

STATES LIMIT EMPLOYER POWER TO REQUIRE THE JOB

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With OSHA’s COVID-vaccination mandate now stayed (almost certainly forever), and the vaccination mandate for government contractors also stayed (probably forever), U.S. employers must decide whether to impose their own COVID vaccination mandates on employees. And state laws will have something to say about that.

The chart below summarizes current state laws that restrict a private sector employer’s ability to impose a COVID vaccination mandate on its employees. In almost all cases, these state restrictions go beyond the federal requirements under the Americans with Disabilities Act and Title VII that employers reasonably accommodate disability or sincerely-held religious belief absent undue hardship.

Other states may add their own restrictions in the coming weeks and months.

State	Summary of Vaccination Exemption	Citation
Alabama	ERs may not require EE to be vaccinated as condition of employment without allowing EE to claim religious and medical reasons. Exemption eligibility must be “liberally construed.” EE’s submission of the universal request form creates a presumption EE is eligible for exemption.	Act 2021-561
Arizona	If an ER received notice from EE that EE’s sincerely held religious beliefs prevent the ER from taking vaccine, ER shall provide a reasonable accommodation unless the accommodation would pose an undue hardship and more than a de minimis cost to the ER.	A.R.S. § 23-206
Arkansas	ERs must allow EEs to opt out of vaccine requirements if they’re tested weekly or can prove that they have antibodies for the virus.	A.C.A. § 11-5-118
Florida	ER may not impose a vaccine mandate unless EE may opt out based on:	F.S.A. § 381.00317

	<ol style="list-style-type: none"> 1. Medical reasons, as determined by a physician, advanced practice registered nurse (APRN) or physician assistant (PA). Medical reasons include pregnancy or expectation of pregnancy. 2. Religious reasons, based on a sincerely held belief 3. Immunity based on prior COVID-19 infection, as documented by a lab test 4. Periodic testing, agreeing to comply with regular testing at no cost to the employee 5. Personal protective equipment (PPE), agreeing to comply with use of employer-provided PPE 	
Illinois	<p>The Illinois Healthcare Right of Conscience Act (“HRCA”) prohibits ERs from discriminating against individuals who refuse to receive or perform health care services based on personal conscience. Under the HRCA, certain Illinois state trial courts have issued preliminary injunctive relief prohibiting enforcement of ER vaccine mandates against EEs with a conscience objection; however, certain federal courts have denied requests for injunctions premised on the HCRA. Illinois recently passed SB 1169, which amends the HCRA to clarify that it does not apply to ER vaccine mandates. The amendment expressly states that it “is a declaration of existing law and shall not be construed as a new enactment[.]” However, the amendment is not effective until June 1, 2022. Thus, ER’s should proceed with caution until June 1, 2022.</p>	<p>745 ILCS 70/7</p> <p>SB 1169</p>
Iowa	<p>ER shall waive any vaccine requirement if the EE submits to ER: (1) a statement that receiving a vaccine would be injurious to the EE’s health and well-being, or (2) a statement that receiving the vaccine would conflict with the tenets and practices of a religion of which the employee is an adherent or member.</p>	<p>I.C.A. § 94.2</p>
Kansas	<p>If ER implements vaccine requirement, ER shall exempt EE if EE submits a written statement stating that such a requirement would:</p>	<p>HB 2001</p>

	<p>1. Endanger EEs life, as signed by physician</p> <p>2. Violate sincerely held religious beliefs of EE, as signed by EE.</p>	
Montana	<p>It is unlawful for an ER to refuse employment, to bar a person from employment, or to discriminate against a person in compensation or in a term, condition, or privilege of employment based on the person's vaccination status or whether the person has an immunity passport.</p> <p>An individual may not be required to receive any vaccine whose use is allowed under an emergency use authorization or any vaccine undergoing safety trials</p>	MCA 49-2-312
North Dakota	<p>Individuals are exempt from any employer vaccination requirement if they submit proof of COVID-19 antibodies, have a medical condition, have a religious, philosophical, or moral belief opposing immunization, or submit to periodic COVID-19 testing.</p>	NDCC § 34-03-10
Tennessee	<p>ER shall not compel or otherwise take an adverse action against a person to compel the person to provide proof of vaccination if the person objects to receiving a COVID-19 vaccine for any reason. An adverse action includes any discrimination against a person by denying the person employment; or discharging, threatening, or otherwise discriminating against an employee in any manner that affects the employee's employment, including compensation, terms, conditions, locations, rights, immunities, promotions, or privileges.</p>	T.C.A. § 14-2-102
Texas	<p>Executive Order banning all entities, including private businesses, from compelling receipt of a COVID-19 vaccine by any individual, including an employee or a consumer, who objects to such vaccination for any reason of personal conscience, based on a religious belief, or for medical reasons, including prior recovery from COVID-19.</p>	Executive Order No. GA-40
Utah	<p>ER shall relieve EE of vaccine any requirement if EE submits statement that vaccine would:</p>	U.C.A. § 26-68-201

	<ol style="list-style-type: none"> 1. be injurious to the health and well-being of the EE; 2. conflict with a sincerely held religious belief, practice, or observance of the EE; or 3. conflict with a sincerely held personal belief of the EE. 	
West Virginia	ER must exempt EE from vaccination requirement upon the presentation of a certification of medical exemption signed by a medical professional or notarized certification of religious exemption.	W. Va. Code § 16-3-4b

RELATED CAPABILITIES

- Employment & Labor

MEET THE TEAM



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