

Louisiana Enacts Reforms During the COVID-19 Pandemic: Limits on Liability, Damages, and Changes to Evidentiary Rules

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Louisiana Governor John Bel Edwards recently signed into law [Act 336 of the 2020 Regular Session](#), which was filed in the Louisiana State Legislature as House Bill 826. The new act limits the liability to which Louisiana businesses and employers could be exposed due to the ongoing COVID-19 public health emergency. Specifically, the law creates two statutes—La. Rev. Stat. § 9:2800.25 and La. Rev. Stat. § 29:773—that limit the potential liability of businesses and employers operating in Louisiana for COVID-19 contractions and related injuries. The law is retroactive to March 11, 2020.

Governor Edwards also signed into law [Act 37 of the 2020 First Extraordinary Session](#), which was filed in the legislature as House Bill 57. This new act—titled the “Civil Justice Reform Act of 2020”—provides additional protections to Louisiana businesses and changes Louisiana’s civil litigation rules. This new law will take effect on January 1, 2021.

Act 336: Protections from COVID-19 Liability for Employers Operating in Louisiana

Act 336 protects employers from potential tort claims and civil liability for COVID-19 contractions and related injuries or illnesses suffered by employees at work. The law also protects employers against potential tort claims and civil liability for COVID-19 contractions sustained by individuals who are not covered by Louisiana’s workers’ compensation law. Under Act 336, employees may pursue civil or other tort claims against their employers for COVID-19 contractions only where exposures have been caused by the intentional acts or conduct of the employers. Absent intentional conduct, an eligible employee’s sole remedy for COVID-19 exposure and any related injury or illness is limited to the recovery provided by Louisiana’s workers’ compensation law.

Act 336 limits the potential civil liability that Louisiana businesses, including businesses and manufacturers involved in the sale and distribution of personal protective equipment, may face for COVID-19 contractions and related injuries or illnesses. It also protects businesses that host, promote, produce, or organize events in Louisiana. The list of covered events includes the following:

tradeshows, conventions, meetings, association-produced events, corporate events, sporting events, or exhibitions that place in the state.

Exceptions to Act 336's COVID-19 Protections and Liability Limitations

The law's protections are not without limitation, nor are they applicable to all employers and businesses operating in Louisiana. The law provides certain exceptions to the liability limitations and protections it creates. In particular, businesses and employers that are grossly negligent or engage in "willful or wanton misconduct" related to the ongoing COVID-19 pandemic can still be held civilly liable to their customers and employees. To be protected by Act 336, employers and businesses must abide by local, state, or federal COVID-19 procedures applicable to their businesses or operations. Otherwise, noncompliant businesses and employers could be exposed to tort claims and civil liability from their customers and employees for COVID-19 contractions and related illnesses and injuries.

Employer Takeaways

Employers and businesses operating in Louisiana may want to take steps to ensure they are following local, state, and federal COVID-19 procedures applicable to their respective businesses, operations, and workforces, and document the steps they are taking or have taken. Employers may also seek to implement and enforce policies and procedures related to COVID-19 that are suitable for the needs of their respective workforce and business operations. Finally, employers and businesses in Louisiana may want to provide training to their workforces and document the fact that managers and supervisors have been trained on the applicable COVID-19 policies and procedures.

Act 37: Limits on Damages and Evidentiary Changes

Act 37, the Civil Justice Reform Act of 2020, is a new law that will take effect on January 1, 2021, and make changes to Louisiana's civil litigation system that may reduce the number of lawsuits filed in the state each year. Act 37 also places limits on the potential damages awardable for medical expenses in personal injury cases.

Supporters of the law argue that it will afford greater protections to Louisiana businesses and industries and discourage frivolous lawsuits that some believed had made it harder to attract businesses and industries to Louisiana. Proponents also claim this tort reform law will lower insurance rates for businesses and individuals in Louisiana. Louisiana's auto insurance rates, for example, are currently the second highest in the nation. Opponents of the new law, on the other hand, claim it unnecessarily increases court and litigation costs while lowering the potential recovery for victims.

Significant Changes and Protections for Businesses and Employers Operating in Louisiana

Act 37 has the potential to force more jury trials by lowering the threshold for a jury trial in lawsuits where the damages sought are greater than \$10,000 (down from the current \$50,000 threshold). Somewhat unique to the Louisiana state court system is that many defendants in civil lawsuits prefer to force plaintiffs to argue their cases and prove damages to juries instead of individual judges. The new law also amends the rules of evidence to limit any mention of the amount of insurance coverage to a jury and to limit certain medical expense awards, including eliminating double recovery in certain

instances. Additionally, Act 37 will allow a jury to hear evidence about whether a plaintiff in an auto accident case was wearing a seatbelt.

Employer Takeaways

By reducing the threshold for jury trials in civil lawsuits from \$50,000 to \$10,000, Louisiana businesses and employers will have more control and discretion when it comes to deciding whether their cases will be decided by juries. Many companies that find themselves as defendants in civil litigation in Louisiana's state court system may prefer juries to decide their cases instead of judges. Act 37 gives businesses the option of asking for jury trials in more cases.

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