

THOUGHT LEADERSHIP

News

New Texas Statute Limits COVID Liability

Newsbrief

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Last Monday, the Texas Pandemic Liability Protection Act (PLPA) became law and went into effect that day. The PLPA contains several provisions, including liability protection for health care providers and educational institutions, and protection against products liability actions.

It also provides liability protection for employers, or other entities, that allegedly expose individuals to a pandemic disease. Under the PLPA, the exposed individual must show either the employer or other entity: (a) knowingly failed to warn the individual of or remediate a condition that the person knew was likely to result in the exposure of an individual to the disease or (b) knowingly failed to implement or comply with government-promulgated standards, guidance, or protocols intended to lower the likelihood of exposure to the disease that were applicable to the person or the person's business.

Claimants proceeding under subsection (a), above, must also show the employer or other entity had control over the condition, knew the claimant was more likely than not to come into contact with the condition, and had the ability and the opportunity to either remediate the condition or warn the claimant. Claimants proceeding under subsection (b) must also show the employer or other entity had the opportunity and ability to implement the standards, refused to implement or flagrantly disregarded them, the standards did not conflict with other applicable standards, and reasonable scientific evidence shows that the employer's failure or refusal was the cause in fact of the claimant's contracting the disease.

The claimant will also have to serve an expert report within 120 days of a defendant's answer of such a lawsuit, setting forth the factual and scientific basis for the assertion that the defendant's failure to act caused the individual to contract a pandemic disease. Failure to serve an adequate report can result in the dismissal of the suit with the claimant responsible for the defendant's fees and costs. The PLPA will apply to actions filed after March 13, 2020, provided a final judgment has not yet been rendered. The PLPA does not provide a private cause of action.

This is an important tool for employers in limiting liability for pandemic-related lawsuits. And in conjunction with your workers' compensation program, can eliminate liability for worker illnesses for COVID-related conditions.

We routinely advise employers regarding workplace liability, including liability for physical ailments and injuries.

Stay safe, Jack, Elizabeth and Jim