LEGAL UPDATES PUBLISHED: NOVEMBER 23, 2021

Tennessee and Florida State Law Restrictions on Employer Vaccine Mandates

Services

Employee Benefits & Executive Compensation

Labor & Employment

Professionals

BARBARA A. GRANDJEAN
DENVER:
303.892.4458
BARBARA.GRANDJEAN@HUSCHBLACKWELL.COM

HILLARY L. KLEIN
NASHVILLE:
615.949.2251
KANSAS CITY:
816.983.8363
HILLARY.KLEIN@HUSCHBLACKWELL.COM

Tennessee and Florida enacted state laws earlier this month that impose restrictions on an employer's ability to impose vaccine mandates or to ensure employees are vaccinated. While Tennessee's law provides employers who are covered by the vaccine mandates imposed by the Centers for Medicare & Medicaid Services (CMS) and Executive Order 14042 with an exemption from the state law, the Florida law provides no such exemption. Florida's law places employers in the difficult position of either risking a loss of business with the federal government or a potential violation of state law and the imposition of penalties.

Tennessee

On November 12, 2021, Tennessee Governor Bill Lee signed into law House Bill 9077/Senate Bill 9014 (SB 9014) that prohibits (1) a governmental entity and certain educational entities from mandating that individuals receive COVID-19 vaccinations and (2) private businesses from requiring proof of COVID-19 vaccination from employees and third parties. Additionally, the law extends unemployment benefits to employees who have left their jobs after refusing to comply with an employer's COVID-19 vaccine mandate. SB 9014 is effective immediately and terminates on July 1, 2023.

Vaccine mandates and proof of vaccination

The law prohibits governmental entities and schools or local education agencies from mandating that individuals receive a COVID-19 vaccine. The law does not, however, prevent private employers from mandating vaccines. Instead, it prevents employers from requiring proof of vaccination status from employees and third parties and from taking adverse actions against

© 2026 HUSCH BLACKWELL LLP. ALL RIGHTS RESERVED

individuals to compel disclosure of proof of vaccination if the individual objects to receiving a COVID-19 vaccine for any reason. The specific provision states:

> A private business, governmental entity, school, or local education agency shall not compel or otherwise take an adverse action against a person to compel the person to provide proof of vaccination if the person objects to receiving a COVID-19 vaccine for any reason.

An adverse action is defined broadly to include discharge, denial of employment or discrimination against the person in any manner that "affects the employee's employment."

Face coverings and testing requirements

Private employers. SB 9014 does not prohibit private businesses from requiring employees to wear face coverings and does not address whether private employers may implement COVID-19 testing protocols.

Governmental entities. An employer that is a governmental entity "shall not require an employee to wear a face covering as a term or condition of employment, or take an adverse action against an employee for failing to wear a face covering, unless severe conditions exist at the time the requirement is adopted, and the requirement is in effect for not more than fourteen (14) days." Additionally, governmental entities must permit individuals to refuse to wear face covering if the individual provides a medical order from their healthcare provider identifying a medical reason that supports their refusal to wear a face covering.

Exemptions

Healthcare employers. This law exempts healthcare employers who participate in Medicare and Medicaid and are subject to the federal CMS Interim Final Rule issued in November 2021. Notably, it does not exempt private employers with 100 or more employees that are subject to the November 2021 OSHA ETS, which is currently stayed pending litigation.

Federal contractors and subcontractors. Federal contractors that must comply with the federal vaccine mandate required under EO 14042 or risk loss of federal funding for non-compliance may apply for an exemption from compliance with SB 9014. To apply for an exemption, federal contractors must file a written notice on the comptroller's website consistent with the requirement specified in the comptroller's guidelines. Exemptions must be renewed on a yearly basis. If conditions change and there is no longer a risk of losing federal funding (e.g., the federal contract ceases to exist), the federal contractor must notify the comptroller within 14 days and comply with the provisions of SB 9014.

Entitlement to unemployment insurance benefits

© 2026 HUSCH BLACKWELL LLP. ALL RIGHTS RESERVED

Individuals who leave employment due to the individual's failure or refusal to receive a COVID-19 vaccine are not disqualified from receipt of unemployment benefits. The provision also retroactively entitles claimants to unemployment benefits who were previously denied benefits for failing or refusing to receive a COVID-19 vaccine.

Private right of action for employees related to vaccine mandates and vaccine status

SB 9014 creates a private cause of action that allows an employee injured by an employer's violation of the law to "maintain a private right of action for injunctive relief and to recover compensatory damages and reasonable attorneys' fees" against the employer.

