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Question of the Day: COVID-Related Lawsuit Protection

Legal Update

06.22.2020

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Question**Do businesses have any protection from COVID-related lawsuits?****Answer****Yes, in Iowa (and four other states so far).**

As the economy continues to reopen, businesses—even those taking all appropriate precautions—have questioned what liability they may face if COVID exposure is connected to their place of business. Given the extremely contagious nature of COVID-19, even going above and beyond all recommended precautions may not stop the spread of the virus. Moreover, it may be difficult—if not impossible—to identify exactly where any given case of COVID-19 originated. With all this in mind, calls have been heard around the country to limit the liability of business owners from COVID-related suits, and some jurisdictions are heeding these calls.

Iowa recently enacted the COVID-19 Response and Back-to-Business Limited Liability Act, which provides ongoing and retroactive protection to businesses in Iowa (dating back to January 1, 2020). First, the Act sets a higher standard for would-be plaintiffs to bring suit against a business that they believe caused them to contract COVID-19. Specifically, no suit may be filed due to exposure to COVID-19 unless inpatient hospitalization or death has resulted, the suit “involves an act that was intended to cause harm,” **or** the suit “involves an act that constitutes actual malice.”

The Act also protects against certain forms of premises liability, including for businesses who rent their operating space, by requiring anyone seeking to recover damages for COVID-19 exposure to show that the business “recklessly disregard[ed] a substantial and unnecessary risk that the individual would be exposed to COVID-19,” “expose[d] the individual to COVID-19 through an act that constitutes actual malice,” or “intentionally expose[d] the individual to COVID-19.”

In addition to setting higher standards for liability, the Act provides a safe harbor for businesses that follow applicable guidance—yet another reason to stay updated on and follow these recommendations. Any defendant facing suit for COVID-19 exposure can assert an affirmative defense that it “was in substantial compliance or was consistent with” applicable laws and public health guidance from certain agencies (as defined in the Act).

The Act also protects health care providers and those generating or donating disinfecting supplies, personal protective equipment, etc. from certain forms of liability.

These protections are welcome news for Iowa businesses operating in the “new normal” of living with COVID-19. Take heed, however, that employees may still be able to bring employment-related claims against employers. For example, the Act does not affect the rights or liabilities under the workers’ compensation system, nor does it prevent claims that may arise under the Iowa Civil Rights Act, Americans With Disabilities Act, Family Medical Leave Act, or other employment laws.

North Carolina, Oklahoma, Utah, and Wyoming also have implemented various limited liability protections, and other states have considered similar measures. Congress has also debated limiting the liability of employers for COVID-related suits, but the measure has thus far failed to advance.

Businesses should continue to monitor changes in this area, as additional jurisdictions may provide protections similar to those now afforded to Iowa businesses. While most businesses have already been going above and beyond to protect the health and safety of their customers and employees, Iowa’s COVID-19 Response and Back-to-Business Limited Liability Act provides formal legal protection for doing so and for following applicable rules and guidance. While this Act will not completely shield businesses from lawsuits, it will likely decrease the number of these suits while also providing businesses the comfort of knowing they have a defense for following guidance as our understanding of COVID-19 continues to evolve.

If you have questions regarding these obligations or others related to COVID-19, contact your Fredrikson & Byron Employment & Labor attorney.

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