



OHIO COVID IMMUNITY

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OHIO HAS ADOPTED A STATUTE TO PROVIDE IMMUNITY FROM COVID CLAIMS IN CERTAIN CIRCUMSTANCES.

Amended House Bill 606 was signed by the Governor on September 14, 2020 but goes into effect March 9, 2020. The statute essentially covers two specific circumstances. First, it substantially abolishes the potential for a claim by a person who contracts COVID subject to some special limitations. Second, the Act provides immunity for healthcare providers who could not provide care due to temporary governmental orders or declined to provide care under the circumstances. The devil of course is in the details.

ABOLISHING COVID CLAIMS.

The statute specifically provides that a person cannot file a civil lawsuit “for damages, for injury, death or loss to person or property” against any person if that claim is based in-whole or in-part on the exposure, transmission or contraction of a COVID-type condition. The same section also provides that the claim could be asserted if the damage or condition was caused by “reckless misconduct or intentional misconduct or willful or wanton misconduct.”

The statute goes on to provide that any government order, recommendation or guideline does not create nor is to be presumed as the “duty of care.” In the COVID-world, the State, for example, issued a series of protocols for steps to take to reopen businesses and the like. The statute in essence says that the failure to follow those protocols does not itself mean that a duty of care was violated or that a party is liable simply because they failed to follow the protocol.

The statute provides that in the event the immunity section should for some reason be determined not to actually provide immunity such as a court declaring the statute invalid, the section prohibits the filing of class actions for COVID-related claims. This in essence would preclude an assertion that all persons who went to a specific restaurant, for example, could file claims as a group as opposed to each of them having to file independent claims.

While the immunity in this section is helpful, we do anticipate cases will be filed asserting that the damage was the result of

“recklessness conduct” which will be heavily fact-based but requires more than simple neglect or failure to act. Imagine a circumstance where a person knows that they have COVID and they may have deliberately coughed on another person intending to cause that person harm. The statute is generally a positive step to protect employers and businesses.

HEALTHCARE PROVIDER IMMUNITY.

At the start of the pandemic, certain medical procedures or treatments were postponed and declared “non-essential.” Absent



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the pandemic, many of these procedures would have routinely occurred and perhaps earlier surgical or medical intervention may have detected conditions or have brought treatment options into play earlier for the patient.

Questions arose as to whether or not healthcare providers may be liable to patients for that failure to act earlier or whether disciplinary actions could be asserted that the physician failed to act in the best interest of the patient.

The statute provides that a healthcare provider who makes a healthcare decision or withholds healthcare during the time of an emergency is not subject to disciplinary action nor are they liable to any person or government agency for a civil action for injury, death or loss. This immunity applies in circumstances both as to the decision to provide healthcare or withdraw provision of healthcare. The statute further states that a healthcare provider is not liable in the instance of an inability of that provider to treat, diagnose or test a person or to perform an elective procedure due to an executive or directors order under the public health emergency. To add further clarity, the statute provides that the statute does not create any new cause of action or a substantive legal right that did not exist prior to the statute being created.

As noted in the section regarding general liability, this health provider immunity does not apply if there is a decision that constituted a “reckless disregard for the consequences” or “intentional misconduct” again that would require a fairly high set of facts to hit that level.

EFFECTIVE DATES.

The statute provides that the effective date of the statute begins March 9, 2020 which is the date of the Governor’s original Executive Order declaring the emergency due to COVID-19 and runs through September 30, 2021.

While the statute provides immunity from claims and disciplinary actions, we still recommend that employers and healthcare providers continue to review periodic updates of recommended protocols that are issued by the State of Ohio, CDC and others, and where possible, adapt your office procedures to comply with those guidances with the goal of hopefully reducing the risks to employees and the public.

If you would like a copy of the statute or have any questions concerning these matters, please contact Scott Sandrock at 330-253-4367, spsandrock@bmdllc.com.

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