Articles + Publications | February 25, 2022

Mandatory Vaccination Policies: Not on Some States' Watch

Labor & Employment Workforce Watch

WRITTEN BY

Akilah F. Craig

Since April 2021, when all adults in the United States became eligible to receive COVID-19 vaccines, the federal government, as well as most state legislatures and local officials, implemented extensive measures to increase the availability of and access to COVID-19 vaccines. Once vaccines became widely available, the federal government took steps to increase vaccination rates, including, in part, through attempts to mandate employment-based vaccination requirements. In response to, or anticipation of, such actions at the federal level, some states took the opposite approach—passing laws restricting an employer's ability to implement a mandatory vaccination policy. With varying state laws, it is important for employers to be aware of these limitations, and how they may affect employment-based vaccination policies.

Similar to the federal law requirements for exemptions to mandatory vaccination programs, certain states codified an employee's right to object to an employer-mandated vaccine requirement for medical and religious reasons.

- Arizona (Senate Bill 1824)—*protecting religious exemptions only*
- Alabama (Senate Bill 9)
- Iowa (House File 902)
- Kansas (House Bill 2001)

Other states have passed laws that, in addition to the typical medical and/or religious exemptions, recognize broader categories of exemptions from employment-based vaccination programs:

- Arkansas (Senate Bill 739 and companion House Bill 1977) provides exemptions for an employee who (1) produces a negative COVID-19 test result no more than once a week; or (2) provides proof of immunity through COVID-19 antibodies, a T cell response, or a positive COVID-19 tests, on a basis of two times per year, not to exceed one time every six months.
- Florida (House Bill 1B) provides exemptions based upon COVID-19 immunity, periodic COVID-19 testing, and personal protective equipment usage.
- North Dakota (House Bill 1511) provides exemptions based on proof of COVID-19 antibodies, periodic COVID-19 testing, and a philosophical or moral belief opposing immunization.
- Texas (Executive Order GA 40) provides an exemption based upon an individual's personal conscience. Note: there was a push for the Texas legislature to codify the terms of the Governor's Executive Order into a bill during a special session, but such efforts were ultimately unsuccessful. Executive Order GA 40, however, still remains in effect.

©2026 Troutman Pepper Locke

- Utah (Senate Bill 2004) also provides an exemption for personal reasons, but there is an exception for an employer who employs fewer than 15 employees and establishes a connection between the vaccination requirement and the employee's assigned duties and responsibilities.
- West Virginia (House Bill 335) provides exemptions based upon a showing that the employee has COVID-19 antibodies, or has suffered and recovered from COVID-19.

The legislature in Montana (House Bill 702) took a far more restrictive approach by recognizing an individual's vaccination status as a protected category under Montana's Human Rights Act. As a result, employers are prohibited from refusing employment to, barring from employment, or discriminating in compensation or any other term, condition or privilege of employment, on the basis of a person's vaccination status, or whether the person has an immunity passport. Frequently Asked Questions issued in connection with the law note that an employer also may not require an employee to wear a mask while on the employer's premises or during the course of employment, based on the employee's vaccination status. Rather, employers who choose to impose a mask requirement must do so without regard to vaccination status.

Stopping short of barring mandatory vaccination programs, Tennessee (House Bill 9077/Senate Bill 9014), instead, created an impediment to employer enforcement of any such mandatory vaccination program. The law prohibits an employer from requiring proof of vaccination or taking an adverse action against an employee or applicant for refusing to provide proof of vaccination if the employee objects to receiving the vaccine for any reason. While not an express prohibition on vaccine mandates, Tennessee's intention is clear.

Beyond the creation of employee exemptions, many of these state laws contain nuanced requirements for any employment-based vaccination program. For example, some states have created specific forms or processes for certifying certain exemptions, which must be incorporated into the vaccination program. Other states provide for specific enforcement measures in the event of a violation, such as an employee's right to appeal the employer's decision to the state Department of Labor, and job protection pending appeal. An employer who violates these laws may face varying penalties under state law, some significantly steeper than others. For instance, Florida and Kansas both provide for a penalty of up to $10,000 per violation for employers with under 100 employees and a penalty of up to $50,000 per violation for employers with 100 or more employees, while other states, such as West Virginia, provide for injunctive relief.

Beyond the state laws described above, several states took legislative action to restrict vaccine mandates only in certain industries or that are not applicable to private employers. In addition to the state laws already in effect, there is a significant amount of pending legislation at the state level that could further impact employment-based vaccination programs. With such wide variance among state legislation, and the potential for federal preemption, any employer with a vaccination policy, or who is considering one, should carefully review the state laws applicable to their employee population to ensure legal compliance.

RELATED INDUSTRIES + PRACTICES

- Labor + Employment

©2026 Troutman Pepper Locke