



## Ohio Legislature grants qualified immunity to schools for COVID-19 related lawsuits

September 18, 2020

On September 2, 2020, the Ohio General Assembly enacted House Bill 606, a measure that provides widespread qualified immunity to various groups, including schools, for liability related to COVID-19. Once Governor DeWine receives the bill, he has 10 days to sign, let it become law without his signature, or veto. The law will go into effect 90 days after it is signed by the Governor, or, if he does not sign, 100 days after it is received. The law is retroactive and covers acts, omissions and other conduct from March 9, 2020, through September 30, 2021. Additionally, because the legislature acknowledged that this law is not general or permanent, it will not be given specific section numbers in the Revised Code. However, through its expiration date, it still has the full force and effect of regular, permanent law.

The new law has two primary parts. Section 1 provides qualified civil immunity to those providing health care and emergency services during a government-declared disaster or emergency. Section 2 provides qualified immunity to individuals, schools, businesses and other entities from liability in civil lawsuits alleging exposure, transmission or contraction of COVID-19.

Section 2 was designed to provide qualified immunity to any person sued for causing harm by exposure to, transmission or contraction of COVID-19 and other specified coronaviruses. As used in the bill, "person" has the same broad meaning as in Revised Code 1.59, which includes schools, businesses and other organizations. A school does not have immunity if it is established that the exposure, transmission or contraction occurred by reckless conduct, intentional misconduct or willful and wanton misconduct. While the last two terms are not defined in the statute, "reckless conduct" is defined as someone who acts with "heedless indifference" and disregards "a substantial and unjustifiable risk" that their conduct will cause exposure to,

transmission or contraction of one of the specified coronaviruses.

Section 2 also clarifies that government orders, recommendations and guidelines do not create duties of care for schools, and those orders and other documents cannot be used as evidence to establish a duty of care. In other words, a plaintiff in a lawsuit could not argue that an order from the Ohio Department of Health, a guideline from the Ohio Department of Education, or another similar document from a government entity created a duty for a school to either take or leave a certain action. Establishing a duty of care is a required element for a successful negligence lawsuit, so Section 2 makes such lawsuits more difficult for those seeking to pursue them. Additionally, Section 2 prevents class actions in cases where qualified immunity does not apply.

The bill offers a measure of relief to schools as they provide much needed services and contend with uncertainty during the pandemic. It recognizes the importance of reopening Ohio's schools and businesses while balancing those stakeholders' concerns with lawsuits alleging liability for transmission of the virus, which cannot be eliminated, even when organizations take the recommended steps to provide a safe environment.

# Authors

---

Copyright © 2023 Bricker & Eckler LLP. All rights reserved.