Engage PEO Client Alert - Florida

Florida Law Provides Exemptions from Vaccine Mandates

What's New: Florida's new vaccine mandate law allows employees to decline vaccination in five ways that differ from the Federal guidelines.

Why It Matters: In Florida, private employers of any size that voluntarily implement a vaccine mandate must comply with these five exemptions or face fines up to $14,000 per violation for companies with fewer than 100 employees or up to $50,000 for companies with 100 or more employees.

Vaccine Mandate Background

Since being announced by President Joe Biden on September 10th, 2021, plans to implement vaccine mandates have run into legal challenges. Recently, challenges in federal court have resulted in the federal government's vaccine mandates being halted, creating confusion for employers.

Florida passed legislation on November 18th that conflicts with the federal mandates by expanding the exemptions employees have available to decline vaccination.

This alert provides Florida employers with guidance on complying with state law and clarifies the impact Florida's legislation has on the federal vaccination mandates should they be reinstated in the future.

Effect of the Florida Legislation on Employers

Since the federal government's vaccination mandates are currently blocked from implementation by federal courts, these five exemptions apply to all private-sector employers in Florida, regardless of size, that voluntarily implement a vaccination mandate for their employees. The five exemptions are for:

1. Medical reasons, including pregnancy or expectation of pregnancy.
2. Sincerely held religious beliefs, including moral beliefs about negative health consequences.
3. Immunity resulting from a prior COVID-19 infection regardless of date.
4. The employee agreeing to weekly COVID-19 testing at no cost to the worker.
5. The employee agreeing to use Personal Protective Equipment ("PPE") provided by the employer.

Exemptions Explained

Medical Exemption

Unlike the federal exemption for medical reasons, Florida law allows an employee to be exempted from vaccination if the employee is anticipating becoming pregnant. The law does not specify how long the anticipation period extends for and only requires the employee to provide a note from a physician, advanced practice registered nurse (APRN) or physician assistant (PA), attesting to the intent of becoming pregnant. This means an employee may be exempted from vaccination indefinitely so long as a doctor provides a note which affirms the intent to become pregnant at some point in the future.

Religious Exemption

Florida allows employees to be exempted from vaccination due to a sincerely held religious belief. The state has a template available for download which workers can use as documented proof of their religious reason for exempting.

However, employers should be careful when requesting proof of an employee's religious belief as a means of being exempted from vaccination. Although the EEOC allows employers to make a limited inquiry into an employee's religious belief if that individual is acting inconsistently with their faith, Engage recommends consulting with your HR Consultant prior to denying or requesting more information about an employee's sincerely held belief.

Any employee who expresses a moral belief of contraindication (should not be vaccinated due to negative health consequences) is also shielded via the state's religious exemption.

Immunity Exemption

For individuals who have contracted COVID-19 in the past, the state provides an immunity exemption to vaccination. Florida does not detail when the immunity period ends or if contracting COVID-19 is the only way of developing an immunity to the virus. The exemption requires documentation.

Weekly Testing Exemption

An employee who chooses weekly testing is exempt from vaccination under Florida law. However, it is critical to note that state law does not allow employers to pass the cost of testing on to workers. If an employee chooses testing, a company needs to ensure the individual does not need to pay out of pocket for the cost of testing as this would violate state law and open the employer up to potential fines.

Personal Protective Equipment ("PPE") Exemption

Although Florida allows individuals to use employer approved and/or provided PPE as a means of exemption, state law does not clarify what type of PPE employees must use. As such, this will be largely left in the hands of employers until further guidance is issued. Engage recommends employers follow CDC guidelines concerning face coverings and other recommended forms of PPE.

Consequences for Employers Who Violate the Legislation

The state can levy fines on any company that fails to comply with this new series of legislation. Employers with fewer than 100 employees can face fines of up to $14,000 per violation, while employers with 100 employees or more can face fines of up to $50,000 per violation.

What Happens if the Federal Mandates are Reinstated?

The Federal regulations will supersede Florida laws in the event of a direct conflict between them. Thus, employers should be prepared to comply with the federal mandates if they are reinstated.

The Centers for Medicare & Medicaid Services ("CMS") rule and federal contractor vaccine mandate requirements only allow exemptions to their rules if an employee has a medical condition or a sincerely held religious belief that makes compliance impracticable.

What Does this Mean for Florida Employers?

For the time being, if a Florida employer wishes to implement a vaccine requirement, Engage recommends complying with the federal government's requirements and the Florida exemptions.

Engage will continue to monitor this fluid situation and will issue updated guidance if there are any changes to state or federal law.