

Lawsuit Vaccines: More States Enact COVID-19 Immunity Laws for Businesses

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As businesses, schools, and other organizations reopen across the country, employers remain concerned about potential liability if employees or customers contract COVID-19 in their workplace or business. In response, 14 states enacted broad civil liability protections last year for claims related to exposure to the virus: Georgia, Idaho, Iowa, Kansas, Louisiana, Michigan, Mississippi, Nevada, North Carolina, Ohio, Oklahoma, Tennessee, Utah and Wyoming. Alabama, Indiana, Montana and Wisconsin recently enacted similar laws. Their key provisions are outlined below.

Despite broad immunity protections, the potential for liability remains. Employers should continue to adhere to safety procedures and protocols in order to minimize the risk of contracting and transmitting COVID-19. Contact your Vorys lawyer if you have questions about COVID-19 compliance issues.

Alabama

A “covered entity” is not liable for any damages, injury, or death suffered by any person as a result of, or in connection with, a “health emergency claim.” The immunity does not apply if the claimant proves by clear and convincing evidence that the covered entity caused the damages, injury, or death by acting with wanton, reckless, willful or intentional misconduct.

Even if the claimant establishes liability but there is no serious physical injury or death, the claimant can only recover actual economic compensatory damages; the claimant cannot recover noneconomic or punitive damages. Further, if a person asserts a wrongful death claim, the person is only entitled to punitive damages.

A “covered entity” is a business entity, health care provider, educational entity, church, governmental entity, cultural institution, and any director, officer, trustee, manager, member, employee, or agent. A “health emergency claim” is any claim that arises from or is related to Coronavirus. Such claims include the actual, alleged, or feared exposure

to or contraction of Coronavirus from the premises or operations of a covered entity or from its operations, products, or services provided on or off-premises, as well as the covered entity's efforts to prevent or delay the spread of Coronavirus through testing, monitoring or providing personal protective equipment.

The law is retroactive to March 13, 2020, and remains in effect until Dec. 31, 2021, or one year after the public health emergency expires, whichever is later.

Indiana

A "person" is immune from civil tort liability for damages "arising from COVID-19": (1) on the premises owned or operated by the person; (2) on any premises on which the person or an employee or agent of the person provided property or services to another person; or (3) during an activity managed, organized or sponsored by the person. The law provides similar immunity to manufacturers or suppliers for harm resulting from the design, manufacture, labeling, sale, distribution or donation of a COVID-19 protective product.

In either case, immunity does not apply to an act or omission that constitutes gross negligence or willful or wanton misconduct (including fraud and intentionally tortious acts) as proven by clear and convincing evidence. In no case may a person bring a class action for tort damages.

A claim "arises from" COVID-19 if it is premised on the actual, alleged, or possible exposure to or contraction of COVID-19; or services, treatment, or other actions performed for COVID-19. A "person" is broadly defined to include individuals and any association, institution, corporation, company, trust, limited liability company, partnership, political subdivision, government body, nonprofit corporation, and other organization or entity.

The law is retroactive to March 1, 2020, and expires on December 31, 2024.

Montana

A "person" is not liable for damages for injuries or death from or relating to exposure or potential exposure to COVID-19 unless the action involves gross negligence, willful and wanton misconduct, or intentional tort. There is similar immunity for a person who designs, manufactures, labels, sells, distributes, or donates household disinfecting or cleaning supplies, personal protective equipment or a qualified product in response to COVID-19.

A "person" is an individual, corporation, nonprofit corporation, estate, trust, partnership, limited liability company, business or similar trust, association, joint venture, place of worship, personal representative, trustee or any other legal or commercial entity.

Further, a person who possesses or is in control of a premises, including a tenant, lessee, or occupant, who directly or indirectly invites or permits an individual onto a premises, is not liable for damages sustained from the individual's exposure to COVID-19. This immunity applies whether the exposure occurs on the premises or during an activity managed by the person who possesses or is in control of the premises. The immunity does not apply in the case of gross negligence, willful and wanton misconduct or intentional tort.

A person may assert as an affirmative defense that the person took reasonable measures consistent with an applicable federal or state statute, regulation, order, or public health guidance related to COVID-19 at the time of the injury. If proven, the affirmative defense is a complete bar to any action relating to COVID-19.

Montana law further specifies that a government order, regulation, or public health guidance related to COVID-19 does not create a new cause of action. Moreover, if a federal or state statute, regulation, order, or public health guidance related to COVID-19 recommends or requires the use of a face mask, a person is not required to ensure face masks are being used or a face mask is sufficient to stop the spread of COVID-19 to meet the standard of care. Similarly, a person is not required to conduct temperature checks before allowing a person to enter the premises if an individual refuses to allow a temperature check. An individual is not required to receive a vaccine and a person is not required to ensure employees or agents are vaccinated to meet the standard of care.

The law became effective on February 10, 2021, and remains in effect until January 1, 2031. The law is not retroactive.

Wisconsin

An “entity” is immune from civil liability for the death of or injury to any individual or damages caused by an act or omission resulting in or relating to exposure, directly or indirectly, to COVID-19 in the course of or through the performance or provision of the entity's functions or services. Immunity does not apply if the act or omission involves reckless or wanton conduct or intentional misconduct.

“Entity” means a partnership, corporation, association, governmental entity, tribal government, tribal entity, or other legal entity, including a school, institution of higher education, or nonprofit organization, and includes an employer or business owner, employee, agent, independent contractor and volunteers.

The immunity is retroactive to claims accruing on or after March 1, 2020, but does not apply to an action filed before February 27, 2021.

VORYS COVID-19 TASK FORCE

Vorys is actively monitoring these developments and will continue to analyze the situation and provide updates. We have also established a comprehensive Coronavirus Task Force, which includes attorneys with deep experience in the niche disciplines in which we have been and expect to continue receiving questions. [Learn more and see the latest updates from the Task Force.](#) If you have questions regarding this news, please contact your Vorys attorney or a member of our [Coronavirus Task Force](#).