

Alert

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Florida Law Prohibits Vaccination Mandate Without Five Specific Individual Exemptions

On November 18, 2021 Florida Governor Ron DeSantis signed legislation banning private employers, regardless of size, from mandating COVID-19 vaccinations unless several exemptions are offered to employees. Effective immediately, if any employer received a statement from an employee requesting any of the following exemptions, the employer must allow the employee to opt out of vaccination mandates: 1) medical reasons, (including reasons of pregnancy or anticipated pregnancy); 2) religious reasons; 3) COVID-19 immunity; (shown through “competent medical evidence” that the employee has immunity that is documented by the results of laboratory testing); 4) periodic testing (the statement from the employee that they will comply with “regular testing” at no cost to the employee); or 5) employee agreement to use PPE (a statement by the employee to comply with the employer’s reasonable written requirement that the employee use employer provided PPE when around others).

While the current federal contractor and CMS rules that mandate COVID-19 vaccinations of covered employees should preempt this new Florida law to the extent the laws directly conflict, OSHA’s ETS is in direct conflict with this law for employers with 100 or more employees in Florida. Since that ETS has been “stayed” by the federal courts, and when and if that stay will ever be lifted is currently unknown, employers in Florida cannot rely on federal “preemption” to justify ignoring the obligations under this new Florida law. If the Florida Attorney General’s Office finds a violation of the law it must notify the employer involved with the opportunity to cure the non-compliance. If an employer does not restore an improperly discharged employee with back pay, the employer can be fined between \$10,000 to \$15,000 per violation, depending on the size of the employer. The Department of Legal Affairs within the Attorney General’s Office is required to issue rules explaining the investigation and complaint procedures to enforce the new laws.

All Florida employers that currently impose or plan to impose COVID-19 vaccine mandates on their employees should evaluate **now** whether the obligations they are imposing on their employees are in violation of this state law.



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