



## Alerts

### Florida Governor DeSantis Signs a New Florida Law Governing COVID-19 Vaccination Mandates

November 22, 2021

*Insights for Employers*

Last week, following a special legislative session in Tallahassee, Florida, Governor Ron DeSantis signed four new bills into law that relate to vaccination mandates. One of the new bills—House Bill 1B—directly impacts employers, as it allows a private business to implement a COVID-19 vaccination mandate, but only if it provides opt-out exemptions.

#### Optional Employer COVID-19 Vaccination Mandate and Employee Exemptions

Under House Bill 1B, employers are not required to implement COVID-19 vaccination mandates, but if they choose to do so, they must provide certain exemptions for employees to opt-out of the mandate.

There are five exemptions provided for employees to opt-out of employer COVID-19 vaccination mandates:

1. **Medical Reasons:** if an employee can prove that they cannot receive the vaccine based on a medical reason determined by a healthcare professional, employers must allow them to opt-out;
2. **Religious Reasons:** an employee must be allowed to opt-out based on a sincerely held religious belief;
3. **Prior COVID-19 Infection:** any employee that can provide medical proof of a prior COVID-19 infection can opt-out of their employer's vaccine mandate;
4. **Periodic Testing:** an employee may opt-out of their employer's vaccine mandate by agreeing to undergo regular COVID-19 testing; and
5. **Use of Employer-Provided PPE:** an employee may opt-out simply by agreeing to wear personal protective equipment provided by their employer when in the presence of other employees or other persons.

#### Significant Statutory Penalty for Violations of House Bill 1B

House Bill 1B does not allow employees to sue their employers for violating the law. However, employers may be subjected to significant fines for any violations. The fines include a \$10,000 fine per violation for smaller employers and a \$50,000 fine per violation for larger companies.

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## Conflict with Federal Law

Over the past several months, the federal government has issued three rules regarding vaccinations. These include OSHA's recently released [Emergency Temporary Standard \(ETS\)](#) (which is currently subject to an injunction), the [Centers for Medicare & Medicaid Services' Interim Final Rule \(CMS IFR\)](#), and [Executive Order 14042](#), "Ensuring Adequate COVID Safety Protocols for Federal Contractors" (Contractor Mandate). All of the recently issued federal laws regarding COVID-19 mitigation measures conflict with House Bill 1B to some extent. These conflicts create a great deal of uncertainty for Florida employers. It is very likely these conflicts will only be resolved in a definitive manner through the courts.

## Next Steps

It is a challenge for employers to determine next steps in light of these conflicting laws. Many of the unanswered questions presented by these conflicting laws can only be clarified by the courts in the coming weeks. While the legal issues are sorted out, it is important for employers to monitor the evolving litigation to assess the risks and costs associated with these issues and how best to operate in this uncertain environment.

However, Florida employers who are not covered by the ETS, CMS IFR, or the Contractor Mandate and who have or intend to implement COVID-19 vaccination mandates should immediately consider revising their policies to comply with House Bill 1B.

For assistance with any of these issues, please contact your Hinshaw attorney.