

Montana Makes Vaccination Status a Protected Class

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Discrimination based on vaccination status is prohibited under a new Montana law ([House Bill 702](#)). Enacted on May 7, 2021, the new law went into effect immediately.

The new law provides that employers, including governmental entities, are prohibited from refusing employment to a person or discriminating against a person in compensation or in a term, condition, or privilege of employment based on the person's vaccination status or whether the person has an "immunity passport."

The legislation also prevents an employer from requiring employees to get vaccinated with a vaccine administered under Emergency Use Authorization status.

Though employers may not require employees be vaccinated as a condition of employment, employers may still encourage employees to become vaccinated.

Definitions

House Bill 702 defines "immunity passport" as a document, digital record, or software application indicating a person is immune to a disease, either through vaccination or infection and recovery.

The law defines "vaccination status" as an indication of whether a person has received one or more doses of a vaccine.

"Health care facility" is defined as all or a portion of an institution, building, or agency, private or public, excluding federal facilities, whether organized for profit or not, that is used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any individual. The term includes chemical dependency facilities, critical access hospitals, eating disorder centers, end-stage renal dialysis facilities, home health agencies, home infusion therapy agencies, hospices, hospitals, infirmaries, long-term care facilities, intermediate care facilities for the developmentally disabled, medical assistance facilities, mental health centers, outpatient centers for primary care, outpatient centers for surgical services, rehabilitation facilities, residential care facilities, and residential treatment facilities.

Limited Exemptions for Certain "Health Care Facilities"

House Bill 702 exempts licensed nursing homes, long-term care facilities, and assisted living facilities from complying with the law, if doing so would result in a violation of regulations or guidance issued by the Centers for Medicare and Medicaid Services or the Centers for Disease Control and Prevention.

"Health care facilities" do not unlawfully discriminate if they comply with both of the following:

1. Ask an employee to volunteer the employee's vaccination or immunization status for

the purpose of determining whether it should implement reasonable accommodation measures to protect the safety and health of employees, patients, visitors, and other persons from communicable diseases. A healthcare facility may consider an employee to be nonvaccinated or nonimmune if the employee declines to provide the employee's vaccination or immunization status to the health care facility for purposes of determining whether reasonable accommodation measures should be implemented; and

2. Implement reasonable accommodation measures for employees, patients, visitors, and other persons who are not vaccinated or not immune to protect the safety and health of employees, patients, visitors, and other persons from communicable diseases.

Enforcement

House Bill 702 is codified as part of Montana's Human Rights Act, which prohibits discriminatory practices, including in employment and public accommodations.

Employers that have already implemented mandatory vaccination policies should consult with counsel to determine appropriate next steps.

Jackson Lewis attorneys are available to assist with compliance of this new law.

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