, 2020. HB606 was passed by the House and is pending in the Senate Judiciary Committee.

Set out below are some key provisions of this pending Ohio legislation. At the same time, five other bills that would provide presumptive eligibility for workers’ compensation for certain occupations, including one that would cover all “essential” employees, are pending in the General Assembly before the House Insurance Committee.

Similar employer immunity and employee-friendly presumptions have been enacted or are being considered in other states as well. We are actively involved in the legislative process concerning HB606 and SB308 and will provide updates as needed. In the interim, contact your

Vorys lawyer if you have questions about these bills, how they may apply to your operations, or if you have questions about legislative advocacy.

Substitute Senate Bill 308

Qualified civil immunity for service providers

SB308 grants a “service provider” qualified civil immunity for illness, injury, death, or loss in providing services that are as a result of, or in response to, a disaster or emergency declared due to COVID-19 or are intended to assist persons to recover from such disaster or emergency during its period and ending on April 1, 2021. It further provides immunity for injury, death, or loss resulting from, or related to, a person’s actual or alleged exposure to an illness in the course of providing services during the period of the declared disaster or emergency due to COVID-19 and ending on April 1, 2021. Immunity also applies to a cause of action against a service provider for contribution or indemnity for damages during that time.

A “service provider” is any person (including schools, state institutions of higher education, and for-profit, nonprofit, religious, and governmental entities) that engages in any activity (including manufacturing) that is part of or outside of the service provider’s normal course of business during the period of disaster or emergency due to COVID-19 thru April 1, 2021.

Exceptions to service provider immunity

Immunity does not apply if the service provider’s act or omission is reckless or intentional conduct or willful or wanton misconduct.

Government orders do not create a duty of care on service providers

SB308 provides that a government order does not create a duty of care upon any person that may be enforced in a cause of action, or create a new cause of action or substantive legal right against any person with respect to the matters contained in the government order. Further, it is presumed that a government order is not admissible as evidence that a duty of care or substantive legal right has been established.

Class actions prohibited against service providers

If service 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.

Qualified civil immunity for certain health care providers

SB308 expands civil immunity granted to certain health care providers and emergency medical technicians who provide emergency services during a declared disaster to: (1) actions taken during a declared emergency, (2) actions by additional health care providers, (3) decisions to withhold or withdraw health care services, and (4) compliance with an executive order or director’s order. This immunity is also extended to professional discipline and other civil actions.

Exceptions to health care provider immunity

Immunity does not apply if the conduct is taken in reckless disregard of the consequences or that constitutes willful or wanton misconduct or, as to professional disciplinary actions, if the conduct constitutes gross negligence. It further excludes conduct that is 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.

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.

Amended Substitute House Bill 606

Temporary immunity for health care providers

HB606 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.

Exceptions from temporary immunity

Temporary immunity 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. These immunity provisions are limited to March 9, 2020, through December 31, 2020.

General immunity for all persons

In addition to the immunity granted to health care providers, 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. This immunity is limited to March 9, 2020, through December 31, 2020.

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.

Government orders do not create a duty of care

A government order, recommendation, or guideline does not create a duty of care on a person that may be enforced in a cause of action or that may create a new cause of action or substantive right against any person regarding the matters in the government order, recommendation, or guideline.

COVID-19 as an occupational disease

HB606 creates a presumption, for purposes of workers' compensation, that specified emergency responders, corrections officers, and certain food workers who contract COVID-19 contracted the disease in the course of and arising from their employment.

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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.