

South Carolina Senate Passes COVID-19 Liability Immunity Act

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The South Carolina state Senate has passed legislation that would provide immunity from COVID-19-related lawsuits for businesses that follow state and federal health guidelines.

The measure now goes before the South Carolina House of Representatives for a similar vote and, if passed, could be signed into law by Governor Henry McMaster.

Passage of the bill, S. 147, called the “South Carolina COVID-19 Liability Immunity Act,” was a top priority for both businesses and lawmakers as [national trends continue to show a steady rise in COVID-19-related lawsuits](#) filed against businesses and employers. Several other states have already passed similar measures. (For example, see our article, [Wisconsin Passes COVID-19 Civil Liability Exemption for Employers](#))

Key Provisions

Under S. 147, covered entities (defined broadly to include for profit and non-profit businesses, governmental agencies, and healthcare facilities) need only show reasonable adherence to public health guidance to receive immunity from liability for acts or omissions relating to COVID-19 claims.

The bill does not define what constitutes “reasonable adherence.” However, during early drafting of the bill, state legislators debated whether to include “reasonable” to give flexibility to employer obligations, given the varying sources of public health guidance. A nearly identical bill introduced in South Carolina’s House of Representatives in 2020, H. 5527, defined public health guidance as including both state and federal public health guidance. However, S. 147 specifies that public health guidance refers to directives provided by South Carolina’s state agencies and includes federal guidance only to the extent such guidance is referenced by state agencies.

Under the proposed legislation, any claim arising from actual or alleged exposure to COVID-19 from the premises of a business or from the operations, products, or services provided by a business would be barred by immunity, unless the plaintiff can show by clear and convincing evidence that the business: (1) engaged in conduct that was grossly negligent, reckless, willful, or intentional; or (2) failed to make any attempt to adhere to public health guidance. A more lenient burden of proof applies to certain claims arising in the medical malpractice context.

If signed into law, the Act would apply retroactively to protect businesses against claims arising between March 13, 2020, and June 30, 2021, or 180 days after the final state of emergency is lifted in South Carolina, whichever date is later. Based on its language, the Act is arguably broad enough to encompass state law employment claims, such as whistleblower suits stemming from workplace safety complaints and wrongful termination suits, although such claims are not specifically referenced.

Effect of Workers’ Compensation and Exclusivity Provision

S. 147 also states that its provisions do not preclude or limit the availability of actions brought under South Carolina's Workers' Compensation Act. In 2020, legislators in South Carolina's House of Representatives introduced a measure, H. 5482, to amend the state's Workers' Compensation Act to make it easier for certain essential employees, like first responders, healthcare providers, and correctional officers, to immediately receive temporary total disability benefits should the employee contract COVID-19 at work.

Jackson Lewis attorneys are closely monitoring these and other COVID-19-related legislative measures on both the state and federal levels and are available to help employers weed through the complexities involved with understanding [state-specific or multistate-compliant](#) guidance.

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](#).

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