

COVID-19



KANSAS GOV. KELLY SIGNS BILL BANNING FIRING EMPLOYEES SEEKING WAIVERS FROM MANDATORY VACCINE REQUIREMENTS

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Kansas Gov. Laura Kelly signed a bill Tuesday that prohibits employers from firing employees who submit a written waiver request to an employer's mandatory COVID-19 vaccine requirement.

The main features of the new law are (1) a prohibition on employers questioning the sincerity of an employee's waiver request based on sincerely held religious beliefs, (2) fines of up to \$50,000 per violation for an employer with 100 or more employees or up to \$10,000 per violation for all other employers; and (3) eligibility for unemployment benefits to terminated employees who were denied a waiver.

The law requires an employer to exempt employees from its COVID-19 vaccination requirement if an employee submits a written waiver request based on medical or religious reasons. A medical exemption request must include a written statement signed by a physician or another provider acting at the direction of a physician. A religious exemption request must include a written statement signed by the employee.

The law states that an employer must grant an exemption "based on sincerely held religious beliefs without inquiring into the sincerity of the request." The bill defines "religious beliefs" as "theistic and non-theistic moral and ethical beliefs as to what is right and wrong that are sincerely held with the strength of traditional religious views." In other words, the employee's belief may be moral or philosophical in nature and not necessarily based on the tenets of an organized religion.

A terminated employee may file a complaint with the Kansas Department of Labor, which is required to determine within 60 days whether (1) the employer imposed a COVID-19 vaccine requirement, (2) the employee submitted a written waiver request for medical or religious reasons, and (3) the employee suffered a punitive action as a result

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of the COVID-19 vaccine requirement. A punitive action includes dismissal, demotion, transfer, reassignment, suspension, reprimand, warning of possible dismissal, withholding of work or assessing any monetary penalty or unreasonable charge. If the KDOL finds a violation, the attorney general is authorized to fine an employer up to \$50,000 per violation depending on employer size and certain other factors.

The law specifically says that an employee terminated after being denied a waiver won't be considered to have been discharged for misconduct or declining to accept work, making them potentially eligible for unemployment benefits. This provision is retroactive to September 9.

The Kansas Legislature passed the bill in response to four federal COVID-19 vaccination mandates, the most expansive of which is on hold pending litigation. OSHA had previously announced an emergency temporary standard that requires mandatory COVID-19 vaccination or testing for all employers of more than 100 employees. OSHA has suspended implementation and enforcement activities while legal challenges are pending. The other federal vaccine mandates that are still in play require federal contractors and subcontractors and Medicare- and Medicaid-certified facilities to mandate the COVID-19 vaccination without the alternative for testing. It remains to be seen how the Kansas bill will change the exemption process for those required to mandate vaccines.

The law became effective Tuesday upon publication in the Kansas Register.

FOR MORE INFORMATION

If you have questions or want more information regarding Gov. Kelly's new law, contact your legal counsel. If you do not have regular counsel for such matters, Foulston Siefkin LLP would welcome the opportunity to work with you to meet your specific business needs. For more information, contact **Eric Turner** at 913.253.2176 or eturner@foulston.com. For more information on the firm, please visit our website at www.foulston.com.

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