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LEGAL UPDATES

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# Iowa Addresses Vaccine Waivers and Provides Unemployment Benefits to Discharged Workers

## Key Points

HF 902 was signed into law on October 28, 2021 and requires employers to issue vaccine waivers to employees who: 1) refuse to receive a COVID-19 vaccine requirement and 2) submit a statement that the vaccine is either injurious to the health and well-being of the employee or an individual they live with, or conflicts with a religious practice or a tenet of a religion of which the employee is an adherent or member.

Employees who are discharged for refusing to receive a vaccine are not disqualified from receiving unemployment insurance benefits.

On October 28, 2021, Iowa Governor Kim Reynolds signed House File 902 (HF 902) into law, which creates Chapter 94 of the Iowa Code requiring all employers to provide vaccine waivers to employees who oppose an employer's vaccine mandate and request a waiver along with a required statement. HF 902 also amends the Iowa unemployment insurance law to provide those individuals who are discharged for refusing to comply with vaccine mandates with unemployment insurance benefits.

HF 902 was introduced in a special session of the Legislature and received bipartisan support. The new law, however, places employers in a dilemma of either violating the federal mandates or Iowa's new vaccine waiver law. The law is effective immediately.

## Iowa's vaccine waiver mandate

The new section 94.2, entitled “COVID-19 vaccination requirements by employers – waivers,” requires employers to waive an employer requirement to receive a COVID-19 vaccine if the employee (or the parent or legal guardian of an employee who is a minor) requests a waiver and submits either of the following statements to the employer:

1. 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.
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.

The law, which was passed through the legislature in about 24 hours, fails to provide the following significant information: 1) definitions for new terminology used in the statute; 2) details on how the waivers mandated differ from medical and religious exemptions already available under state and federal civil rights laws; 3) information on the identity of the enforcement authority and penalties imposed on employers that do not provide a waiver; and 4) remedies available to employees who are denied a waiver and are discharged from employment. Due to the lack of information provided in the statute, there is significant ambiguity regarding how employers should process and make decisions to grant or deny vaccine waiver requests based on the required statements, such as:

Whether an employee’s waiver request must be in writing;

The definition of a “statement” and whether a statement under section 1 must be provided by a medical professional, and whether a statement under section 2 must be supported by a faith leader or other third party;

Whether an employer can require that statements are supported by medical or religious authorities;

The definition of the term “health and well-being”;

An explanation of how receipt of a COVID-19 vaccine by an employee could be injurious to the health and well-being of an individual residing with the employee;

Whether the employer is entitled to an undue hardship defense;

Whether an employer can impose other requirements on employees who seek a waiver such as periodic testing, wearing a mask, and teleworking to safeguard business operations, other employees and the public.

Because these questions are not answered, it does not appear that an employer following federal law and guidance will be in compliance with the requirements of this new Iowa law. Employers in Iowa

will have to determine how to comply with both federal and state law or rely on the general principle of preemption of federal law over state law.

### **Unemployment insurance benefits**

Section 3 of HF 902 creates a new section 96.5A to the Iowa Employment Security Law providing that the discharge of an individual due to their refusal to receive a COVID-19 vaccination does not disqualify the individual from receiving unemployment compensation benefits. Employers, other than the discharging employer, will not be subject to penalties or a change in their contribution rate and workers compensation experience rating by the Iowa Department of Workforce Development.

Whether the law will result in an increase in waivers incentivized by the certainty of unemployment benefits is unclear. The statute, however, fails to provide employers with any guidance on the types of work rules they can impose to preserve the safety of their workplace. For example, if an employer imposes a soft mandate allowing an employee to choose between receiving a vaccine or submitting to periodic testing and wearing a mask, will the employee be entitled to unemployment compensation benefits upon discharge if the employee also refuses to submit to testing and to wearing a mask? If an employer discharges an employee who refuses to vaccinate, is the employer subjecting itself to liability due to wrongful discharge? What penalties are imposed on employers who refuse to provide a waiver to an employee because of significant COVID-19 outbreaks in the workplace?

### **Conflict with federal vaccine regulations and orders**

Iowa is one of ten states that has challenged the Biden administration's vaccine mandate imposed on employees of federal contractors and subcontractors. The Occupational Safety and Health Administration (OSHA) has issued an emergency temporary standard (ETS) for healthcare employers and is poised to issue a second ETS for employers with 100 or more employees that addresses vaccines. Failure to comply with federal vaccine mandates may subject employers to federal penalties under OSHA or loss of a federal government contract for violation of Executive Order 14042 by federal contractors and subcontractors providing services to or for the federal government. The Centers for Medicare & Medicaid Services (CMS) is planning to issue a rule requiring most healthcare facilities to mandate the vaccine, with a penalty of the loss of Medicare and Medicare funds for noncompliance.

Under federal law, employers have flexibility over implementing vaccine mandates by providing medical and religious accommodations to employees, and determining whether an accommodation poses an undue hardship on an employer's business operations. Despite HF 902's ambiguities, employers must determine the best way to navigate the uncertain legal terrain and avoid business disruptions arising from opposition to vaccine mandates and COVID-19 outbreaks.

The federal government has already signaled that it believes federal law trumps any conflicting state laws. It is likely that the new OSHA and CMS rules will address issues related to the supremacy of federal law. Employers, however, must consider the reality that they may be subject to litigation for a failure to follow state laws such as that in Iowa. Due to the lack of clarity in the new law, creative plaintiffs' attorneys representing employees may be able to pursue lawsuits against employers with ease.

**Contact us**

Husch Blackwell's Labor & Employment team are tracking state laws that oppose vaccine mandates or that require employers to consider additional exemptions or waivers. For assistance with compliance issues with federal and state vaccine mandates applicable to your business, contact Tom O'Day, Anne Mayette or your Husch Blackwell attorney.

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