

List of States Limiting Employer COVID-19 Vaccine Mandates Continues to Expand

By Joanne Braddock Lambert, Tasos C. Paindiris, Kenneth M. Wentz, Nicholas B. McGrath & M. Christopher Moon

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Meet the Authors



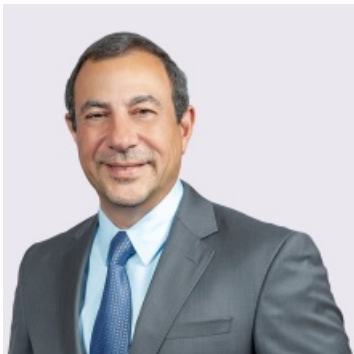
Joanne Braddock Lambert

(She/Her)

Principal

407-246-8447

Joanne.Lambert@jacksonlewis.com

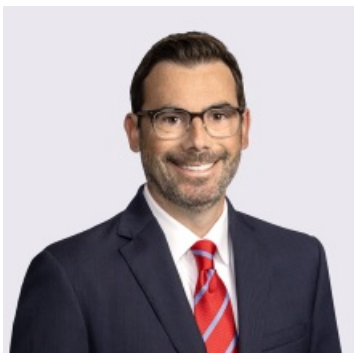


Tasos C. Paindiris

Principal

407-246-8440

Tasos.Paindiris@jacksonlewis.com



In a clear response to the recent Occupational Safety and Health Administration (OSHA) Emergency Temporary Standard (ETS) issued by the Biden Administration, Iowa, Tennessee, Utah, and Florida recently have joined the expanding list of states passing laws curtailing the use of COVID-19 vaccine mandates by private employers.

More than 10 states have now passed such laws, even as the OSHA ETS has been stayed temporarily by the U.S. Court of Appeals for the Fifth Circuit and a related, consolidated lawsuit by several state attorneys general and some private employers challenging the ETS is now scheduled to be heard by the [Sixth Circuit](#).

Iowa

On November 2, 2021, Iowa Governor Kim Reynolds signed into law [House File 902](#) (HF 902), which allows employees to request medical or religious exemptions from their employer's mandatory vaccine policies.

HF 902 provides that employers who require employees to receive a COVID-19 vaccine must waive that requirement if the employee submits one of the following:

1. *Medical Exemption:* A statement that receiving the vaccine would be injurious to the health and well-being of the employee or an individual residing with the employee; or
2. *Religious Exemption:* A statement that receiving the vaccine would conflict with the tenets and practices of a religion on which the employee is an adherent or member.

Several questions surround the practical implications of HF 902, particularly as it relates to the medical waiver. For example, while some Iowa Republican legislators have stated that an employee's request for a medical exemption need not be attested by a physician, nothing in the law itself prohibits an employer from requiring such documentation. Moreover, unlike the exemption language found, for example, in the comparable laws of Tennessee and Utah, the Iowa Civil Rights Commission has explained that the Iowa Civil Rights Act does not provide protection for an exemption based solely on an individual's strongly held personal beliefs.

Tennessee

On November 12, 2021, Tennessee Governor Bill Lee signed [TN HB 9077/SB 9014](#). Under that joint bill, private businesses (as well as governmental entities, schools, and local education agencies) are prohibited from compelling an individual, or from taking an adverse action against the individual to compel them, to provide proof of vaccination if the person objects to receiving a COVID-19 vaccine *for any reason*. If an employee is discharged for failure or refusal to comply with their employer's vaccine

Kenneth M. Wentz

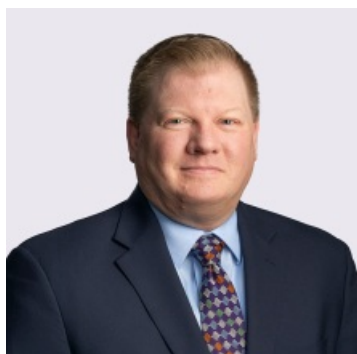
(Ken)

Office Managing Principal
(402) 391-1991
Kenneth.Wentz@jacksonlewis.com



Nicholas B. McGrath

Associate
402-827-4249
Nicholas.McGrath@jacksonlewis.com



M. Christopher Moon

Principal
385-419-3531
Christopher.Moon@jacksonlewis.com

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mandate, they remain fully eligible for unemployment benefits.

Utah

On November 16, 2021, Utah Governor Spencer Cox signed into law [Utah S.B. 2004](#). Under the law, most Utah employers who require employees to receive a COVID-19 vaccine must waive that requirement if the employee submits a request for:

1. A medical exemption, stating that the vaccine would be injurious to the health and well-being of the employee;
2. A religious exemption, stating that the vaccine would conflict with the sincerely held religious belief of the employee; or
3. A “personal belief” exemption, stating that the vaccine conflicts with the “sincerely held personal belief” of the employee.

The law prohibits an employer from taking an adverse action, such as termination of employment, demotion, or reduction in wages, against an employee because the employee takes any action under this law. However, the law omits from its definition of an “adverse action” reassignment of an employee or termination of an employee if reassignment is not practical. It remains to be seen how this exception to the vaccination exemptions will be construed in actual practice.

S.B. 2004 contains employer obligations that may raise questions about conflicts with, or possible preemption by, federal law. For example, the law requires employers to pay for any COVID-19 testing that they require and, at least in some instances, prohibits employers from maintaining proof of vaccination (although employers may maintain records on who has been vaccinated). The law does *not* apply to federal contractors and any private employers subject to a COVID-19 vaccine regulation from the Centers for Medicare and Medicaid Services, which would include most healthcare workers.

Florida

Finally, on November 18, 2021, Governor Ron DeSantis signed joint [House Bill 1B/Senate Bill 2B](#), which, among other things, requires private employers with mandatory COVID-19 vaccination policies to provide employees the opportunity to opt out based on the following exemptions:

1. Due to medical reasons, as determined by a healthcare professional and including, but not limited to, pregnancy or anticipated pregnancy;
2. Based on the employee’s sincerely held religious belief;
3. Demonstrated COVID-19 immunity, documented by the results of a valid laboratory test performed on the employee;
4. The employee’s agreement to comply with regular COVID-19 testing at the employer’s expense; or
5. The employee’s agreement to comply with the employer’s reasonable written requirement to use employer-provided personal protective equipment when in the presence of other employees or other persons.

Employers found to have violated the statute may be subject to fines of up to \$10,000 per violation for employers with fewer than 100 employees, and up to \$50,000 per violation for larger employers. Such fines can be avoided if, prior to the attorney general issuing a final order, the employer reinstates the employee with full back pay. In addition, individuals who are discharged or denied employment based on an

employer's failure to recognize an authorized exemption cannot be denied unemployment benefits if otherwise entitled. The law does not provide an employee with a private right of action against the employer.

The Takeaway

Employers should carefully consider whether and to what extent these types of state law exemptions overlap or differ from obligations under federal law, particularly where the state exemptions lack clear explanation or guidance, such as Utah's the "personal belief" exemption and Tennessee's "any reason" exemption, both of which are significantly broader than exemptions based on anti-discrimination laws.

The legal landscape surrounding vaccine mandates and exemptions at both the state and federal level is constantly evolving. In the meantime, employers operating in states enacting vaccine mandate limitations should prepare for any applicable employee exemption requests.

If you have a question regarding any of these laws or other workplace issues, please contact a Jackson Lewis attorney.

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