

HR COMPLIANCE BULLETIN

Highlights

Vaccine Mandate and Passport Bans

Several states have enacted laws that prohibit businesses and other entities from requiring individuals to receive or provide proof that they have received a COVID-19 vaccination.

OSHA Pre-emption

On Nov. 5, 2021, OSHA issued an ETS that pre-empts all state laws on workplace safety and health requirements related to COVID-19. On Dec. 17, 2021, a federal court reversed a previous stay on the ETS.

Non-occupational Rules

Regardless of whether OSHA's ETS remains blocked, existing state laws on COVID-19 vaccine mandates may still apply if they do not relate to occupational health and safety.

Vaccine Mandate Exceptions

Federal fair employment laws allow employers to have COVID-19 vaccine mandates as long as they provide exceptions for religious and medical reasons. Many states either already had or have recently enacted similar exception requirements.

State Laws Restricting COVID-19 Vaccine Mandates and Passports

Since COVID-19 vaccines first became available, several states have enacted laws that restrict or ban certain entities from mandating them or requiring proof that an individual has received one (also known as a "vaccine passport") in order to be allowed entry or access to services.

Most of these bans and restrictions are generally pre-empted by the new federal [Emergency Temporary Standard](#) (ETS)— which requires all employers with 100 or more employees to implement COVID-19 vaccination or testing policies— issued by the Occupational Safety and Health Administration (OSHA) on Nov. 5, 2021. Although challenges to the ETS may be ongoing, a federal court has [upheld](#) it on Dec. 17, 2021.

In addition, certain portions of these vaccine-related state laws may still apply even if the ETS does become effective. This is because the OSHA ETS does not preempt any "non-conflicting requirements of general applicability" that apply to "workers and nonworkers alike," that "regulate workers simply as member of the general public," and that are consistent with the federal standard. This Compliance Bulletin provides an overview of the state laws that currently restrict or prohibit COVID-19 vaccine mandates or passports.

Action Steps

Employers with 100 or more employees should become familiar with, watch for updates on, and review their policies and procedures to ensure compliance with OSHA's new ETS. These and all other employers that have at least 15 employees should also become familiar with [guidance](#) issued by the Equal Employment Opportunity Commission regarding how to comply with federal fair employment laws during the COVID-19 pandemic. All employers, particularly those with fewer than 15 employees, should become familiar and ensure compliance with all applicable state and local laws.

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State	Vaccine Passport / Mandate Restrictions
<p>Alabama</p>	<p>Effective May 24, 2021, Senate Bill 267 prohibits:</p> <ul style="list-style-type: none"> ☒ Government entities from issuing vaccine passports or requiring an individual to receive a vaccine as a condition for government services, with exceptions; ☒ Educational institutions from requiring additional vaccines as a condition of attendance; and ☒ All businesses from refusing service to an individual based on the individual's vaccination status.
	<p>Issued on Oct. 25, 2021, Executive Order 724 directs state agencies not to enforce the federal vaccine mandate and to cooperate with the state Attorney General's efforts to overturn it. It also prohibits state agencies from punishing businesses or individuals for noncompliance with federal vaccine requirements.</p>
	<p>Effective Nov. 5, 2021, Senate Bill 9 requires employers with vaccine mandates to allow certain exemptions.</p>
	<p>Effective Nov. 18, 2021, Emergency Rule 480-9-1 establishes a process by which employees may appeal an employer's denial of the employee's claim of a vaccination exemption.</p>
<p>Alaska</p>	<p>Effective April 26, 2021, Administrative Order 321 prohibits all state entities and the public from requiring an individual to show proof of vaccination in order to travel to or around the state.</p>
<p>Arizona</p>	<p>Issued April 19, 2021, Executive Order 2021-09 prohibits state and local governments from requiring proof of COVID-19 vaccination status to enter a business, building or area or to receive government service, permit or license.</p>
	<p>Effective July 1, 2021, Senate Bill 1824 prohibits state entities from establishing COVID-19 vaccine passports and requires all employers with vaccine mandates to provide reasonable accommodations if employees' sincerely held religious beliefs prevent them from receiving the COVID-19 vaccine.</p>
<p>Arkansas</p>	<p>Effective April 28, 2021, House Bill 1547 prohibits state and local governments from:</p> <ul style="list-style-type: none"> ☒ Requiring proof of vaccination as a condition of employment or to access education, goods, services, licensing or permitting; and ☒ Discriminating against or coercing individuals who refuse a COVID-19 vaccine by withholding opportunities for career advancement, wage increases or insurance discounts.
	<p>Effective Oct. 13, 2021, House Bill 1977 requires employers that require COVID-19 vaccinations to establish a specific exemption process.</p>

