Legal Update Article

Ohio Halts COVID-19 Litigation, Providing Civil Immunity for Healthcare, Businesses, and Others

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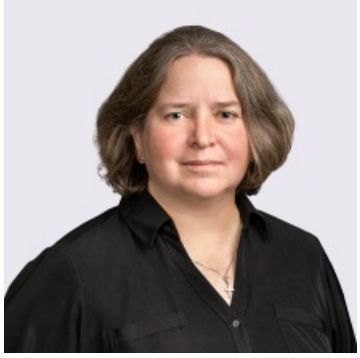
Meet the Authors



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Ohio Governor Mike DeWine has signed a bill granting civil immunity from certain COVID-19-related civil actions for healthcare providers, businesses, schools, individuals, and other entities.

Under House Bill 606, protection from suit is provided where the claim asserts that an injury, death, or loss to person or property was caused by either the exposure to or the transmission or contraction of MERS-CoV, SARS-CoV, or SARS-CoV-2 or any mutation hereof (which includes what we now refer to as COVID-19). Suit may only be brought, according to this bill, if it is established that the exposure, transmission, or contraction was by reckless conduct, intentional misconduct, or willful or wanton misconduct on the part of the person against whom the action is brought. The provisions of the bill apply retroactively from March 9, 2020, through September 30, 2021.

This is a huge victory for employers and business owners who have struggled to follow and comply with the ever-changing guidance from state, local, and federal agencies, without any assurance that doing so would protect them from litigation if someone nonetheless claimed to have contracted the virus. The General Assembly recognized this uncertainty and stated in explanation for the law:

- "[L]awsuits related to the COVID-19 health emergency numbering in the thousands are being filed across the country."
- "Ohio's business owners, small and large, as they begin to re-open their businesses are unsure about what tort liability they may face."
- "[R]ecommendations regarding how best to avoid the infection with COVID-19 change frequently, and such recommendations are often not based on well-tested scientific information."
- "[B]usinesses and premise owners have not historically been required to keep members of the public from being exposed to airborne viruses, bacteria and germs."
- "In Ohio, it has been the responsibility of individuals going into public places to avoid exposure to individuals who are sick. The same is true today: those individuals who decide to go out into public places are responsible to take those steps they feel are necessary to avoid exposure to COVID-19, such as social distancing and wearing masks."
- "Nothing in the Ohio Revised Code establishes duties upon businesses and premises owners to ensure that members of the general public will not be exposed to such airborne germs and viruses."

In addition to protecting healthcare providers, the bill extends the protections to any person, including any individual, corporation, business trust, estate, trust,

partnership, association, school, for profit, non-profits, governmental entities, religious entities, and state institutions of higher education.

Given the statute's broadness, employees and patrons alike are precluded from suing individuals or businesses for an injury caused by the exposure to, or transmission or contraction of COVID-19. In addition, as a second layer of protection, the bill states that even if the protections the bill do not apply, plaintiffs are precluded from bringing a class action for any such cause of action. For a state is ranking high in terms of the number of COVID-19-related employment lawsuits being filed, this is welcome relief.

What Does It Mean for Employers?

The protections offered by the bill should help prevent litigation that blames the employer for someone's exposure or contraction of COVID-19 or any other injury caused by such events. But that does not mean employers should ease efforts they are taking to stop the spread.

The bill expresses clear frustration with the executive branch's orders and goes so far as to state, "[O]rders and recommendations from the Executive Branch, from counties and local municipalities, from boards of health and other agencies, and from any federal government agency, do not create any new legal duties for purposes of tort liability." It further states that such orders are presumed to be irrelevant to the issue of the existence of a duty or breach of a duty and are presumed to be inadmissible at trial to establish proof of a duty or breach of a duty in tort actions. Nevertheless, presumably following the guidance will help show that the employer has not been reckless or engaged in intentional or willful and wanton misconduct. In addition, the state bill does not absolve employers of their obligations under federal law, including the Occupational Safety and Health Act.

With this bill, Ohio joins a growing number of states that have passedsimilar liability protection measures (including Georgia, Louisiana, North Carolina, Oklahoma, Utah, and Wyoming).

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.