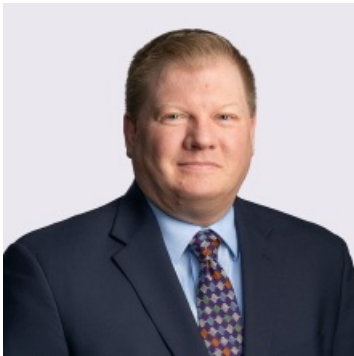


Utah's Vaccine Passport Prohibition: What Employers Need to Know

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The new Utah Vaccine Passport Prohibition legislation (HB 131) prevents most Utah businesses from requiring employees or patrons to be vaccinated for any disease. The new law will take effect May 3, 2023.

The new law has two components:

1. It amends Utah's public accommodations law and the Utah Health Code to make it unlawful for a place of public accommodation to discriminate against an individual based on the individual's immunity status.
2. It amends the Utah Antidiscrimination Act to make it unlawful "for an employer to require proof of immunity status" when making employment decisions.

Public Accommodations Must Provide Equal Access

When it comes to how businesses and enterprises treat patrons, the new law provides individuals in Utah an "equal right to access business establishments, places of public accommodation, and enterprises ... without discrimination on the basis of immunity status."

Immunity status is defined as "an indication of whether an individual is immune to a disease, whether through vaccination or infection and recovery."

Accordingly, Utah businesses cannot treat individuals differently based on whether an individual is vaccinated. Even though the law is plainly a response to the COVID-19 pandemic, it does not limit its coverage to only COVID-19 immunity. Rather, immunity status of any type of disease may not be taken into account in providing public accommodations.

The law provides for a private right of action against companies accused of denying access to individuals on basis of immunity status.

Employer Obligations

The new law makes it a discriminatory employment practice "for an employer, on the basis of an individual's vaccination status or whether the individual has an immunity passport to: (a) refuse employment to the individual; (b) bar an individual from employment; or (c) discriminate against an individual in compensation or in a term, condition, or privilege of employment" unless certain requirements, explained below, are met.

Immunity passport is defined to mean "a document, digital record, or software application indicating that an individual is immune to a disease, whether through vaccination or infection and recovery."

Vaccination status means "an indication of whether an individual has received one or

more doses of a vaccine.”

As this part of the new law amended the Utah Antidiscrimination Act, it puts an employee’s refusal to be vaccinated on the same level as other protected characteristics, such as an employee’s race, sex, or age.

Exemptions

Although the law defines “employer” broadly, there are certain exemptions. To start, schools, universities, and medical facilities and providers will still be allowed to require vaccinations. Furthermore, regulated entities of the Centers for Medicare and Medicaid Services or the U.S. Centers for Disease Control and Prevention can also still require vaccinations.

For other Utah employers to require a vaccination, the employer must demonstrate a connection “between a vaccination requirement and the employee’s assigned duties and responsibilities” or show some other external requirement for a vaccine, not imposed by the employer, and related to the employee’s duties.

What Should Utah Employers Do?

The new provisions will be codified under Utah law, including as part of the Utah Antidiscrimination Act’s statutory scheme. For employers, this means an employee in Utah would be able to file a charge with the Utah Antidiscrimination and Labor Division based on alleged employment practice violations. Employers should also be aware of existing Utah law requiring employers to provide certain exemptions to COVID-19 vaccination mandates. Employers with mandatory vaccination policies should consult with counsel to determine appropriate next steps.

More than 15 states have enacted legislation directed at employer vaccine mandates, including Florida, Georgia, Montana, South Carolina. (For more, see our article, [List of States Limiting Employer COVID-19 Vaccine Mandates Continues to Expand](#).) All employers should remain apprised of the different vaccine regulations and requirements, both statewide and federally, in the wake of the COVID-19 pandemic.

Jackson Lewis attorneys are closely monitoring updates and changes to legal requirements and guidance under this Utah law and other state and federal legislation. If you have questions about this new law, or other workplace law developments, please contact a Jackson Lewis attorney.

(Law clerk Nicholas Bonelli contributed significantly to this article.)

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