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State	Vaccine Passport / Mandate Restrictions
<p>Florida</p>	<p>Effective July 1, 2021, Senate Bill 2006 prohibits all business entities from requiring patrons or customers to provide proof of a COVID-19 vaccine before being allowed entry to receive services.</p>
	<p>Effective Nov. 18, 2021, HB 1 prohibits vaccine mandates for certain employees and requires various exemptions from vaccination mandates. It also specifies that employees who are terminated from employment for refusing to comply with an employer’s vaccine mandate remain eligible for unemployment benefits.</p>
	<p>Effective Nov. 18, 2021, Emergency Rule 64DER21-17 requires establishes standards and forms for employees to claim exemptions from private employer COVID-19 vaccination mandates.</p>
<p>Georgia</p>	<p>Issued May 26, 2021, Executive Order 05.25.21.01 prohibits state agencies and providers of state services or state property from implementing vaccine passport programs or otherwise requiring proof of COVID-19 vaccination as a condition of entering the premises of or conducting business.</p>
<p>Idaho</p>	<p>Issued April 7, 2021, Executive Order 2021-04 prohibits all governmental agencies from producing COVID-19 vaccine passports or requiring proof of vaccination to access state services.</p>
<p>Indiana</p>	<p>Effective April 29, 2021, House Bill 1405 prohibits the state and any local government from issuing or requiring vaccine passports.</p>
<p>Iowa</p>	<p>Effective May 20, 2021, House File 889 prohibits all businesses from requiring individuals to provide proof of having received a COVID-19 vaccination prior to entering the business premises.</p>
	<p>Effective Oct. 29, 2021, House File 902 requires all employers with COVID-19 vaccine mandates to waive the requirement for individuals who request exemptions for health or religious reasons. It also provides that employment terminations for refusing the COVID-19 vaccination will not disqualify an individual from receiving unemployment benefits nor will it affect an employer’s contribution or experience rates.</p>
<p>Kansas</p>	<p>Effective May 26, 2021, Senate Bill 159 prohibits state agencies from issuing or requiring an individual to use a COVID-19 vaccination passport within the state for any purpose.</p>
	<p>Effective Nov. 23, 2021, House Bill 2001 requires employers that impose COVID-19 vaccine requirements to provide medical and religious exemptions. It also establishes a complaint and investigation process and provides that employees who refuse the COVID-19 vaccine are not ineligible for unemployment benefits.</p>
<p>Michigan</p>	<p>Effective Sept. 28, 2021, Senate Bill 82 prohibits governmental entities and entities that receive governmental funding from producing, developing, issuing, or requiring a COVID-19 vaccine passport.</p>

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Missouri	Effective June 15, 2021, House Bill 271 prohibits a county, city, town or village that receives public funds from requiring documentation of an individual having received a COVID-19 vaccination as a condition of the individual accessing transportation systems or services or any other public accommodations.
Montana	Issued April 13, 2021, Executive Order 7-2021 prohibits all governmental entities and all private businesses from requiring vaccine passports to gain entry or receive services.
	Effective July 1, 2021, House Bill 702 prohibits all employers in the state from discriminating against employees or applicants based on vaccination status or on whether the person has a vaccine passport.
New Hampshire	Effective May 27, 2021, House Bill 220 prohibits state and local governmental agencies from mandating that individuals receive a vaccination, including for COVID-19.
North Dakota	Effective May 20, 2021, House Bill 1465 prohibits all private businesses from requiring a patron or customer to provide vaccination status documentation, such as for that of COVID-19.
	Effective Nov. 12, 2021, House Bill 1511 prohibits businesses from requiring proof of COVID-19 vaccination status, post-transmission recovery status or antibody status. It also requires employers that require COVID-19 vaccinations to allow certain exemptions.
Oklahoma	Issued May 28, 2021, Executive Order 2021-16 prohibits state agencies from requiring vaccinations as a condition of entry to public facilities.
South Carolina	Issued May 11, 2021, Executive Order 2021-23 prohibits vaccine passports across the state and prevents schools and governments from creating mask mandates.
South Dakota	Issued April 21, 2021, Executive Order 2021-08 prohibits state and local agencies from developing vaccine passports or requiring proof of vaccination.
Tennessee	Effective May 26, 2021, Senate Bill 858 prohibits governmental entities from requiring proof of vaccination against COVID-19 as a condition of entering the premises or obtaining services.
	Effective Nov. 12, 2021, Senate Bill 9014 prohibits employers from requiring proof of vaccination from a person who objects to receiving a COVID-19 vaccine. It also provides for unemployment benefits if an employee's separation is due to a refusal to receive a COVID-19 vaccination.
Texas	Effective June 16, 2021, Senate Bill 968 prohibits:

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	<ul style="list-style-type: none"> <li data-bbox="444 310 1495 386">☒ Governmental entities from issuing vaccination passports containing an individual’s COVID-19 vaccination status; and <li data-bbox="444 394 1260 428">☒ All businesses from requiring proof of vaccination from patrons. <p data-bbox="393 470 1544 617">Effective Oct. 11, 2021, Executive Order GA-40 bans “all entities” from compelling any individual, including an employee or consumer, to receive a COVID-19 vaccine, if the individual objects based on personal conscience, religious belief or medical reasons. It also authorizes fines of up to \$1,000 for violations.</p>
Utah	<p data-bbox="393 655 1500 730">Effective March 16, 2021, House Bill 308 prohibits state agencies and public universities from requiring proof of vaccination.</p> <p data-bbox="393 764 1549 911">Effective Nov. 16, 2021, Senate Bill 2004 requires employers with COVID-19 vaccine mandates to provide for certain exemptions. It also requires employers to pay for COVID-19 testing, prohibits adverse actions against an employee who claims relief and prohibits employers from maintaining a record or copy of proof of vaccination.</p>
West Virginia	<p data-bbox="393 953 1544 1142">Effective Jan. 18, 2022, House Bill 335 requires all employers that require vaccination as a condition of employment to exempt employees and applicants who present certification of medical exemption signed by a medical professional or notarized certification of religious exemption. It also prohibits all employers from penalizing or discriminating against employees or applicants for exercising their rights to be exempt from vaccination mandates.</p>
Wyoming	<p data-bbox="393 1180 1533 1285">Effective Nov. 12, 2021, House Bill 1002 prohibits public entities from enforcing any mandate or standard of the federal government that requires an employer to mandate that an employee receive a COVID-19 vaccination.</p>