



## Special Session Legislation Summaries and FAQs

[HB 1B](#) (Grall/Burgess) outlines a series of exemptions that must be offered to employees by private employers that require COVID-19 vaccines as a term of employment. These exemptions are for medical or religious reasons, if the employee previously contracted COVID, or if they agree to regular employer-sponsored testing or wearing of employer-provided personal protective equipment. The law will be enforced by the Attorney General's office and businesses will be subject to penalties ranging from up to \$10,000 to up to \$50,000 per violation based on the size of the business and other contributing factors. Additionally, employees that are terminated for refusing to receive a vaccine will be allowed to collect reemployment assistance under the bill. Public employers will not be allowed to require vaccination as a condition of employment. The legislation goes into effect upon being signed by the Governor and sunsets in June 2023.

[HB 3B](#) (Grall/Massullo/Burgess) is a public records exemption that protects employee's religious and health information if they seek an exemption from mandatory vaccination. Additionally, businesses that are being investigated for alleged noncompliance with HB 1B will be shielded from public record until the investigation is complete or no longer active.

[HB 5B](#) (Zika/Hutson) directs the Office of the Governor to create a state plan that asserts jurisdiction over occupational safety and health issues for private employers and government institutions. This is the first step in ending federal oversight by OSHA and requires an update to the Legislature early in the 2022 Legislative Session. It would be a multi-year effort if the state does proceed with creating a state-level OSHA department.

[HB 7B](#) (Andrade/Bean) removes the authority of the state Surgeon General to mandate vaccinations. This authority was created in the aftermath of 9/11 and has never been utilized.

### **What You Need to Know-- State Vaccine Requirements Frequently Asked Questions (HB 1/SB 2)**

**Does the bill prohibit employers from setting vaccination policies as a condition of employment?**

No, it allows employers to set vaccination policies as a condition of employment so long as they also provide employees with a series of other options to vaccination in the form of five individual exemptions.

**What exemptions am I required to offer if I am a private employer and require my employees to be vaccinated?**

Private employers are required to provide five individual exemptions that allow the employee to opt out of the requirement to be vaccinated for 1) medical reasons, including but not limited to, pregnancy or anticipated pregnancy; 2) religious reasons; 3) COVID-19 immunity from prior infection; 4) agreeing to employer-provided periodic testing; and 5) agreeing to the use of employer-provided personal protective equipment.

The exemption forms can be found [here](#).

### **What businesses and employees are covered under the new state requirements related to COVID-19 vaccines?**

All private businesses are required to comply with HB 1B/SB 2B regardless of size and the exemptions covered under the bill are allowed to be taken by any full-time, part-time or contract employees. See additional commentary below for employers under conflicting federal mandates.

### **What is the process for an employee to declare an exemption to vaccination?**

The Florida Department of Health has created [standardized forms](#) for employees to declare any one of the five exemptions under the bill. For a medical exemption, the employee will be required to have the form signed and filled out by a physician, physician assistant, or an advanced practice registered nurse. If an employer receives a properly completed exemption statement, the employer must allow the employee to opt out of the employer's mandatory COVID-19 vaccination policy.

### **How is the state COVID-19 vaccine legislation (1B/2B) enforced?**

If an employer institutes a mandatory vaccination policy for employees, an employee can file a complaint with the Attorney General's office (Department of Legal Affairs) if an exemption is not offered or they believe the exemption has been improperly applied or denied. If the department investigates and finds that the exemption was not offered or was improperly denied or applied, the employer will be notified and be allowed the opportunity to cure the noncompliance.

If following an investigation by the Attorney General, it is found that the employer did not comply with the bill and that the employee was improperly terminated, the Attorney General must impose a fine not to exceed \$10,000 per violation for employers with less than 100 employees and not to exceed \$50,000 per violation for employers with 100 or more employees. However, prior to the final order, an employer may reinstate the employee with back pay to the date the complaint was received to avoid the fine.

### **What factors may the Attorney General consider when determining the severity of a fine for noncompliance?**

The Attorney General may consider any of the following factors when determining the amount of fine to be levied: (1) whether the employer knowingly and willfully violated the law; (2) whether the employer has shown good faith in attempting to comply with the law; (3) whether the employer has taken action to correct the violation; (4) whether the

employer has previously been assessed a fine for violating this law; and (5) any mitigating or aggravating factor that fairness or due process requires.

**Can an employer appeal a fine?**

In addition to the ability to cure during the investigation process, if an employer is found to have improperly denied an exemption, terminated an employee and is fined, it's the intent of the Legislature that businesses have additional recourse under the Administrative Procedures Act under Florida Statute Chapter 120.

**Do employees have a private cause of action to directly sue an employer for not offering or improperly applying or denying an exemption?**

No. Enforcement powers are solely with the Attorney General following an investigation and opportunity to cure as outlined above.

**If an employer is found to have not offered or improperly applied or denied an exemption as outlined above, do they lose the COVID liability protections that currently exist in statute?**

No.

