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Florida Passes Law Restricting Private Business Vaccine Mandates

Following the legal challenges facing OSHA's Emergency Temporary Standard mandating vaccinations, Florida passed legislation banning private employers from mandating COVID-19 vaccines unless several exemptions are offered to employees. The law, signed during a special legislative session on November 18, 2019, does not explicitly prohibit private employers from mandating vaccination, but rather imposes restrictive requirements on any private business that chooses to implement such a policy.

The law applies to all private employers in Florida, regardless of size. Specifically, the law provides that a private employer may not impose a COVID-19 mandate without providing individual exemptions that allow an employee to “opt-out” of that requirement for one of five reasons:

1. **Medical Reasons:** An employer must allow an employee to opt-out for medical reasons, which include pregnancy or anticipated pregnancy. Notably, the law does not require the medical reason to be a “disability” or “handicap” as defined in the Americans with Disabilities Act or the Florida Civil Rights Act. Rather, an employer must allow an accommodation for simply a “medical reason.” To qualify for the exemption, the employee must provide an exemption statement, signed by the employee’s physician, physician assistant, or advanced practice registered nurse, that vaccination is not in the best interest of the employee.
2. **Religious Reasons:** An employee may claim an exemption based on religious reasons if they simply present a statement declining the vaccination because of a sincerely-held religious belief. Although not specifically defined, a “sincerely-held” religious belief likely mirrors the same requirements under Title VII.
3. **COVID-19 Immunity:** An employee may opt-out of the vaccine mandate if they present a statement of “competent medical evidence that the employee has immunity to COVID-19, documented by the results of a valid laboratory test performed on the employee.” The Florida Department of Health is directed to adopt a standard for such statements.

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4. **Periodic Testing:** An employee may claim an exemption by explicitly agreeing to comply with regular testing for the presence of COVID-19. Notably, this exemption must come at *no cost to the employee*. Like the COVID-19 immunity exemption, the Florida Department of Health is directed to determine frequency of testing and types of tests permitted.
5. **Employer-Provided PPE:** Employees may also present an exemption statement agreeing to comply with an employer's "reasonable written requirement" to use employer-provided personal protective equipment when in the presence of other employees or persons.

Upon receipt of an exemption statement from any employee, the Florida employer must allow the employee to opt-out of the vaccine requirement. For violations of this law, employees may file complaints with the Department of Legal Affairs in the Attorney General's office. If the Department finds a violation, the employer will have the opportunity to cure the noncompliance. The Department is also directed to issue rules further detailing the complaint and investigation process.

Notably, the law does not outright prohibit a vaccine mandate. Thus, Florida employers with vaccine mandates can still proceed so long as the various exemptions are offered. However, for employers trying to grapple the conflicting vaccine orders at the state and federal laws, this law only adds to the headache. The Supremacy Clause of the U.S. Constitution provides that federal law preempts state law whenever the two legislations conflict. Thus, if the OSHA ETS survives judicial review, it is likely that Florida's new law will conflict with the OSHA mandate. For questions on what you should do in the meantime, contact a Stokes Wagner attorney.

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