

New Pending Illinois Legislation Could Impact Potential COVID-19 Exposure Claims

SmithAmundsen Construction Alert
March 4, 2021

Illinois legislators have introduced new legislation that, if passed, could drastically alter the liabilities faced by employers and businesses to potential COVID-19 exposure claims.

House Bill 3003, the “COVID-19 Liability Act,” was introduced to the Illinois House of Representatives on February 28, 2021. The bill, in general, offers protections to businesses that may otherwise be liable to individuals who claim to have been infected by contact with the business.

The bill, in effect, does three main things:

First, under the new bill, a plaintiff has to show that a business engaged in **willful misconduct**, which would have to be proven by **clear and convincing evidence**. This is a much higher standard for plaintiffs to meet than the usual negligence standards, which can be proven by a mere preponderance of the evidence.

Second, the bill establishes that if employers make “reasonable efforts in light of all circumstances to comply with the applicable government standards and guidance in effect...” then Illinois courts will presume they are not engaged in willful misconduct. In effect, so long as businesses make reasonable efforts to follow government guidelines, they will have extremely strong legal defenses against exposure claims.

Finally, and most interestingly, the bill also establishes a cause of action for would-be defendants that receive frivolous demands from plaintiffs. Typically, plaintiffs can send “demand letters” to businesses demanding payment pre-suit for claims that often have little or no supporting evidence. Many businesses negotiate during this stage, since they would rather settle out than pay for the costs of prolonged litigation, even if there was no wrongdoing.

If HR 3003 passes in its current form, businesses that receive demand letters can counter-sue the claimants if the demand turns out to be frivolous or meritless. This will likely deter many meritless claims from being prosecuted against businesses in the first place – which is welcome news to Illinois businesses

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In sum, HR 3003 would create a number of protections for businesses and employers in Illinois that are bracing for a potential deluge of litigation as COVID-19 infections decrease and the local economies begin to reopen. As it stands, there is some bipartisan support for the bill – it was sponsored by two Republicans and a Democrat – though it is a long way from becoming law in its current form. Regardless, if and when the bill is passed, all businesses and their counsel should be aware of these protections and be ready to deploy them in COVID-19 related actions.

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