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Starting June 1, 2022, Illinois Right of Conscience Law Does Not Apply to COVID-19 Measures

On Wednesday, October 27, 2021, in a vote of 64-52 the Illinois House passed an amendment to the Illinois Health Care Right of Conscience Act (Act) that would allow employers to enforce work rules and policies relating to COVID-19 vaccinations and testing and prevent individuals from using the Act to challenge COVID-19 rules and policies. The bill, SB 1169, was narrowly passed by the Senate on October 28, 2021, the final day of the General Assembly's fall session. Governor Pritzker is expected to sign the bill, which would become effective on June 1, 2022.

Amendment to the Illinois Right of Conscience Act

The text of the amendment is limited to measures and requirements related to the prevention of COVID-19 transmission and infection:

Section 13.5. Violations related to COVID-19 requirements. It is not a violation of this Act for any person, ...agency...entity... or employer, to take any measures or impose any requirements, including, but not limited to, any measures or requirements that involve provision of services by a physician or healthcare personnel, intended to prevent contraction or transmission of COVID-19 or any pathogens that result in COVID-19 or any of its subsequent iterations.

The amendment further authorizes covered entities to address non-compliance and enforce measures and requirements related to the prevention of infection and transmission of COVID-19. The amendment provides no specifics on what those measures should be, but in a final amendment by the House, the language regarding the right to enforce non-compliance with

termination from employment and exclusion from school, a place of employment, or public or private premises was deleted.

In the past, the Act has been used to protect healthcare providers who refuse to perform, accommodate, or assist with medical procedures on moral or religious grounds. During the pandemic, COVID-19 testing procedures and vaccinations have been developed to stop the transmission of the disease and to bring the pandemic to a close. Individuals challenging policies requiring workers to be vaccinated or tested have filed lawsuits claiming infringement of their rights under the Act.

Significance of June 2022 effective date

The legislature did not receive a three-fifths majority in both chambers to allow the amendment to be effective prior to June 1 of the following calendar year, as required by the state constitution for bills passed after May 31st. Although the sponsors of the amendment characterize the amendment as a declaration of current law, **employers should understand that rejection of conscience objections prior to June 1, 2022 carries a risk of litigation.**

The existence of and provisions of right of conscience laws vary across the states. Husch Blackwell attorneys have considered right of conscience laws across all 50 states and are available for discussions about such laws in specific states, including Illinois.

Contact us

If you have questions about right of conscience laws in your state or are facing a challenge to your work policies and procedures relating to COVID-19, contact Tom O'Day, Anne Mayette, Tom Shorter, Carrie Claiborne, Amanda Bogle or your Husch Blackwell attorney.

Your comprehensive COVID-19 legal resource

Since the pandemic's onset, Husch Blackwell has continually monitored state-by-state orders regarding capacity, masking, vaccines, and more. We regularly address your FAQs and provide you with easy-to-use COVID-19 tools about returning to work and navigating federal programs. Contact our industry-specific legal teams or your Husch Blackwell attorney to plan through and beyond the pandemic.