

Kansas Gov. Laura Kelly Signs New Law Regarding Employer COVID-19 Vaccine Requirement Exemptions and Eligibility for Unemployment Benefits

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Kansas Governor Laura Kelly has signed into law HB 2001, which will impact employers that require their employees to be vaccinated against COVID-19. The new law protects the rights of employees to seek exemptions from employer COVID-19 vaccine requirements, and restricts an employer's review of certain exemption requests. It also insures eligibility for unemployment benefits for individuals whose employment is terminated if an exemption request is wrongly denied. The law applies both if the vaccine requirement is a result of the employer's choice, and if it arises from a federal mandate. It becomes effective upon publication in the Kansas Register, which should occur in early December.

What exemptions must be offered?

Under the new law, an employer that imposes a COVID-19 vaccine requirement must allow for exemptions for medical or religious reasons. For a medical exemption, the employee must submit a written waiver stating that receiving the vaccine would endanger either the health of the worker or a member of their household, accompanied by a written statement to that effect from a physician or other designated provider. For a religious exemption, the employee waiver request must state that the employer's requirement would violate the worker's sincerely held religious beliefs, as evidenced by a written statement from the employee.

How does this impact an employer's review of a waiver request?

The law directs that an employer "shall" grant the exemption if the written waiver request is submitted. With respect to a request for religious exemption, the law defines "religious beliefs" broadly to include "moral and ethical beliefs as to what is right and wrong that are sincerely held with the strength of traditional religious views." In reviewing such a request, an employer may not inquire as to "the sincerity of the request."

What are the potential consequences for an employer for violating the new law?

If an employer fails to offer or improperly denies the exemption, or grants an exemption but retaliates against the employee for requesting the exemption, the employee may seek redress by filing a complaint with the Kansas Secretary of Labor. If the Secretary of Labor finds a violation, the matter will be escalated to the



Attorney General of Kansas to impose civil penalties of up to \$10,000 for an employer with fewer than 100 employees, or up to \$50,000 for an employer with 100 or more employees.

What factors will affect the penalties imposed for a violation of the new law?

The law allows the court to consider a variety of factors in making this determination, including: whether the employer knowingly and willfully violated the law; whether the employer made a good faith effort to comply with the law; whether the employer has done anything to try to correct the violation; and whether the employer has violated the law before.

How does the new law affect claims for unemployment benefits?

Under the new law, an employee who is terminated as a result of a wrongly-denied exemption request, or in retaliation for seeking an exemption, will not be disqualified from receiving unemployment benefits. In other words, if an employee is terminated for refusing to be vaccinated, when the employer should have allowed an exemption, it will not be considered to be disqualifying misconduct by the employee. Moreover, a claimant who was deemed ineligible to receive unemployment benefits between September 9, 2021, and the effective date of the law, based on termination or suspension for an employer's improper denial of an exemption or accommodation, may seek backpay for unemployment benefits to which they were entitled during that time period.

What happens if this law is later invalidated?

Perhaps expecting a legal challenge, the law details the effect if certain provisions are declared unconstitutional. If any part of the new law regarding employer COVID-19 vaccine requirements and exemptions is found to be unconstitutional by the courts, the sections regarding unemployment benefits will be repealed too. However, if the courts later find that only the sections regarding unemployment benefits are unconstitutional, that part alone will be repealed, and the provisions regarding employer COVID-19 vaccine requirements and exemptions will remain valid.

We are committed to helping our clients navigate these uncertain times and have established a cross-disciplinary COVID-19 Client Response Team. The team members serve as subject matter authorities, focused on providing relevant, timely and solution-oriented input responding to clients' questions and needs, as well as providing proactive guidance on emerging issues.

As you face questions and new challenges, please feel free to reach out to your Lathrop GPM attorney, any of the COVID-19 team members, or reach out through our [Contact Us](#) page.