

Under a new executive order issued by Governor Greg Abbott of Texas, government agencies, private businesses and institutions that receive state funding cannot require people to show proof that they have been vaccinated against the coronavirus. The following article applies to businesses **not** receiving state funds.

The Feature Topic is a cursory review. If you would like more information on this, or any other topic previously covered in my newsletter, which can be viewed on [The Legal Strategist](#) tab of my web site, please contact my office at 713.526.1883.

Scott Barrett

FEATURE TOPIC: **TEXAS EMPLOYERS AND COVID-19 VACCINATIONS**



Currently, private employers not receiving state funds have the right to mandate that an employee receive a COVID-19 vaccination; however, there are some limited exceptions to that rule. Vaccine exceptions include employees who have religious or medical-related objections to the vaccine and may have to be reasonably accommodated because of those objections. Another exception is for pregnant employees because pregnant women were not part of the vaccine's clinical trials so it is unknown how the vaccine might affect them and/or their unborn child. There is also an exception for minors, depending on their age and the vaccine that is to be administered.

If an employer mandates vaccination, and an employee suffers adverse effects from it, the employer should have the employee file a workers' compensation claim because the injury/illness occurred in the course and scope of the employee's work. If an employer only encourages vaccination, and vaccination is truly voluntary, the employer should not be responsible for any adverse effects the employee may suffer. To address these liability concerns, a number of states have already enacted COVID-19 liability laws that shield employers and other businesses from liability for any actions they take in conformance with federal, state and local COVID-19 orders, rules and guidance. Governor Abbott has asked the Texas legislature to enact such a law while they are currently in session.

Generally, employers should refrain from only hiring or staffing vaccinated employees. While this may seem harmless, it is likely to have a disparate impact on those employees who are disabled, pregnant or likely to have a religious objection that prevents them from being vaccinated. This can give rise to liability under various anti-discrimination laws like the Americans With Disabilities Act, Title VII of the Civil Rights Act of 1964 and even the Pregnancy Discrimination Act. Additionally, the Texas legislature is considering bills, that if passed, would prohibit employers from refusing to hire or taking adverse employment actions such as suspensions and terminations just because employees refused to receive a COVID-19 vaccine.

Legally, you are currently allowed to include a vaccination requirement for employment if your business does not receive state funds, but it is not a good idea to do so. Businesses should keep in mind that the latitude they currently have with regard to vaccination policies is only because we are in a pandemic. Anything employers do right now may have to be relaxed or rescinded once the pandemic is over. In addition, qualified applicants or current employees who fall within the exceptions described above might be inadvertently excluded from hiring or promotional opportunities because they are not vaccinated.

Governor Abbott has said that vaccination status is private health information, and that no one should have to disclose it as a condition of engaging in normal activities, including employment. So be on the lookout for possible future prohibitions on any business requiring COVID-19 vaccinations for any of their employees.

If you would like more information on this or any other topic relating to your workforce and the COVID-19 vaccines, please contact [Scott Barrett](#) to set up a consultation.