Legal Update Article

Georgia Enacts COVID-19 Legal Immunity for Healthcare Providers, Businesses

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Georgia Governor Brian Kemp has signed into law Senate Bill 359, which, like legislation enacted by several other states, is designed to protect healthcare facilities, businesses, and other entities from civil liability related to the spread of COVID-19, except in limited situations that include where there is a showing of gross negligence or intentional misconduct.

Under the "Georgia COVID-19 Pandemic Business Safety Act," healthcare facilities, healthcare providers, businesses, individuals, state government agencies, and other entities cannot be held liable for damages involving a COVID-19 liability claim, unless the claimant can show that the entity's actions involved "gross negligence, willful and wanton misconduct, reckless infliction of harm, or intentional infliction of harm."

A COVID-19 liability claim is broadly defined to cover the transmission, infection, exposure, or potential exposure to the virus at any healthcare facility or on the premises of any entity, including the acts or omissions by the healthcare provider in arranging for or providing medical care. The liability protections also extend to claims related to the manufacturing, labeling, donation, or distribution of personal protective equipment or sanitizer during a COVID-19 public health state of emergency.

The Act also creates a rebuttable presumption of assumption of risk by any claimant, except for gross negligence, willful and wanton misconduct, or reckless or intentional infliction of harm. The entity must have issued the claimant a receipt or proof of purchase for entry to the premises that includes the following statement (in at least 10-point Arial font):

> Any person entering the premises waives all civil liability against this premises owner and operator for any injuries caused by the inherent risk associated with contracting COVID-19 at public gatherings, except for gross negligence, willful and wanton misconduct, reckless infliction of harm, or intentional infliction of harm, by the individual or entity of the premises.

Businesses also can create this rebuttable assumption of risk presumption by posting at the premises' point of entry, a sign (with at least one-inch Arial font) containing the following statement:

Warning

> Under Georgia law, there is no liability for an injury or death of an individual entering these premises if such injury or death results from the inherent risks of contracting COVID-19. You are assuming this risk by entering these premises.

The new law creates a rebuttable presumption of assumption of risk at healthcare facilities or on the premises of any healthcare provider that post similar warnings.

However, the presumptions and warning statement requirements are in addition to, and do not limit, the overall legal immunities created under the law.

Several other states (including Louisiana, North Carolina, Oklahoma, Utah, and Wyoming) have passed similar liability protection measures to address business concerns related to reopening during the COVID-19 pandemic.

The Act has a sunset provision and applies to any causes of actions accruing until July 14, 2021.

Reopening orders contain extensive requirements creating compliance issues that can vary significantly depending on the specific state or local jurisdiction. Jackson Lewis attorneys are closely monitoring updates and changes to legal requirements and guidance and are available to help employers weed through the complexities involved with state-specific or multistate-compliant plans.

If you have questions or need assistance, please reach out to the Jackson Lewis attorney with whom you regularly work, or any member of our COVID-19 team.