

Don't Relax – COVID-19-Related Changes are NOT Slowing Down

Article By:

This author much prefers the well-known (at least in some circles) advice from *The Hitchhiker's Guide to the Galaxy* – “DON'T PANIC.” Unfortunately, even with some hopeful signs of normal (or something close to normal) returning, it may be better to share the admonition of “Don't Relax.” COVID-19 continues to have tremendous impact on many aspects of our lives, and certainly affects many employment considerations. The changes keep coming, and the need to pay close attention continues.

To illustrate, here are a few of the recent COVID-19-related developments impacting employers:

- Vaccine pass or not? It depends on where you live.
 - On March 26, 2021, New York State launched the [Excelsior Pass](#) program that allows for verification of vaccination or recent negative results. This can be used for access to particular events or venues, including attendance in excess of normal limits.
 - [Florida](#) and [Texas](#), in contrast, have executive orders by their respective governors that ban the use of a vaccine passport. In Florida, the ban is good for 90 days, and Governor DeSantis expects the legislature to pass similar protections. The executive order bans governmental entities from issuing vaccine passports and directs that businesses in Florida cannot require documentation of a vaccine to gain access to or service from the business. Businesses are required to comply with this directive in order to be eligible for any grants or contracts that are funded with state revenue.
- COVID-19 immunity protections for businesses continue to pass.
 - Arizona has passed legislation protecting businesses from civil liability in the context of COVID-19 exposure so long as the business acted in good faith during a public health emergency.
 - Florida also passed legislation providing civil immunity unless gross negligence or intentional misconduct is involved. The Florida law also requires a physician's affidavit of merit related to an injury claim and requires gross negligence be proven by

clear and convincing evidence. Claims must be brought within one year of death, hospitalization or the diagnosis that is the basis for the claim.

- Wisconsin is naming (business) names.

In Wisconsin, it appears that the names of businesses with at least 25 employees that have had at least two employees test positive for COVID-19 or been involved with close contact investigation will be released. The list of businesses was part of a public records request to the Wisconsin Department of Health Services. Three trade associations filed suit and a temporary injunction prevented release of the information (business names, not identification of individuals). An appellate court ruled the lawsuit should be dismissed, largely because the trade associations did not have a legally protectable interest.

- OSHA standards remain pending.

Finally, anyone anxiously awaiting the release of OSHA's new emergency temporary standard has to wait longer. OSHA was supposed to decide by March 15, 2021, if a new standard was needed, but the agency is still evaluating, and waiting for updated analysis to reflect availability of vaccines as well as concern about variants.

This is a lot of activity for a short period of time and we can expect the flurry of COVID-19-related developments to continue. So your need to stay alert also continues. We'll stay alert too, and continue to update our readers of key developments.

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