

No Vaccine Passports in Iowa

by William J. Miller

One of the last pieces of legislation the Iowa legislature sent to Governor Kim Reynolds' desk for assured signature was a bill banning vaccine passports in Iowa. House File 889 contains several prohibitions regarding inquiries into a person's COVID-19 vaccine. For entities that contract with the state government or otherwise receive any kind of state funding, the law contains financial consequences for a violation (but is silent as to penalties for others). While the law contains clear prohibitions, it also has notable explicit and implicit exclusions.

First, the law prohibits the designation of COVID-19 vaccine status on state or political subdivision-issued identification cards. So you won't be seeing vaccination status on Iowa drivers' licenses anytime soon. Second, the law does not allow businesses or governmental entities to require customers, patrons, clients, patients, or other persons invited onto the premises ("invitees") to show proof of a COVID-19 vaccine.

If a business or governmental entity violates the new law and requires proof of COVID-19 vaccination status prior to entry or service, that business or governmental entity will be immediately stripped from eligibility for grants or contracts funded by state revenue, including the renewal of such grants or contracts. The law is silent regarding when that penalty expires, meaning that in theory, a business or governmental entity who violates the new law could be ineligible for state-funded grants and contracts indefinitely. The law is also silent as to what penalties might befall a business that does not receive grants or contracts funded by state revenue.

The law still allows businesses and governmental entities to screen for COVID-19, as long as that screening does not inquire into a person's vaccination status. Thus, people should not be surprised if they are asked about recent symptoms, exposure, or to submit to a temperature check.

Notably, the law does not list employees in the category of people who are protected from having to show proof of a COVID-19 vaccine. Therefore, Iowa employers can

Related People

- William J. Miller

Related Capabilities

- Labor & Employment
- Commercial Litigation

legally require employees to show proof of a COVID-19 vaccine as a condition of employment. However, employers adopting that requirement should be mindful of state and federal anti-discrimination employment laws such as the Iowa Civil Rights Act (ICRA) and the Americans with Disabilities Act (ADA). Both the ICRA and the ADA prohibit employers from discriminating against employees on the basis of their religion or disability (among other things). An employee's religion or health condition may prohibit them from getting a COVID-19 vaccine, and employers could run into problems if they are unwilling to make exceptions in those circumstances.

The law also explicitly excludes health care facilities from the definition of a business or a governmental entity. Under Iowa law, health care facilities include hospitals and other licensed inpatient centers, ambulatory surgical or treatment centers, skilled nursing centers and nursing facilities, residential treatment centers, diagnostic, laboratory and imaging centers, rehabilitation and other therapeutic health settings, and intermediate care facilities for people with mental illness or intellectual disabilities. That means those places can require proof of COVID-19 vaccination prior to providing services and they can require employees to be vaccinated.

State law and federal guidance on this issue is ever-changing. Last week, the EEOC updated its technical guidance regarding whether employers can provide COVID-19 vaccine incentives for employees. The guidance echoes the considerations above, noting that employers must take care not to run afoul of state and federal employment laws when making decisions about vaccine requirements. The guidance also states the vaccine incentives cannot be coercive, and that employers must keep vaccine information confidential.

In the end, employers, regardless of industry, should consult with a qualified employment lawyer prior to enacting any policies mandating COVID-19 vaccines for employees.