Florida

Effective November 18, 2021, Florida enacted Section 381.00317 (statute) prohibiting private employers of any size from imposing a COVID-19 vaccination mandate for any full-time, part-time or contract employee without providing an exemption that allows employees to opt out of the vaccine mandate. The allowable reasons described in the statute to support the exemption include, but are not limited to, "pregnancy or anticipated pregnancy; religious reasons; COVID-19 immunity; periodic testing; and the use of employer-provided personal protective equipment." The statute further invalidates employer COVID-19 vaccination mandates until the earlier of the date the Florida Department of Health files emergency rules, which are related to certain requirements under the statute, or 15 days after the effective date. The statute expires on June 1, 2023.

Opt-out exemptions

Private Florida employers that implement COVID-19 vaccine mandates are required to provide employees with specific forms provided by the Florida Department of Health (Department of Health), or substantially similar forms, that enable employees to submit "exemption statements." Employers **must** provide an exemption to employees who provide a completed exemption statement in compliance with the statute and must permit the employee to opt out of the employer's vaccine mandate. A description of the exemption requirements included in the statute is provided below and will be supplemented by emergency rules provided by the Department of Health:

Medical exemptions. An employee is required to provide a dated and signed exemption statement from a physician or a physician's assistant that holds a valid, active license, who has examined the employee and who certifies that the COVID-19 vaccination is not in the best medical interest of the employee.

Religious reasons. An employee's exemption statement must state that the employee declines the COVID-19 vaccination based on a sincerely held religious belief.

© 2026 HUSCH BLACKWELL LLP. ALL RIGHTS RESERVED

COVID-19 immunity. An exemption statement must be supported by a valid laboratory test performed on the employee demonstrating that the employee has immunity to COVID-19 based on competent medical evidence.

Periodic testing. Employees must agree to comply with regular testing for COVID-19 at no cost to the employee.

Personal protective equipment. Employees must agree to comply with the employer's "reasonable written requirement to use employer-provided personal protective equipment" when in the presence of other individuals.

Administrative enforcement actions

Employers that violate the statute by failing to offer an exemption or by improperly applying or denying exemptions in violation of the statute and that result in the employee's termination or the "functional equivalent of termination" are subject to an investigation and the imposition of fines by the Florida Department of Legal Affairs (Attorney General). The fines levied under the statute are $10,000 for employers with less than 100 employees and $50,000 for employers with 100 or more employees. No fines will be imposed on employers that reinstate an employee with back pay prior to the issuance of the Attorney General's final order. Fines imposed may be adjusted based on either mitigating or aggravating factors in accordance with fairness and due process considerations.

Employee eligibility for reemployment assistance

Employees terminated in violation of the statute are eligible for reemployment assistance under Florida Chapter 443 and other remedies available to the employee. Further, reemployment assistance benefits may not be denied to terminated employees who refuse to accept new employment "that requires compliance with a COVID-19 vaccination mandate contrary to the statute or the employee's refusal to comply with a vaccine mandate that does not comply with the statute."

What this means to you

Tennessee law SB 1904 does not apply to healthcare employers subject to the CMS Interim Final Rule and federal contractors and subcontractors are entitled to seek an exemption from SB 1904's prohibition on requesting proof of vaccination status. Although SB 1904 does not ban private employers from implementing vaccine mandates, the Tennessee law does not allow employers to verify that employees obtained a COVID-19 vaccination required by an employer's mandate, which is a key component of OSHA's ETS issued in November 2021. Depending on the outcome of the litigation related to OSHA's ETS, Tennessee OSHA (TOSHA) will be required to adopt the OSHA ETS

© 2026 HUSCH BLACKWELL LLP. ALL RIGHTS RESERVED

or an alternative that is at least as effective as the OSHA ETS. If the stay is lifted, noncompliance by TOSHA would jeopardize their state plan status.

Under Florida's new statute, employers that fail to comply with the statute are subject to either steep fines or costs associated with reinstatement and the payment of back pay. Employers should monitor and comply with emergency rules published by the Florida Department of Health regarding the exemption and opt-out provisions of the statute. It should be noted that costs associated with the periodic testing exemption and personal protective equipment must be paid by the employer. Additionally, the Florida Attorney General is authorized to adopt emergency rules regarding employee complaints, investigation of complaints and enforcement actions. The Department of Economic Opportunity is authorized to adopt emergency rules relating to employees' eligibility for reemployment assistance benefits.

Florida employers that are covered by the Centers for Medicare & Medicaid Services (CMS) Interim Final Rule or Executive Order 14042 related to COVID-19 vaccines are subject to conflicting federal and state laws regarding vaccine mandates. The federal government has already stated that it believes federal law preempts conflicting state laws. Employers in Florida, however, must weigh the costs of choosing to follow either federal or state law. Due to the lack of clarity in the new Florida law on the issue of preemption, employers may be subject to litigation.

Contact us

If you have questions about compliance with federal and state regulations, orders and laws regarding COVID-19 and your workplace, contact Barbara Grandjean, Hillary Klein, Sarah Quinn, Jessica Brown, Julie Garabedian 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.

© 2026 HUSCH BLACKWELL LLP. ALL RIGHTS RESERVED