

Employer COVID-19 Vaccine Requirements and Exemptions; Unemployment Insurance; HB 2001

HB 2001 creates law related to employer COVID-19 vaccine requirements and exemptions and related eligibility for unemployment benefits.

Employer COVID-19 Vaccine Requirements and Exemptions

The bill requires, notwithstanding any provision of law to the contrary, an employer who implements a COVID-19 vaccine requirement to exempt an employee from such requirement, without punitive action, if the employee submits a written waiver request to the employer stating that complying with the requirement would:

- Endanger the life or health of the employee or an individual residing with the employee, as evidenced by an accompanying written statement signed by a physician or another person who performs acts pursuant to practice agreements, protocols, or at the order, direction, or delegation of a physician; or
- Violate sincerely held religious beliefs of the employee, as evidenced by an accompanying written statement signed by the employee.

The bill requires an employer to grant an exemption requested in accordance with the bill based on sincerely held religious beliefs without inquiring as to the sincerity of the request.

The bill provides that an employee aggrieved by a violation of the bill's provisions may file a complaint with the Secretary of Labor (Secretary) alleging that an employer failed to offer an exemption, improperly denied an exemption request, took punitive action against the employee, or committed any other violation of this section. The bill requires the Secretary to promptly commence an investigation of each complaint filed under these provisions, to determine, at a minimum, whether:

- The employer imposed a COVID-19 vaccine requirement;
- The employee submitted a written waiver request in accordance with the bill's provisions; and
- The employer committed any violation of this section.

The bill requires the Secretary to complete such investigation and issue a final order within 60 calendar days after the filing of the complaint. The bill requires the order to contain findings and conclusions as to whether the employer violated the bill's provisions and requires the Secretary to provide the order to the employee and the employer. The order shall be a final order for purposes of judicial review and must state the right of the employee or employer to appeal as provided in the Kansas Judicial Review Act.

If the Secretary issues a final order finding that an employer violated the bill's provisions, the bill requires the Secretary to issue an order containing such findings and provide such order to the employee, the employer, and the Attorney General.

The bill requires the Attorney General, upon receipt of such order from the Secretary, to secure enforcement of such order by filing an action in an appropriate district court to impose civil penalties. Such civil action will not be filed against an employer if the employer reinstates a terminated employee with back pay to the date that the complaint was received by the Secretary.

In such action, the court may impose a civil penalty not to exceed \$10,000 per violation for an employer with fewer than 100 employees, or \$50,000 per violation for an employer with 100 or more employees.

In determining the amount of a civil penalty for a violation, the bill permits the court to consider:

- Whether the employer knowingly and willfully violated the bill's provisions;
- Whether the employer has shown good faith in attempting to comply with the bill's provisions;
- Whether the employer has taken action to correct the violation;
- Whether the employer has been previously assessed a civil penalty for violating the bill's provisions; and
- Any other mitigating or aggravating factor that fairness or due process requires.

The bill requires all civil penalties assessed and collected under the bill's provisions to be remitted to the State Treasurer for deposit in the State Treasury to the credit of the Employment Security Fund.

For purposes of this section, the bill defines "COVID-19 vaccine," "COVID-19 vaccine requirement," "employee," "employer," "person," "physician," "punitive action," and "religious beliefs."

Eligibility for Unemployment Benefits

The bill provides that an individual aggrieved by a violation of the bill's provisions who has filed a claim for benefits under the Employment Security Law and who is otherwise eligible for benefits under the Employment Security Law shall not become ineligible for benefits or be disqualified from receiving benefits on the grounds that the claimant:

- Was discharged or suspended for misconduct, if the employer's conduct in discharging or suspending such claimant was a violation of the bill's provisions;
or

- Has declined to accept work that requires compliance with a COVID-19 vaccine requirement, if the claimant has requested an exemption from the prospective employer in accordance with the bill's provisions, and such request was denied. In such case, such work for the claimant would be deemed not to constitute suitable work for purposes of the Employment Security Law.

The bill requires that, upon request by a claimant, the claimant be retroactively paid benefits for any week the claimant would otherwise have been eligible for such benefits, if the claimant was disqualified from receiving such benefits during the period of September 9, 2021, through the effective date of the bill, on the grounds that the claimant was discharged or suspended for misconduct as the result of the claimant's refusal to comply with a COVID-19 vaccine requirement after the claimant requested an exemption or accommodation from such requirement provided by state or federal law and such request was denied.

The bill requires the Secretary to independently review any claims denied during the same period because a claimant was disqualified on the same grounds under the same circumstances, and, if the claimant has not requested retroactive payment of such benefits, the Secretary is required to retroactively pay benefits to such claimant for any week the claimant would otherwise have been eligible for such benefits. The Secretary is required to develop and implement procedures to enable claimants to retroactively substantiate and file claims under these provisions, and the claimant or the employer may appeal an award or denial of benefits made pursuant to these provisions.

Benefits awarded to a claimant who received back pay pursuant to the bill's provisions are subject to the repayment or benefit offset and other related provisions, if applicable.

For purposes of this section, the bill defines "COVID-19 vaccine requirement."

Severability Clause

The bill provides, if any of the provisions regarding employer COVID-19 vaccine requirements and exemptions are held to be unconstitutional by a court of competent jurisdiction, then upon final order by the court, the Attorney General must certify to the Secretary of State that such holding has occurred, and the Secretary of State must then publish notice of such certification in the *Kansas Register*. Upon such publication, the provisions regarding eligibility for unemployment benefits will be repealed.

The bill provides, if any of the provisions regarding unemployment benefits are held to be unconstitutional by a court of competent jurisdiction, these provisions are severable, and such holding shall not affect the validity of the provisions regarding employer COVID-19 vaccine requirements and exemptions.

Effective Date

The bill will be in effect upon publication in the *Kansas Register*.