



Iowa's New Law Relating to COVID-19 Vaccination Requirements by Employers and Unemployment Insurance

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The Bills

- **House Study Bill 281**
- **House File 902**
- **Introduced yesterday as part of special session to approve/deny congressional redistricting maps.**

Two Components of the Bills

- **Waivers for employees seeking an exemption from the COVID-19 vaccine.**
- **Unemployment compensation for employees refusing to receive COVID-19 vaccine.**

Waivers for employees seeking an exemption from the COVID-19 vaccine

- **Two ways to obtain a waiver:**
 - **Statement that receiving the vaccine would be injurious to the health and well-being of the employee or an individual residing with the employee.**
 - **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.**

Statement that receiving the vaccine would be injurious to the health and well-being of the employee or an individual residing with the employee

- In some circumstances, ADA requires an employer to provide reasonable accommodations for employees who, because of a disability, do not get vaccinated, unless providing an accommodation would pose an undue hardship on the operation of the employer's business.
- ADA disability definition: physical or mental impairment that substantially limits one or more major life activities.
- Undue hardship definition: significant difficulty or expense
- If the employer determines that being vaccinated against COVID-19 is a safety-related qualification, employee may not be entitled to an accommodation if the employer can demonstrate that the individual would pose a "direct threat" to the health or safety of the employee or others in the workplace.
- Direct threat definition: a "significant risk of substantial harm" that cannot be eliminated or reduced by reasonable accommodation.
- **The new Bill offers more protection than the ADA and does not offer defenses for employers.**

Statement that receiving the vaccine would conflict with the tenets and practices of a religion of which the employee is an adherent or member

- Once an employer is on notice that an employee's sincerely held religious belief, practice, or observance prevents the employee from getting a COVID-19 vaccine, the employer must provide a reasonable accommodation unless it would pose an "undue hardship."
 - Undue hardship definition: more than a *de minimus* expense.
- EEOC: definition of religion is broad and protects beliefs, practices, and observances with which the employer may be unfamiliar.
- EEOC: employers should ordinarily assume that an employee's request for religious accommodation is based on a sincerely held religious belief, practice, or observance.
- EEOC: employees do not have to use magic words.
- (See yesterday's e-alert from Dorsey)

Statement that receiving the vaccine would conflict with the tenets and practices of a religion of which the employee is an adherent or member

- EEOC: employee's credibility can be assessed and factors may include-
 - whether the employee has acted in a manner inconsistent with the professed belief;
 - whether the accommodation sought is a particularly desirable benefit that is likely to be sought for nonreligious reasons;
 - whether the timing of the request renders it suspect (e.g., it follows an earlier request by the employee for the same benefit for secular reasons); and
 - whether the employer otherwise has reason to believe the accommodation is not sought for religious reasons.
- Strict adherence is not required, and a minor slip up here and there will not automatically disqualify the employee from an exemption.
- Under Title VII, exemption requests cannot be based on “social, political, or economic views, or personal preferences.”
- **Iowa's Bill appears similar to the protections afforded by Title VII and EEOC guidance.**

Unemployment

- **Iowa Code § 96.5(1):** An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits, if the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.
- **(New Bill) Iowa Code § 96.5A:** An individual who is discharged from employment for refusing to receive a vaccination against COVID-19 shall not be disqualified for benefits on account of such discharge.

Unemployment

- **(New Bill) Iowa Code § 96.5A: The contribution rate and unemployment experience of any employer employing the discharged employee (or a previous employer) shall be unaffected by such discharge.**
- **Iowa Workforce Development may not impose any penalty or take any other action against an employer or former employer whose employee was discharged for refusing to receive a COVID-19 vaccine.**

Differences from Texas Law

- On October 11, 2021, Texas Governor Greg Abbott issued an executive order prohibiting employers from mandating the COVID-19 vaccine.
- In addition to medical religious exemptions, also includes:
 - “any reason of personal conscience”
 - “prior recovery from COVID-19”
- Broader than Iowa’s Bill.
- Questions regarding enforceability.

Conflict of Laws?

Yes.

How will this resolve?



Questions?

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