

Wisconsin Offers Legal Protection for Those Manufacturing Emergency Medical Supplies

Article

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On April 15, 2020, Governor Evers signed into law Wisconsin's first state-wide legislative response to the COVID-19 crisis: 2019 Wisconsin Act 185 (the "Act"). The new Act provides civil immunity to specific individuals or companies for death or injury to a person caused by the "emergency medical supply." Stated otherwise, the Act provides legal protections to businesses and manufacturers who are creating emergency medical supplies for the government or charities.

Specifically, the Act provides civil immunity for those who are engaged in the manufacturing, distribution, or sale of "emergency medical supplies" if those supplies are either donated or sold for a price not to exceed the "cost of production" to charitable organizations and governmental units.

"Emergency medical supplies" includes any medical equipment or supplies necessary to limit the spread or provide treatment for the coronavirus, including life support devices, personal protective equipment, and cleaning supplies. Therefore, the definition is broad enough to include face masks, ventilators, medical gowns, and hand sanitizers or disinfectant.

"Cost of production" includes not just the costs of inputs, but includes "costs of inputs, wages, operating the manufacturing facility, and transporting the production." Therefore, manufacturers can include some overhead costs and transportation costs in the price that they sell the emergency medical devices for. The Act also provides civil immunity for charitable organizations that distribute emergency medical supplies for free.

In considering whether to shift a manufacturing line or begin producing new emergency medical supplies, many manufacturers are worried about civil product liability that could follow from producing these devices, especially because they are producing a product that is new to them (such as distilleries producing hand sanitizer or clothing companies producing facemasks) or these companies are inventing new medical devices (such as companies inventing new ventilators). The immunity provided by the Act should encourage more companies and manufacturers to start, or continue, producing emergency medical supplies to provide or sell to nonprofits and the government. It also

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