

Iowa Passes New Law Related to COVID-19 Vaccination Mandates by Employers and Unemployment Insurance

by Manuel A. Cornell and William J. Miller

On October 29, 2021, Iowa Governor Kim Reynolds signed into law legislation affecting the interplay between Iowa employers, employees, and COVID-19 vaccine requirements. Iowa's new law, HF 902, sets up questions regarding what conflicts and issues will arise for employers and employees who are subject to current and forthcoming COVID-19 vaccine mandates from the Biden Administration. The new law has three components: a waiver relating to the health and well-being of employees and those in their household, a waiver based on religious tenets and practices, and modifications to unemployment rules.

A. Iowa employees now have medical exemption options beyond those required by existing state and federal law

HF 902 allows Iowa employees to seek a waiver from an employer's COVID-19 vaccine mandate by providing 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. This goes beyond what is required by the Americans with Disabilities Act ("ADA"), which in some circumstances requires an employer to provide reasonable accommodations for employees who, because of a disability, do not get vaccinated, unless providing an accommodation would pose an undue hardship on the operation of the employer's business.

The ADA defines "disability" as a physical or mental impairment that substantially limits one or more major life activities, and "undue hardship" as significant difficulty or expense. Traditionally, employers are permitted to require a note from a health care provider describing the employee's disability or medical condition that prohibits them from receiving the COVID-19 vaccine. The Iowa law was specifically drafted to eliminate any requirement that a health care provider must certify that the COVID-19 vaccine is contraindicated for an employee. A statement from the employee—without more—is now sufficient to exempt the employee from an employer's COVID-19 vaccine mandate.

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Under the ADA, if the employer determines that being vaccinated against COVID-19 is a safety-related qualification, the employee may not be entitled to an accommodation if the employer can demonstrate that the individual would pose a “direct threat”—a “significant risk of substantial harm” that cannot be eliminated or reduced by reasonable accommodation—to the health or safety of the employee or others in the workplace. Notably, the ADA does not allow an employee an exemption from the COVID-19 vaccine because an employee states that receiving the vaccine would be injurious to their health or well-being. Likewise, the ADA does not allow an employee an exemption from employer-based vaccine requirements because the employee states that receiving the vaccine would be injurious to the health or well-being of others in their household. Iowa’s new law offers more waiver opportunities than the ADA, and does not appear to offer defenses (undue hardship or direct threat) for employers who wish to deny a request for an exemption.

B. Religious exemption options for Iowa employees remain largely the same

Second, the law provides for a waiver from any vaccination requirement relating to the religious tenets and practices of the employee. To request the waiver, the employee must provide 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. Under guidance released by the Equal Employment Opportunity Commission (“EEOC”) which was updated last week, once an employer is on notice that an employee’s sincerely held religious belief, practice, or observance prevents the employee from getting a COVID-19 vaccine, the employer must provide a reasonable accommodation unless it would pose an “undue hardship”—more than a *de minimus* expense.

The EEOC’s definition of religion is broad and protects beliefs, practices, and observances with which the employer may be unfamiliar. Employers should ordinarily assume that an employee’s request for religious accommodation is based on a sincerely held religious belief, practice, or observance. Similar to the request for a medical exemption or waiver, all that is required for a religious exemption under HF 902 is a statement from the employee. Given that employers have been reluctant to require much more than that, Iowa’s new law appears similar to the protections afforded by Title VII and EEOC guidance.

C. Unvaccinated employees now entitled to unemployment benefits

Third, under the new law, an employee discharged from employment for refusing to receive a vaccination against COVID-19 will be eligible to receive unemployment benefits. This creates an exception from Iowa administrative rules stating that an individual would be disqualified from benefits if the department found that the individual left work voluntarily without good cause attributable to the individual’s employer. Many Iowa employers have voluntary COVID-19 vaccine mandates that result in termination of employment for an employee’s failure to comply, though that termination is considered a voluntary resignation. Questions remain regarding whether HF 902 will allow employees to receive unemployment benefits if their employer considers the employees to have voluntarily resigned if they do not comply with a COVID-19 mandate.

Importantly, under the new law, the contribution rate and unemployment experience of any employer employing the discharged employee (or a previous employer) shall be unaffected by such discharge. Moreover, Iowa Workforce Development may not impose any penalty or take any other action against an employer or former employer whose employee was discharged for refusing to receive a COVID-19 vaccine. Though the rate and penalty provisions appear to be aimed at satisfying employers, business leaders appear collectively displeased with the new law, largely because it sets up a conflict between state and federal compliance.

D. Tensions between state and federal law

Iowa is not the only state making similar changes to legislation related to COVID-19 vaccines. For example, on October 11, 2021, Texas Governor Greg Abbott issued an executive order prohibiting employers from mandating the COVID-19 vaccine. Texas's law not only provides religious and medical exemptions, it also includes exemptions for "any reason of personal conscience," and for "prior recovery from COVID-19." This makes the Texas legislation broader than Iowa's new law, but leaves Texas employers in the same quandary regarding state versus federal compliance.

On September 9, 2021, the Biden Administration announced its new COVID-19 Action Plan (the "Action Plan"), which includes a requirement that employees of federal contractors and subcontractors are vaccinated against COVID-19. Many employers, including those in Iowa, are already taking steps to comply with that mandate. The Action Plan also requires vaccination for health care workers as a condition of receipt of Medicare and Medicaid funding. Employers are still awaiting guidance from the Centers for Medicare and Medicaid ("CMS"). Iowa's new law is almost certainly on a collision course with these federal mandates, creating additional questions of who gets an exemption or who receives or loses federal contracts and funding. We suspect Iowa's new law will create multiple lawsuits challenging the legality of either the state or federal laws and which should govern.