

## HB0063S02 compared with HB0063S01

~~text~~ shows text that was in HB0063S01 but was deleted in HB0063S02.

text shows text that was not in HB0063S01 but was inserted into HB0063S02.

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**Representative Jefferson S. Burton** proposes the following substitute bill:

### COVID-19 VACCINE EXEMPTIONS

2022 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Jefferson S. Burton**

Senate Sponsor: ~~Kirk A. Cullimore~~ \_\_\_\_\_

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#### LONG TITLE

##### General Description:

This bill amends provisions related to COVID-19 in the workplace.

##### Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires an employer to exempt an employee or a prospective employee from a COVID-19 vaccine requirement if the employee or prospective employee submits a primary care provider's note stating that the employee or prospective employee was previously infected by COVID-19;
- ▶ amends provisions related to recordkeeping;
- ▶ amends applicability of provisions;
- ▶ prohibits an employer from keeping or maintaining a record or copy of an

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employee's COVID-19 test results, except as otherwise required by law; and

- ▶ makes technical and conforming changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

ENACTS:

**34A-12-201**, Utah Code Annotated 1953

RENUMBERS AND AMENDS:

**34A-12-101**, (Renumbered from 26-68-201, as enacted by Laws of Utah 2021, Second Special Session, Chapter 9)

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*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **34A-12-101**, which is renumbered from Section 26-68-201 is renumbered and amended to read:

## CHAPTER 12. WORKPLACE COVID-19 PROVISIONS

### Part 1. General Provisions

~~[26-68-201]~~. **34A-12-101. Definitions.**

~~[(+)]~~ As used in this ~~[section]~~ chapter:

~~[(a)-(i)]~~ ~~(1)~~ ~~(a)~~ "Adverse action" means an action that results in:

~~[(A)]~~ ~~(i)~~ the refusal to hire a potential employee; or

~~[(B)]~~ ~~(ii)~~ the termination of employment, demotion, or reduction of wages of an employee.

~~[(iii)]~~ ~~(b)~~ "Adverse action" does not include~~[-(A)]~~ an employer's reassignment of an employee~~[-or]~~.

~~[(B)]~~ ~~the termination of an employee, if reassignment of the employee is not practical.~~

~~[(b)]~~ ~~(2)~~ "COVID-19 vaccine" means a substance that is:

~~[(+)-(A)]~~ ~~(a)~~ ~~(i)~~ approved for use by the United States Food and Drug Administration;

or

~~[(B)]~~ ~~(ii)~~ authorized for use by the United States Food and Drug Administration under

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an emergency use authorization under 21 U.S.C. Sec. 360bbb-3;

~~[(ii)]~~ (b) injected into or otherwise administered to an individual; and

~~[(iii)]~~ (c) intended to immunize an individual against COVID-19 as defined in Section 78B-4-517.

~~[(e)]~~ (3) "Employee" means an individual suffered or permitted to work by an employer.

~~[(d)(i)]~~ (4) (a) Except as provided in Subsection ~~[(1)(d)(ii)]~~ (4)(c), "employer" means the same as that term is defined in Section 34A-6-103.

(b) Except as provided in Subsection (4)(c), "employer" includes a federal contractor.

~~[(ii)]~~ (c) "Employer" does not include:

~~[(A)]~~ (i) a person that is subject to a ~~{temporary}~~ regulation by the Centers for Medicare and Medicaid Services regarding a COVID-19 vaccine ~~\_{,} unless the person is the state or a political subdivision of the state that is not an academic medical center {, or} \_{,}~~ \_{,} during the period that the {temporary} regulation is in effect {,; or}

~~[(B) a federal contractor.]~~

(ii) a health care provider, as defined in Section 78B-3-403, that is a participating provider for the Centers for Medicare and Medicaid Services.

(5) "Nurse practitioner" means an individual who is licensed to practice as an advanced practice registered nurse under Chapter 31b, Nurse Practice Act.

(6) "Physician" means an individual licensed to practice as a physician or osteopath under Chapter 67, Utah Medical Practice Act, or Chapter 68, Utah Osteopathic Medical Practice Act.

