

2021 SPECIAL SESSION B LEGISLATION

HB 1B: Rep. Grall, Rep. Massullo

SB 2B: Sen. Burgess

This bill is the main piece of legislation for special session B, with 3 main components:

- Prohibits private employers from implementing a COVID-19 vaccination mandate without required opt-out provisions.
- Educational institutions and governmental entities may not impose a COVID-19 vaccination mandate for any full-time, part-time or contract employee.
- School boards may not require students to wear face masks or prohibit asymptomatic students who have not tested positive for COVID-19 to attend school.

Private Employers and vaccine mandates:

Private employers that wish to implement a vaccine mandate must include the following opt-out provisions:

1. Medical exemption, signed by a physician, PA or APRN who has examined the employee, stating that vaccination is not in the best interest of the employee. Pregnancy or anticipated pregnancy is specifically included.
2. Religious exemption evidenced by a statement indicating the employee declines vaccination because of a sincerely held religious belief.
3. COVID-19 immunity exemption, evidenced by a statement demonstrating competent medical evidence that the employee has immunity to COVID-19 documented by a valid laboratory test performed on the employee.
4. Periodic testing exemption – employee must present a statement indicating that the employee agrees to comply with regular testing at no cost to the employee.
5. PPE exemption – employee must present a statement indicating that the employee agrees to comply with reasonable written personal protective equipment requirements when in presence of other employees or persons.

Employers who receive a completed exemption statement on any of the above grounds must allow the employee to opt out of the employer's vaccination mandate.

Employees who are improperly denied the ability to opt out may file a complaint with the Department of Legal affairs. If the Department investigates and agrees, it must allow the employer the opportunity to cure the noncompliance.

If the Attorney General finds that an employer has improperly terminated an employee (and has not reinstated that employee with back pay), the AG must impose an administrative fine not to exceed \$10,000 for employers with less than 100 employees, or \$50,000 for employers with more than 100 employees.

HB 1B also makes changes to the reemployment assistance program under Chapter 443 making a terminated employee eligible for assistance and changing certain provisions related to employee misconduct and refusal to work.

The Department of Health, the Department of Legal Affairs and the Department of Economic Opportunity are given specific authority to adopt emergency rules.

DOH is required to adopt emergency rules to specify requirements for frequency and methods of testing, to establish standards for competent medical evidence that the employee has immunity to COVID-19, and to specify circumstances that are considered an anticipated pregnancy. DOH is also instructed to create the required forms for the various exemptions.

Finally, private employers may not impose a policy that prohibits an employee from choosing to receive a COVID-19 vaccination.

Educational institutions and governmental entities:

Educational institutions (defined as all public pre K-12 schools, charter schools, state universities, developmental research schools, Florida College System Institution, the Florida School for the Deaf and Blind, and the Florida Virtual School) are prohibited from imposing a COVID-19 vaccination mandate for any student.

Educational institutions and governmental entities are prohibited from imposing a COVID-19 vaccination mandate for any full-time, part-time or contract employee.

DOH may impose a fine of \$5,000 per violation on any entity that violates this prohibition.

Similar changes are made with regards to reemployment assistance as with private employers.

Interestingly, the prohibition appears to be a blanket ban on vaccine mandates. Unlike for private employers, educational institutions and governmental entities are not allowed to have a vaccine mandate with the 5 opt out provisions.

Face covering and quarantine mandates for school students:

District school boards, superintendents, local officials and school board employees are prohibited from requiring students to wear a face mask, a face shield, or any other facial covering that fits over the mouth or nose.

Parents are given the discretion to allow their children to wear face coverings.

School boards, etc. are not allowed to prohibit a child from attending school based on an exposure to COVID-19 so long as the child is asymptomatic and has not received a positive COVID-19 test.

School boards, etc. are also not allowed to prohibit an employee from returning to work or subject the employee to restrictions or disparate treatment based on exposure to COVID-19 so long as the employee remains asymptomatic and has not received a positive COVID-19 test.