

HR Heads-up

PERIODIC UPDATES ON IMPORTANT HR LEGAL ISSUES

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Employer COVID-19 Immunity Included In Unemployment Bill

Governor Evers signed a new bill into law on Thursday, February 25th dealing primarily with updating Wisconsin's outdated Unemployment Compensation System (2021 Wisconsin Act 4). While this is good news as it should address delays and other processing issues which became evident over the past year, it will take some time for a new system to be designed and implemented.

The new law does not really change the underlying Unemployment Compensation law, although it does contain a few COVID-19-related provisions which will be touched on below. However, what it does do, and what has been lost or glossed over in many of the reports about this new law, is create **immunity** for "entities" (including employers, business owners, etc.) from many COVID-19-related claims from employees, students, and the general public.

Immunity from COVID-19-Related Claims

Specifically, the law provides immunity from liability for the death or injury to any individual caused by COVID-19, as stated here:

895.476 Civil liability exemption; exposure to the novel coronavirus SARS-CoV-2 or COVID-19.

(1) In this section:

(a) "COVID-19" means the infection caused by the novel coronavirus SARS-CoV-2 or by any viral strain originating from SARS-CoV-2, and conditions associated with the infection.

(b) "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. "Entity" includes an employer or business owner, employee, agent, or independent contractor of the entity, regardless of whether the person is paid or an unpaid volunteer. "Entity" includes an employer covered under ch. 108.

(2) Beginning March 1, 2020, 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 the novel coronavirus identified as SARS-CoV-2 or COVID-19 in the course of or through the performance or provision of the entity's functions or services.

(3) Subsection (2) does not apply if the act or omission involves reckless or wanton conduct or intentional misconduct.

(4) Immunity under this section is in addition to, not in lieu of, other immunity granted by law,

and nothing in this section limits immunity granted under any other provision of law, including immunity granted under s. 893.80 (4).

The law makes it clear the immunity and limitation on recovery of damages under Wis. Stat. § 895.476 applies retroactively to all claims by all persons (including employees, citizens, etc.) back to March 1, 2020, except that it does not apply to actions filed before the effective date of the law (which is February 27, 2021). All other statutory and common law immunities are effective to actions filed both before and after the effective date of the law, however.

While certain terms within this legislation are likely to be litigated as to their meaning and scope, this is good news for Wisconsin employers as Congress has not provided similar immunity at the federal level. However, this “immunity” does not give employers carte blanche to ignore government orders or regulations, as that might be considered “wanton,” “reckless” or “intentional” conduct. Therefore, employers should continue to exercise appropriate caution including monitoring the applicability of insurance coverages, as decisions that could be impacted by COVID-19 are being considered.

Unemployment Compensation Provisions

The unemployment issues of importance in this bill include:

1. Once again, waving the one week waiting period for employees that are eligible for benefits. However, the waiver is extended only through March 14, 2021, unless it is extended again in future legislation.
2. Creating a presumption that all unemployment claims between March 15, 2020, and March 13, 2021, relate to the COVID-19 pandemic (unless the employee’s separation from employment was due to a voluntary quit, discharge for misconduct or substantial fault, or a labor dispute). That means the benefits will be charged to the State’s general fund rather than an individual employer’s UC account. Employers are not required to file any form or otherwise apply for the relief. This provision is retroactive back to March 15, 2020, so even if an employer failed or forgot to request the relief previously (under a 2020 law provision), the department will still apply the presumption. However, if the claim has already been charged to an employer’s account, the employer will likely have to take some action to get charging relief. For school districts this is important as schools are “direct payers” for unemployment benefits, meaning they normally have to reimburse the state dollar for dollar for their share of unemployment benefits. For other employers who have insured accounts, they may wish to monitor their UC accounts and rates carefully over the next year to make sure their rates are not going up due to this provision or that they are getting the appropriate credit. It is not clear from this change in law exactly how employers will be notified of these credits or that they are not being charged, so perhaps the Department of Workforce Development will provide additional guidance.

This law will not likely be the last State or Federal legislation impacting employers when it comes to COVID-19. We will continue to update you on COVID-19 legal developments, but if you have

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