

Indiana Enacts COVID-19 Liability Shield for Hoosier Businesses

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In an effort to stimulate safe reopening of the economy and protect companies acting in good faith, Indiana has enacted a COVID-19 immunity shield.

Governor Eric Holcomb signed Indiana [Senate Bill 1](#), “Immunity Related to COVID-19,” into law on February 18, 2021. It is retroactive and applies to a cause of action that accrues on or after March 1, 2020, and will remain in effect until December 31, 2024.

Except for an act or omission that constitutes gross negligence or willful or wanton misconduct, the new law provides civil tort immunity to a person for damages arising from COVID-19 in the following three instances:

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 new law provides protection for a broad array of entities on various premises. For purposes of the law, a “person” is defined as:

- An individual;
- An association;
- An institution;
- A corporation;
- A company;
- A trust;
- A limited liability company;
- A partnership; A political subdivision;
- A government office, department, division, bureau, or other body of government;
- A nonprofit corporation; or
- Any other organization or entity.

“Premises” are defined as real property and any appurtenant building or structure.

Entities are protected from damages “arising from COVID-19,” defined as an injury or harm caused by or resulting from: (1) the actual, alleged, or possible exposure to or contraction of COVID-19; or (2) services, treatment, or other actions performed for COVID-19.

Additionally, manufacturers or suppliers of COVID-19 protective products are protected from civil tort liability for harm that results from the design, manufacture, labeling, sale, distribution, or donation of such products. “COVID-19 Protective Products” include one or more of the following:

- Personal protective equipment;
- Medical devices, equipment, and supplies used to treat COVID-19, including medical devices, equipment, or supplies that are used or modified for an unapproved use to treat COVID-19 or to prevent the spread of COVID-19;
- Medical devices, equipment, and supplies used outside of their normal use to treat COVID-19 or to prevent the spread of COVID-19;
- Medications used to treat COVID-19, including medications prescribed or dispensed for off label use to attempt to treat COVID-19;
- Tests, as approved by the federal Food and Drug Administration, to diagnose or determine immunity or exposure to COVID-19;
- A product designed to clean or disinfect to prevent the spread of COVID-19; and
- Any component of an aforementioned item.

Further, under the law, a person may not bring a class action lawsuit based on tort damages arising from COVID-19 or for harm that results from the design, manufacture, labeling, sale, distribution, or donation of a COVID-19 protective product.

The liability shield *does not* grant immunity from civil tort liability to a person, manufacturer, or supplier whose acts or omissions constitute gross negligence or willful or wanton misconduct (including fraud and intentionally tortious acts) as proven by clear and convincing evidence.

The law supplements and is in addition to the Indiana Tort Claims Act (IC 34-13-3), the Indiana Medical Malpractice Act (IC 34-18), and any other immunity that may apply under state or federal law. It *does not* apply to a claim brought under Workers' Compensation (IC 22-3-2), Workers' Occupational Disease Compensation (IC 22-3-7), Occupational Health and Safety Act (IC 22-8), or Unemployment Compensation (IC 22-4).

Even with the tort liability protection afforded under the new law, as issues and concerns about COVID-19 unfold daily, Hoosier businesses should remain diligent in their reopening efforts to slow the spread and curb other potential exposure and maintain the health and safety of their workforce.

Jackson Lewis attorneys are closely monitoring updates and changes to legal requirements and guidance and are available to help employers weed through the complexities involved with [state-specific or multistate-compliant plans](#).

If you have questions or need assistance, please reach out to the Jackson Lewis attorney with whom you regularly work, or any member of our [COVID-19 team](#).

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