

NJ-LAC
COVID-19 IMMUNITY

COVID-19 Exposure is Essentially an Insurance Issue

- COVID claim problem not dependent on success of claim
- Core issue: No insurance coverage
- Large out-of-pocket expenses for claims
- Effective immunity law:
 - Broad immunity
 - Not require strict compliance with Covid-19 standards
 - Chills plaintiff's lawyers

Nationwide Trends in Immunity

- A number of states, including NJ (pursuant to a statute granting the governor the authority to do so during a health emergency), have provided some form of immunity to health care providers and health care facilities
- In addition, the legislatures of several states have passed broader based immunity bills extending to businesses and nonprofits.

Common Themes in Effective Bills

- The bills generally provide immunity for claims of COVID transmission on the premises of the businesses, absent willful misconduct, recklessness, or gross negligence.
- Most laws contain carve-outs for workers comp claims and criminal prosecution for failure to abide by COVID regulations.
- Most are retroactive to a date in March.
- Some bills require compliance or substantial compliance with COVID-19 regulations and guidelines.

Pending NJ Legislation for Immunity

- By our count there are as many as 10 separate bills out there for COVID-19 immunity. These bills involve immunity for schools, governments, non-profits, employers, businesses, and employees.

Bill List

- A4440/A4377/S2628/S2634—Narrow immunity for entities and colleges
- A4426—Narrow immunity for schools
- A4408---Broad immunity for higher education
- A4388—Broad immunity for employers
- A4377—Narrow immunity for entities
- **A4390/S2695—Broad immunity for age restricted associations**

Bills fall into two categories—broad and limited immunity

- Broad immunity bills generally only include carve-outs for gross negligence, recklessness, and willful misconduct.
- We believe that this type of bill is what is necessary to adequately protect associations
- Narrow immunity bills are generally only provide immunity for entities which in “good faith” reasonably comply with or “exceed” health and safety measures

Narrow Immunity Bills are Less Desirable

- If immunity is premised on full compliance with a panoply of regulations and guidance, some of which is conflicting, then the immunity may not have the required chilling effect on uninsured lawsuits.
- Many of the “regulations and guidance” referred to in these bills, such as CDC guidance, consists of “considerations,” “suggestions,” and “recommendations.”

Age Restricted Immunity Bill A4390/S2685

- “Any association of an age-restricted planned real estate development, and any members, employees, and agents thereof, shall not be liable for any civil damages for injury or death caused by an exposure to COVID-19, a related viral strain, or a disease caused by either one, alleged to have been sustained as a result of an act or omission by the age-restricted planned real estate development association, or any members, employees, or agents thereof, in the course of managing or maintaining the common elements and facilities of the age-restricted planned real estate development. This immunity shall be retroactive to March 9, 2020.”

Age Restricted Immunity Bill A4390/S2685

- No immunity for “acts or omissions constituting a crime, actual fraud, actual malice, gross negligence, recklessness, or willful misconduct.”
- To improve effectiveness:
 - Include pool management companies
 - Agents include management companies