

State Law Provides Broad Immunity for COVID-19 Liability

Article
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Long-term care providers and other businesses and entities in Wisconsin now have broad, but not unlimited, immunity from liability related to COVID-19 exposure, under a bill signed into law by Governor Tony Evers on February 25. The immunity provision is included in a bill addressing the state's unemployment insurance program, which received final legislative approval on February 23. The bill is January 2021 Special Session Senate Bill (SB) 1, now 2021 Wisconsin Act 4.

The new law provides immunity from civil liability for death, injury, or other damages due to any act or failure to act resulting in, or related to, a person's exposure to COVID-19. Such action or failure to act must be in the performance of the entity's functions or services.

The immunity does not apply to reckless or wanton conduct or intentional misconduct. The law does not define "reckless" or "wanton" conduct. Wisconsin courts have interpreted "reckless" and "wanton" in various contexts as constituting more than mere negligence and involving intent, unreasonable dangerousness, indifference to consequences, and similar standards.

The scope of the immunity is extensive, covering any legal entity – including long-term care facilities, other businesses, associations, nonprofits, government, and schools. The immunity also covers such entities' employees, employers, business owners, agents, and independent contractors.

The immunity applies retroactively to claims arising on or after March 1, 2020. However, legal actions filed before the bill goes into effect on February 27 are not affected by the immunity.

The immunity provision is in a newly created statute, Wis. Stat. § 895.476.

Last year a separate statute, § 895.4801, applying only to health care providers, provided immunity for death, injury, or other damages caused by their services. That immunity was not limited to COVID-19 damages. However, it was only for services given during the state of emergency declared by Governor Evers on March 12, 2020, in Executive Order 72, and for 60 days after the end of the state of emergency. The state of emergency ended on May 11, 2020, so the subsequent 60-day extension expired on or around July 11.

PROFESSIONALS

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Regardless of immunity, long-term care providers should continue to follow the standard of care in all services to residents as well as federal, state, and local guidance regarding COVID-19 protocols. Providers should also take care to effectively document their efforts in these areas.

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