



FLORIDA PASSES LEGISLATION IN RESPONSE TO FEDERAL VACCINE MANDATES - IS YOUR BUSINESS IN COMPLIANCE?

On Thursday, November 18, 2021, Governor Ron DeSantis signed into law, effective immediately, legislation targeted at the recent COVID “vaccine mandates” implemented by the Biden administration. Specifically, the Florida legislature approved the following four bills:

- **S.B. 2B/H.B. 1B** – requires employers to add more “opt-out” options for employees subject to employer vaccine mandates, subject to significant fines for non-compliance. This new law also prohibits COVID-19 vaccination mandates for students and public employees, and provides students or their parents to sue a school district for violating the law.
- **S.B. 4B/H.B. 3B** – makes all employee complaints alleging a violation of the above law confidential and exempt from public view while an investigation is ongoing.
- **S.B. 6B/H.B. 5B** – establishes the intent of the legislature to establish a state-level version of OSHA and asks the Governor's Office to create a plan for doing so.
- **S.B. 8B/H.B. 7B** – removes the State Health Officer's ability to order the vaccination of individuals upon declaration of a public health emergency.

Most importantly for Florida employers, **S.B. 2B/H.B. 1B** prohibits employers from imposing a COVID-19 vaccine mandate without providing employees certain “exemptions” that allow employees to “opt out” of the vaccine requirement. Notably, these exemptions are broader than the limited exemptions under federal vaccine mandates as they include:

- “Medical reasons”;
- “Religious reasons”;
- Pregnancy or anticipated pregnancy;
- COVID-19 immunity;

- Periodic testing (paid for by employers); and
- Use of employer-provided personal protective equipment (also paid for by employers).

Businesses with vaccine mandates that are found to have terminated an employee without providing one of the above exceptions will be subject to hefty fines – \$10,000 per violation for businesses with fewer than 100 employees, and \$50,000 per violation for those with 100 or more.

Notably, the Florida law is in conflict with the Occupational Safety and Health Administration's (OSHA) Emergency Temporary Standard (ETS), the federal contractor vaccine mandate, and the CMS vaccine mandate for certain healthcare workers. Each federal mandate provides fewer "exemptions" / "opt outs" from the federal vaccination requirements – generally, only for medical/disability reasons and for sincerely-held religious beliefs. It remains to be seen how this new Florida law will interact with these federal mandates.

However, as detailed in our [previous alert](#), the OSHA ETS, which established COVID vaccination and testing requirements for private employers with 100 or more employees, has been stayed by the Fifth Circuit Court of Appeals, and it is now assigned to the Sixth Circuit Court of Appeals for further judicial review. To date, the federal contractor vaccine mandate and the CMS vaccine mandate for certain healthcare workers remain in place with vaccination deadlines looming.

For the most up to date information and analysis, please contact a member of our [COVID-19 Attorney Response Team](#) below:



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