

Topics

Coronavirus Taskforce

Employment Law

Alabama Governor's Proclamation Provides Civil Immunities for Businesses

Date May 11, 2020

On May 8, 2020, Alabama Governor Kay Ivey issued a proclamation that curtails potential liability of businesses and health care providers resulting from COVID-19 transmissions as well as from the impacts of a business's or health care provider's response to the COVID-19 public health emergency. The May 8 Proclamation states its purpose is "to preserve the lives and property of the people of this State" by mitigating the economic impacts of the COVID-19 state health emergency and the state's emergency response that has impacted non-essential businesses. These limitations take the form of certain immunities from liability and caps on damages.

The emergency liability protection clause provides that "[a] business, health care provider, or other covered entity shall not be liable for the death or injury to persons or for damage to property in any way arising from any act or omission related to, or in connection with, COVID-19 transmission or a covered COVID-19 response activity, unless a claimant shows by clear and convincing evidence that the claimant's alleged death, injury or damage was caused by the business, health care provider, or other covered entity's wanton, reckless, willful, or intentional misconduct." The definition of covered entity includes non-profits, universities, institutions of higher learning, and any directors, officers, and employees of covered entities. A COVID-19 transmission includes any "actual, alleged, or feared exposure to or contraction of a COVID-19 infection" while any covered entity is engaged in a business activity.

The Governor's Proclamation heightens the proof a claimant must present from a "preponderance of the evidence" standard, meaning more likely than not, to a "clear and convincing" standard, which essentially means the claimant must convince the trier of fact that it is highly and substantially probable that the business or health care provider committed or engaged in wanton, reckless or intentional acts that resulted in damages. With regard to the types of damages available if this heightened standard is met, the Proclamation limits recovery to actual economic compensatory damages unless there is a "serious physical injury." The Proclamation specifically prohibits recovery for non-economic or punitive damages in all instances, except that punitive damages, but only punitive damages, are permitted for wrongful death claims. Under the Alabama Emergency Management Act the Governor has the authority to make such proclamations during a state emergency. The public health emergency is scheduled to be lifted on May 22, 2020, and any causes of action occurring after that date will likely not be subject to the immunities unless the legislature acts to restore them.

The Proclamation anticipates potential challenges to the application of the immunity provisions to claims existing before the Proclamation's effective date by providing a modified standard for such claims upon a court determination that the above-discussed immunities do not apply. This standard, potentially governing claims between March 13, 2020 (the date the public health emergency was first declared in Alabama), and May 8, 2020, provides that for certain claims a covered entity can be held liable only if the claimant proves that the covered entity did not "reasonably attempt" to comply with the then-applicable public health guidance. The Proclamation applies the heightened clear and convincing evidence standard to claims for negligence, premises liability, or any non-wanton, non-willful, or non-intentional civil causes of action under this standard. Remedies for these claims are limited to economic compensatory damages. Mental anguish, emotional distress, and punitive damages are specifically excluded with the exception of claims for "serious physical injury." As in the Proclamation's previous immunity section, only punitive damages are allowed for wrongful death claims.

The limitations on liability and damages do not impact injury claims by employees under the Alabama Workers' Compensation Act. Thus, if an employee is able establish that he or she has contracted COVID-19 within the scope of employment, Workers' Compensation benefits are the sole remedy.

Practically, the May 8 Proclamation allows businesses in Alabama to respond to a COVID-19 threat based on the best information available at the time without fear of liability. For example, if a business operation discovers a COVID-19 outbreak in a production facility, it can respond by ceasing production until the threat has been addressed without fear of liability for lost revenue by its retail customers who cannot fill orders.

If you have any questions regarding the issues addressed in this Alert, please contact the authors, Wesley Redmond, partner in our Birmingham office at wredmond@fordharrison.com and Susan Bullock, counsel in our Birmingham office at sbullock@fordharrison.com. Of course, you may also contact the FordHarrison attorney with whom you usually work.

FordHarrison is closely monitoring the spread of Coronavirus and associated federal and state legislation and has implemented continuity plans, including the ability to work remotely in a technologically secure environment when necessary, to ensure continuity of our operations and uninterrupted service to our clients. We are following all CDC guidelines and state and local laws as applicable. We are committed to ensuring the health and welfare of our clients, employees, and communities while continuing to provide our clients with the highest quality service. Please see our dedicated Coronavirus Taskforce and Coronavirus – CARES Act pages for the latest FH Legal Alerts and webinars on Coronavirus and workplace-related provisions of the CARES Act, as well as links to governmental and industry-specific resources for employers to obtain additional information and guidance. For more information or to be connected with a Coronavirus Taskforce or CARES Act attorney, please contact clientservice@fordharrison.com.