

Effective August 28, 2021

MISSOURI GOVERNOR SIGNS STATE SENATE BILL PROVIDING EMPLOYER PROTECTIONS AGAINST COVID-19 CIVIL ACTION

Background

On August 28, 2021, Missouri Governor Michael L. Parson signed into law **SB 51** and **SB 42**. The new law is codified in R.S.MO. §§ 537.1000, 537.1005, 537.1010, 537.1015, 537.1020, and 537.1035, that provides protection to employers against COVID-19 liability.

SS#2 SCS **SB 51** (lead bill) establishes provisions of law relating to liability in COVID-19 related actions and **SB 42** modifies provisions relating to civil actions arising during a declared state of emergency due to COVID-19.

Specifically, the new law limits an individual's right to bring a civil action against an employer for COVID-19 exposure. In order to bring an action against a company for exposure to COVID-19, and individual must show by clear and convincing evidence: 1) The individual or entity engaged in recklessness or willful misconduct that caused an actual exposure to COVID-19; and, 2) The actual exposure to COVID-19 caused the personal injury of the plaintiff. If the company is a religious institution, the plaintiff must show the exposure was intentional in order to recover.

The law also provides a rebuttable presumption that the plaintiff assumed the risk in a COVID-19 exposure action when the individual or entity posts or maintains written notice stating:

WARNING

Under Missouri law, any individual entering the premises or engaging the services of the business waives all civil liability against the individual or entity for any damages based on inherent risks associated with an exposure or potential exposure to COVID-19, except for recklessness or willful misconduct.

This warning must be placed in a clearly visible location at the entrance of the business, service, activity, or accommodation. A religious institution is not required to post the Warning.

Summary

The law bars individual or entity liability for COVID-19 exposure through the acts of a third party unless: 1) the individual or entity had an obligation under general common law to control the acts of the third party; or, 2) the third party was an agent of the individual or entity.

There are also protections for product liability actions. The new law bars suits against manufactures in a COVID-19 products liability action when: 1) it does not make the covered product in the ordinary course of business; 2) makes the covered product in

the ordinary course of business, however, the product was made in a modified manufacturing process that it outside the ordinary course of business due to COVID-19; or, 3) makes the covered product in the ordinary course of business and use of the covered product is different than its recommended purpose and used in response to the emergency due to COVID-19.

In order for a plaintiff to prevail in a COVID-19 products liability action over the use or misuse of a covered product, they are required to prove by clear and convincing evidence: 1) Recklessness or willful misconduct; and, 2) The alleged harm, damage, breach, or tort was caused by the alleged recklessness or willful misconduct.

Kevin P. Clark vigorously represents his clients to obtain the most favorable outcome, whether by settlement or trial. While he has experience in all facets of civil defense, Kevin specializes in defending insurance coverage claims, employment law and class action cases, automobile and trucking matters, toxic torts and asbestos claims. He has extensive trial experience having tried numerous cases to favorable jury verdicts in both Missouri and Illinois.

Litchfield Cavo operates out of 22 offices, serving clients in more than 35 states nationwide.

AZ – Phoenix | **CA** – Los Angeles area | **CT** – Hartford area | **FL** – Ft. Lauderdale | **FL** – Tampa
GA – Atlanta | **IL** – Chicago | **IN** – Highland | **LA** – New Orleans area | **MA** – Boston area
MO – St. Louis | **NJ** – Cherry Hill | **NV** – Las Vegas | **NY** – New York | **PA** – Philadelphia
PA – Pittsburgh | **RI** – Providence | **TX** – Dallas-Ft. Worth | **TX** – Houston | **UT** – Salt Lake City
WI – Milwaukee | **WV** – Barboursville
