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Client Alert: Florida Governor Signs Into Law New COVID-19 Lawsuit Protections for Employers

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On March 29, 2021, Florida Governor Ron DeSantis signed into law Florida Statute 768.38, granting significant liability protections to employers, businesses, and other entities against COVID-19 related lawsuits. The law is effective immediately and applies to actions filed after March 29, 2021.

The new law sets forth several requirements for bringing a "COVID-19-related claim," which is defined as "a civil liability claim against a person, including a natural person, a business entity, an educational institution, a governmental entity, or a religious institution, which arises from or is related to COVID-19." Among other things, the law contains the following requirements:

- The plaintiff must plead their lawsuit with specificity and file with the lawsuit an affidavit from a Florida-licensed physician attesting to the physician's belief that the defendant caused the plaintiff's COVID-related injuries.
- The court must then act as a gatekeeper and determine (1) whether the plaintiff complied with the above filing requirements, and (2) whether the defendant made a good-faith effort to substantially comply with any applicable government-issued health standards or guidance.
- If the court determines that the plaintiff failed to comply with the above filing requirements, the court must dismiss the case, but must give the plaintiff an opportunity to re-file the lawsuit. If the court determines that the defendant made a good-faith effort to comply, the employer is immune from liability on the plaintiff's claims. If the court finds that the defendant did not make a good-faith effort, the case may proceed.
- If the case is allowed to proceed, the defendant cannot be held liable for ordinary negligence. Instead, the plaintiff must prove by clear and convincing evidence that the defendant committed at least gross negligence (a higher degree of fault than ordinary negligence).
- Plaintiffs must file their COVID-related lawsuits within one year after the cause of action accrues or within one year after March 29, 2021.

Although Florida's new law grants significant protections to employers, businesses, and other entities against COVID-related lawsuits, the law re-emphasizes the importance of consistently adhering to government-issued health standards and guidance, such as those issued by the Centers for Disease Control and Prevention (CDC), Occupational Health and Safety Administration (OSHA), and other federal, state, and local authorities. As these standards and guidance are continuously changing, employers should make sure to review current standards and guidance and consult with counsel prior to making any changes to their COVID safety procedures. Additionally, employers should consider updating their employee handbooks and policies to require compliance with such standards and guidance, as employers may be able to use such policies as evidence of good faith in subsequent COVID-related lawsuits under Florida's new law.

Governor DeSantis also signed into law significant protections for health care providers against non-employment-related COVID claims. Shumaker's Health Law team will be providing more details in a separate Client Alert.

If you have any questions about Florida's new law protecting employers and other businesses from COVID-related lawsuits, please contact Chris Cavaliere at ccavaliere@shumaker.com or 813.676.7208 or Haley Kole at hkole@shumaker.com or 813.676.7254.

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