Wisconsin Enacts COVID-19 Civil Liability Shield

Gov. Tony Evers signed Senate Bill 1 into law on February 26, 2021, which increases protection for Wisconsin employers from COVID-19-related civil liability. Specifically, the recently enacted law shields entities from civil liability for the death, injury or damages related to a COVID-19 infection of any individual, employee or patron who may have been infected because of an act or an omission through the entity's performance of its functions or services. This civil immunity, however, does not extend to an entity's "reckless or wanton conduct or intentional misconduct."

The law defines entities broadly to include partnerships, corporations, associations, governmental units, tribal governments, schools, nonprofit organizations and any employer covered by the state unemployment insurance laws. The law also provides immunity beyond the employer-employee relationship and would apply, for example, to a business's customers, a school's students or a nursing home facility's patients. The immunity is retroactive to claims accruing on or after March 1, 2020, but does not apply to actions filed before the effective date of the bill, February 27, 2021.

This new civil immunity is in addition to any other limitations of liability, such as workers' compensation laws. Workers' compensation generally preempts civil lawsuits because it provides the exclusive remedy for an employee who becomes injured or sick while working. While Wisconsin's new COVID-19 civil liability shield is broad and employers can be more confident in the lessened risks associated with operating their businesses during the pandemic, it does not mean that employers should stop taking necessary and recommended precautions to reduce the risk of exposure to COVID-19. Employers should continue to stay up to date and comply with guidance from the Centers for Disease Control and Prevention, the Occupational Safety and Health Administration (OSHA) and the Wisconsin Department of Health Services. The immunity granted by the new Wisconsin law applies only to civil liability and does not impact OSHA's ability to investigate and inspect a workplace in response to a complaint or an illness or death. Additional insight into OSHA's most recent COVID-19 guidance can be found here.

If you have any questions about your current procedures related to COVID-19, please contact Matthew DeLange or your Reinhart attorney.

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