**Who pays for testing or PPE requirements- the employer or the employee?**

The employer is required to pay for COVID-19 testing and/or PPE if an exemption is taken under this bill.

**How often will an employee be required to submit to testing under the exemption?**

For the purposes of claiming an exemption based on periodic testing, an employer can test an employee no more than weekly or upon evidence of COVID-19 symptoms.

**Can I still require employees to wear masks or require regular testing if they select a medical, religious, or lab-verified COVID-19 immunity exemption?**

There is nothing in this legislation that prohibits an employer from still requiring the use of masks or requiring regular testing.

**Will there be an opportunity to provide written or public comment during the rulemaking process?**

Unknown at this time, but because the rulemaking is emergency rulemaking, public comment is not required under law. However, after the emergency rulemaking process, written and public comment will be available as the agencies work through the traditional rulemaking process.

**Are terminated employees eligible for reemployment assistance?**

Terminated employees are eligible to receive reemployment assistance from the state.

**Am I allowed to prohibit my employees from being vaccinated?**

No, newly created FS 381.00317(7) prohibits employers from imposing policies that prohibit an employee from choosing to receive a vaccine.

**Can I require vaccination if I am a governmental entity or educational institution?**

No, newly created 112.0441(2) prohibits educational institutions and governmental entities from imposing COVID-19 vaccination mandates on any full-time, part-time or contract employees.

**Where can I find the exemption forms from the Florida Department of Health?**

The Florida Department of Health has published the exemption forms [here](#).

**I have already set a vaccination policy for my employees, am I covered under this bill?**

Any active employer COVID-19 vaccine mandate is deemed invalid until the Florida Department of Health files its emergency rules or 15 days after the effective date of the bill, whichever is earlier. The Department of Health published the emergency rules in the Florida Administrative Register on November 22, 2021. Private employers will then be required to follow the provisions of this bill. The bill does not apply retroactively.

**What is the effective date of the bill and does it sunset?**

The bill was effective upon signing by the Governor on November 18, 2021 and these requirements are in place until June 1, 2023.

**What exemptions to an employer vaccination policy are available under the state law, OSHA ETS, Federal Contractor Rule and CMS Rule?**

	Alternatives to Vaccination Allowed			
	Testing	Antibody Test	PPE	Religious/Medical Exemption
State Law (HB1B, SB2B)	Yes	Yes	Yes	Yes
Federal Contractor Rule	No	No	No	Yes
OSHA Emergency Temporary Standard	Y- in conjunction with PPE wearing	No	Y- in conjunction with testing	Y- generally in conjunction with testing & PPE wearing (with limited exceptions)

CMS Providers Rule	No	No	NO	Y
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**What happens if I am covered by both the state law and one of the federal mandates, which have conflicting exemptions (see above chart)?**

All three of the federal vaccine mandates are undergoing legal challenges. To date, the OSHA ETS has been temporarily enjoined (stopped) by the federal 5<sup>th</sup> Circuit Court of Appeals and OSHA cannot enforce its mandatory vaccination policy until the conclusion of litigation. The challenges against the CMS rule and federal contractor rule are still ongoing but set an enforcement date of January 4<sup>th</sup>, unless the courts also enjoin the requirements from moving forward. If a legal challenge is successful against a particular federal mandate and the mandate is ruled unconstitutional or exceeding the authority of the agency, compliance cannot be enforced on effected employers. If legal challenges are unsuccessful and conflict remains between state and federal law, it has been argued by the bill sponsors in committee and during floor debate that the federal rules would preempt any conflicting state law due to the Supremacy Clause of the U.S. Constitution. As always, we recommend you consult your legal counsel on your legal options as an employer.

**What is the definition of anticipated pregnancy for the purposes of a medical exemption?**

The Florida Department of Health has defined an anticipated pregnancy by an employee as meeting both of the following: (1) the employee intends to become pregnant and (2) the employee is of child-bearing age. The medical exemption for anticipated pregnancy remains in effect for the time that the employee meets both of these qualifications, and the employer is required to accept the employee’s intent to become pregnant. However, the employee will still be required to have the exemption form completed by a physician, physician assistant or advanced practice registered nurse.

**How does an employee prove COVID-19 immunity for an exemption?**

The employee must present the required exemption form and proof of either a positive laboratory result from a diagnostic test or an antibody test that has received full approval or Emergency Use Authorization from the U.S. Food and Drug Administration. The rule does not set a time period for which the immunity remains valid.

**How does an employee claim an exemption based on religious reasons?**

The employee must present the required exemption form to claim an exemption based on religious reasons, which under the emergency rule, includes a sincerely held moral or ethical belief. An employer is not allowed to inquire into the veracity of an employee’s religious beliefs.

If you have further questions, please contact Carolyn Johnson at [cjohnson@flchamber.com](mailto:cjohnson@flchamber.com).