

HB0063S03 compared with HB0063S02

~~text~~ shows text that was in HB0063S02 but was deleted in HB0063S03.

text shows text that was not in HB0063S02 but was inserted into HB0063S03.

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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

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~~ scope 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}~~34-56-102, Utah Code Annotated 1953

34-56-201, Utah Code Annotated 1953

RENUMBERS AND AMENDS:

~~{34A-12-101}~~34-56-101, (Renumbered from 26-68-201, as enacted by Laws of Utah 2021, Second Special Session, Chapter 9)

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

Section 1. Section ~~{34A-12-101}~~34-56-101, which is renumbered from Section 26-68-201 is renumbered and amended to read:

CHAPTER ~~{12}~~56. WORKPLACE COVID-19 PROVISIONS

Part 1. General Provisions

~~[26-68-201]~~. ~~{34A-12-101}~~34-56-101. Definitions.

~~{(1)}~~ As used in this ~~[section]~~ chapter:

~~{(a)}~~~~{(i)}~~ (1) (a) "Adverse action" means:

~~{(i)}~~ 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~~;~~

~~—~~ ~~{(i)}~~; or

(ii) a governmental entity separating an employee from another employee solely because of the COVID-19 vaccination status of the employee.

~~{(ii)}~~ (b) "Adverse action" does not include~~[-(A){}]~~ an employer's reassignment of an employee~~[-or]~~, if the employee's COVID-19 vaccination status is not the only reason for the

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reassignment.

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

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

~~[(i)-(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 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.

(3) "COVID-19 vaccination status" means the state of whether an individual has received a COVID-19 vaccine.

~~[(c)]~~ ~~(3)~~4) "Employee" means an individual suffered or permitted to work by an employer.

~~[(d)(i)]~~ ~~(4)~~5) (a) Except as provided in Subsection ~~[(1)(d)(ii)]~~ ~~(4)~~5)(c), "employer" means the same as that term is defined in Section 34A-6-103.

(b) Except as provided in Subsection ~~(4)~~5)(c), "employer" includes a federal contractor.

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

~~[(A)]~~ (i) a person that is subject to a 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]~~ during the period that the 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.

(6) "Governmental entity" means:

(a) an executive branch agency as defined in Section 63A-16-102;

(b) the legislative branch;

(c) the judicial branch;

(d) the State Board of Education;

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(e) the Utah Board of Higher Education;

(f) an institution of higher education; and

(g) a political subdivision of the state;

(i) as defined in Section 17B-1-102; and

(ii) including a school district.

(~~5~~7) "Nurse practitioner" means an individual who is licensed to practice as an advanced practice registered nurse under Chapter 31b, Nurse Practice Act.

(~~6~~8) "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~~9) "Physician assistant" means an individual who is licensed to practice as a physician assistant under Chapter 70a, Utah Physician Assistant Act.

(~~8~~10) "Primary care provider" means a nurse practitioner, physician, or physician assistant.

(~~e~~) (~~9~~11) "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]~~

~~[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~~

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~~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}~~34-56-102 is enacted to read:

34-56-102. Scope.

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.

Section 3. Section 34-56-201 is enacted to read:

Part 2. Vaccinations, Recordkeeping, and Testing

~~{34A-12-201}~~34-56-201. **Employee COVID-19 vaccination, recordkeeping, and testing provisions.**

(1) (a) Except as provided in Subsection (~~{4}~~1)(b), 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:

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(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) 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 an exemption described in Subsection (1)(a), if:

(i) the employer establishes a nexus between the requirement and the employee's assigned duties and responsibilities; and

(ii) reassignment of the employee is not practical.

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

(2) (a) ~~Except as provided in Subsection (4), an~~ 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) ~~Except as provided in Subsection (4), an~~ 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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