



Proponent Testimony from Tony Fiore
On behalf of
The Ohio SHRM State Council
On SB 308
Before the
Senate Judiciary Committee
On
May 20, 2020



Chairman Eklund, Vice Chair Manning, Ranking Member Thomas, and members of the Senate Judiciary Committee, thank you for the opportunity to provide testimony in support of Senate Bill 308 (SB 308), sponsored by Sen. Matt Huffman. My name is Tony Fiore and serve as the Director, Government Affairs for the Ohio SHRM State Council.

I am here today on behalf of the Ohio SHRM State Council. The Society for Human Resources Management ("SHRM") was founded in 1948 in Berea, Ohio. SHRM is the world's largest HR membership organization devoted to human resources management. Representing more than 300,000 members with over 115 million employees in over 160 countries, the Society is the leading provider of resources to serve the needs of HR professionals and advance the professional practice of human resource management. SHRM has more than 575 affiliated chapters within the United States and subsidiary offices in China, India and United Arab Emirates. In Ohio, the Ohio SHRM State Council represents over 25 local chapters and more than 15,000 members.

The coronavirus (COVID-19) is placing unprecedented demands on everyone thus far in 2020 and the effects will be felt for years to come. HR professionals are at the epicenter helping companies navigate these uncharted waters. Before discussing the need for the civil protections proposed in SB 308 it's important to know the legal landscape companies and non-profits have to operate under before and in response to the coronavirus.

- Employees have several protections, whether during a disaster or emergency, with penalties to employers for violations. These include the [Occupational Safety and Health Act \(OSHA\)](#) "[general duty clause](#)" to provide each worker "employment and a place of employment, which are free from recognized hazards that are causing or are likely to cause death or serious physical harm." OSHA will utilize outside nationally recognized consensus standards or other authoritative sources, such as recommendations issued by the [Centers for Disease Control \(CDC\)](#), the [National Institute for Occupational Safety and Health \(NIOSH\)](#), the [World Health Organization \(WHO\)](#) or other similar resources. If any workplace injuries or death arise out of or in the course of an employee's employment such injuries or death are likely covered by Ohio's workers' compensation system.
- Most employers already provided paid family or sick leave prior to the [Families First Coronavirus Response Act](#) provided protections for such leave and penalties for not providing them. The [U.S. Department of Labor's Wage and Hour Division's](#) enforcement of [Fair Labor Standards Act \(FLSA\)](#) and job-protected leave under the [Family and Medical Leave Act \(FMLA\)](#) are also available for employee's protection. There are also employee protections under the [Americans with Disabilities Act \(ADA\)](#) which provides certain protections to employees who may have physical, mental or emotional "disabilities" but who are otherwise qualified to

perform their essential job functions. There are no less than 9 federal agencies, including the [U.S. Equal Employment Opportunity Commission \(EEOC\)](#), that enforce the ADA.

- There was already a workforce/talent shortage before COVID-19, so this problem will likely get worse before it gets better. Business and non-profit closures have surged the number of unemployment claimants to an all-time high since the Great Depression. As employers begin to reopen their operations the additional \$600 per week, as authorized in the federal CARES Act, on top of regular unemployment insurance benefit through the end of July makes them the “bad guy” for asking employees to return-to-work. Why? In many cases, this will provide more money than the employee normally made when working. These employees may feel less inclined to return to work before August, and therefore, refuse the employer’s recall. This also puts an additional strain on those operations that obtained funding through the [U.S. Small Business Administration’s Paycheck Protection Program](#) since employers may not be able to bring back as many employees to reach the loan forgiveness thresholds before the end of June.
- Anyone who violates the Governor DeWine and the Ohio Department of Health orders may be charged with a 2nd-degree misdemeanor under [O.R.C. 3701.99](#), which carries a maximum potential penalty of up to 90 days in jail and a fine of up to \$750.00. There may be additional penalties, including license revocation, if the company or individual is licensed under a state agency, board, or commission.

I’ve recapped some of these federal, state and local laws because protections and penalties will remain in place even if the civil liability protections in [SB 308](#) become law.

The bill provides:

- businesses in Ohio, including non-profits, qualified immunity from lawsuits alleging an individual was exposed to the coronavirus while on their premises.,
- manufacturers and other companies who provide products in response to the coronavirus pandemic protection from product liability lawsuits, and
- healthcare providers the same emergency care liability limits throughout the continuation of care performed during a disaster or emergency

It is important to note that these immunities do not apply if there is clear and convincing evidence that the service provider’s act or omission is intentional, willful, or wanton misconduct. What this proposal does for companies and individuals is to give them fairness and predictability at no cost to the government. Everyone has made significant sacrifices to help prevent as many people as possible from contracting the coronavirus. It will take years for some companies to fully recover from this pandemic and others may never reopen. The last thing companies should have to deal with are frivolous lawsuits alleging an individual or class of individuals contracted the coronavirus from a particular business. One thing the Ohio General Assembly can do for companies and HR professionals that do everything possible to protect employees and third parties is to grant them the civil liability protections contained in [SB 308](#).

Chairman Eklund, Vice Chair Manning, Ranking Member Thomas, and members of the Senate Judiciary Committee, thank you for the opportunity to provide testimony in support of [SB 308](#). Please contact me at afiore@keglerbrown.com or (614) 462-5428 if you have any questions.