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Client Alert: North Carolina Adopts Limited Immunity for Essential Businesses and Emergency Response Entities

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On May 4, 2020, Governor Roy Cooper signed off on legislation that amends North Carolina General Statute §66-460 to provide immunity from civil liability to essential businesses, as defined in the Essential Business Executive Order, issued March 27, 2020, and emergency response entities. Emergency response entities are defined as businesses, not-for-profit organizations, educational institutions, and governmental entities that manufacture, produce, or distribute personal protective equipment, testing equipment, or ventilators, or process COVID-19 testing results. This also applies to those businesses that the Department of Revenue may determine to be essential.

For any essential business that provides goods or services within the State of North Carolina, they will have immunity from civil liability with respect to any claims from a customer or employee for injuries or death alleged to have been caused by contracting COVID-19 while doing business with or employed by the essential business. For an emergency response entity, they will have immunity from civil liability with respect to claims from any customer, user, or consumer for any injuries or death alleged to have been caused as a result of the COVID-19 pandemic or while doing business with the emergency response entity.

This immunity does have its limitations and does not apply if the injuries or death were caused by an act or omission of the essential business or emergency response entity that constitutes gross negligence, reckless misconduct, or intentional infliction of harm. It also does not preclude an employee from seeking an appropriate remedy under the North Carolina Workers' Compensation Statutes for injuries or death alleged to have been caused as a result of the employee contracting COVID-19 while employed by an essential business or emergency response entity. Further, this immunity is limited in time. It applies from the date the Governor issued the COVID-19 Essential Business Executive Order (March 27, 2020), and expires when the COVID-19 Emergency Declaration, issued by Executive Order on March 10, 2020, is rescinded or expires.

Businesses are cautioned to remain vigilant with respect to the health and safety of their employees and customers, as Plaintiffs' attorneys will no doubt argue that any alleged injury or death was accompanied by

or was the result of the gross negligence, reckless misconduct, or intentional infliction of harm of the essential business or emergency response entity.

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