(7) "Physician assistant" means an individual who is licensed to practice as a physician assistant under Chapter 70a, Utah Physician Assistant Act.

(8) "Primary care provider" means a nurse practitioner, physician, or physician assistant.

~~[(e)]~~ (9) "Workplace" means the same as that term is defined in Section 34A-6-103.

~~[(2) Except as provided in Subsection (6), an employer who requires an employee or prospective employee to receive or show proof that the employee or prospective employee has received a COVID-19 vaccine shall relieve the employee or prospective employee of the requirement if the employee or prospective employee submits to the employer]~~

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~~[a statement that receiving a COVID-19 vaccine would:]~~

~~[(a) be injurious to the health and well-being of the employee or prospective employee;]~~

~~[(b) conflict with a sincerely held religious belief, practice, or observance of the employee or prospective employee; or]~~

~~[(c) conflict with a sincerely held personal belief of the employee or prospective employee.]~~

~~[(3) Except as provided in Subsection (6), an employer shall pay for all COVID-19 testing an employee receives in relation to or as a condition of the employee's presence at the workplace.]~~

~~[(4) Except as provided in Subsection (6), an employer may not take an adverse action against an employee because of an act the employee makes in accordance with this section.]~~

~~[(5)(a) An employer may not keep or maintain a record or copy of an employee's proof of vaccination, unless:]~~

~~[(i) otherwise required by law;]~~

~~[(ii) an established business practice or industry standard requires otherwise; or]~~

~~[(iii) the provisions of this section do not apply as described in Subsection (6)(a).]~~

~~[(b) Subsection (5)(a) does not prohibit an employer from recording whether an employee is vaccinated.]~~

~~[(6)(a) The provisions of this section do not apply to a contract for goods or services entered into before November 5, 2021, unless the contract is between an employer and the employer's employee.]~~

~~[(b) An employer may require an employee or prospective employee to receive or show proof that the employee or prospective employee has received a COVID-19 vaccination without providing the relief described in Subsection (2), if the employer:]~~

~~[(i) employs fewer than 15 employees; and]~~

~~[(ii) establishes a nexus between the requirement and the employee's assigned duties and responsibilities.]~~

Section 2. Section **34A-12-201** is enacted to read:

### **Part 2. Vaccinations, Recordkeeping, and Testing**

#### **34A-12-201. Employee COVID-19 vaccination, recordkeeping, and testing**

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### provisions.

(1) (a) ~~†An†~~Except as provided in Subsection (4), an employer who requires an employee or prospective employee to receive or show proof that the employee or prospective employee has received a COVID-19 vaccine shall exempt the employee or prospective employee from the requirement if the employee or prospective employee submits to the employer:

(i) a statement that receiving a COVID-19 vaccine would:

(A) be injurious to the health and well-being of the employee or prospective employee;

(B) conflict with a sincerely held religious belief, practice, or observance of the employee or prospective employee; or

(C) conflict with a sincerely held personal belief of the employee or prospective employee; or

(ii) a letter from the employee or prospective employee's primary care provider stating that the employee or prospective employee was previously infected by COVID-19.

(b) (i) An employer may not keep or maintain a record or copy of an employee's proof of vaccination, unless:

(A) otherwise required by law; or

(B) an established business practice or industry standard requires otherwise.

(ii) Subsection (1)(b)(i) does not prohibit an employer from verbally asking an employee to voluntarily disclose whether the employee is vaccinated.

(2) (a) ~~†An†~~Except as provided in Subsection (4), an employer shall pay for all COVID-19 testing an employee receives in relation to or as a condition of the employee's presence at the workplace.

(b) An employer may not keep or maintain a record or copy of an employee's COVID-19 test results, unless otherwise required by law.

(3) ~~†An†~~Except as provided in Subsection (4), an employer may not take an adverse action against an employee because of an act the employee makes in accordance with this chapter.

(4) If a requirement imposed on an employer under this chapter substantially impairs the fulfillment of a contract entered into before May 4, 2022 to which the employer is a party, the requirement does not apply to the employer.

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