

SENATE BILL No. 1

By Senators Masterson, Alley and Wilborn

11-22

1 AN ACT concerning employer COVID-19 vaccine requirements; requiring
2 exemptions; providing for waiver requests; authorizing a complaint and
3 investigation process with the secretary of labor for violations related to
4 exemptions and civil penalties by the attorney general for such
5 violations; relating to employment security law; providing exceptions
6 to benefit eligibility conditions and disqualification conditions based on
7 refusal to comply with COVID-19 vaccine requirements; retroactive
8 provision of benefits when denied on the basis of discharge or
9 suspension for misconduct as the result of refusal to comply with
10 COVID-19 vaccine requirements.

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12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. (a) Notwithstanding any provision of law to the contrary, if
14 an employer implements a COVID-19 vaccine requirement, the employer
15 shall exempt an employee from such requirement, without punitive action,
16 if the employee submits a written waiver request to the employer stating
17 that complying with such requirement would:

18 (1) Endanger the life or health of the employee or an individual who
19 resides with the employee, as evidenced by an accompanying written
20 statement signed by a physician or another person who performs acts
21 pursuant to practice agreements, protocols or at the order, direction or
22 delegation of a physician; or

23 (2) violate sincerely held religious beliefs of the employee, as
24 evidenced by an accompanying written statement signed by the employee.

25 (b) An employer shall grant an exemption requested in accordance
26 with this section based on sincerely held religious beliefs without inquiring
27 into the sincerity of the request.

28 (c) (1) An employer who fails to comply with this section and
29 terminates an employee based on a COVID-19 vaccine requirement
30 commits a violation of this section. Termination includes the functional
31 equivalent of termination. The terminated employee may file a complaint
32 with the secretary of labor alleging that an exemption has not been offered
33 or has been improperly applied or denied, resulting in the employee's
34 termination.

35 (2) (A) The secretary of labor shall conduct an investigation of each
36 complaint filed pursuant to this subsection. At a minimum, the

1 investigation shall determine whether:

- 2 (i) The employer imposed a COVID-19 vaccine requirement;
3 (ii) the employee submitted a written waiver request in accordance
4 with this section; and
5 (iii) the employee was terminated as a result of the COVID-19
6 vaccine requirement.

7 (B) If the secretary of labor finds that an employer violated this
8 section, the secretary shall issue an order containing such findings and
9 provide such order to the employee, the employer and the attorney general.

10 (3) (A) Except as provided in paragraph (3)(B), upon receipt of an
11 order from the secretary of labor pursuant to paragraph (2), the attorney
12 general shall impose a civil penalty not to exceed:

- 13 (i) \$10,000 per violation for an employer with fewer than 100
14 employees; or
15 (ii) \$50,000 per violation for an employer with 100 or more
16 employees.

17 (B) The attorney general shall not impose a civil penalty against an
18 employer if the employer, prior to the issuance of a final order by the
19 attorney general, reinstates a terminated employee with back pay to the
20 date that the complaint was received by the secretary of labor under this
21 subsection.

22 (C) In determining the amount of the civil penalty for a violation, the
23 attorney general may consider the following factors:

- 24 (i) Whether the employer knowingly and willfully violated this
25 section;
26 (ii) whether the employer has shown good faith in attempting to
27 comply with this section;
28 (iii) whether the employer has taken action to correct the violation;
29 (iv) whether the employer has previously been assessed a civil
30 penalty for violating this section; and
31 (v) any other mitigating or aggravating factor that fairness or due
32 process requires.

33 (D) A civil penalty shall not be imposed pursuant to this subsection
34 except upon the written order of the attorney general to the employer that
35 violated this section. Such order is a final order for purposes of judicial
36 review and shall state the violation, the penalty to be imposed, the factors
37 considered in determining such penalty and the right of such employer to
38 appeal as provided in the Kansas judicial review act.

39 (4) All civil penalties assessed and collected under this subsection
40 shall be remitted to the state treasurer in accordance with the provisions of
41 K.S.A. 75-4215, and amendments thereto. Upon receipt of each such
42 remittance, the state treasurer shall deposit the entire amount in the state
43 treasury to the credit of the state general fund.

1 (d) (1) An individual aggrieved by a violation of this section who is
2 otherwise eligible for benefits under the employment security law shall not
3 become ineligible for benefits pursuant to K.S.A. 44-705, and amendments
4 thereto, or be disqualified from receiving benefits pursuant to K.S.A. 44-
5 706, and amendments thereto, on the grounds that the individual:

6 (A) Was discharged or suspended for misconduct if the employer's
7 conduct in discharging or suspending such individual was a violation of
8 this section; or

9 (B) has declined to accept work that requires compliance with a
10 COVID-19 vaccine requirement if the individual has requested an
11 exemption from the prospective employer in accordance with this section
12 and such request was denied. In such case, such work for such individual
13 shall be deemed not to constitute suitable work for purposes of the
14 employment security law.

15 (2) (A) Notwithstanding the time limitations of K.S.A. 44-709, and
16 amendments thereto, or the provisions of K.S.A. 44-706, and amendments
17 thereto, or any other provision of the employment security law to the
18 contrary, a claimant upon request shall be retroactively paid benefits for
19 any week that the claimant would otherwise have been eligible for such
20 benefits, if such claimant was disqualified from receiving such benefits
21 during the period of September 9, 2021, through the effective date of this
22 act on the grounds that the claimant was discharged or suspended for
23 misconduct as the result of the claimant's refusal to comply with a
24 COVID-19 vaccine requirement after the individual requested an
25 exemption or accommodation from such requirement provided by state or
26 federal law and such request was denied.

27 (B) The secretary of labor shall independently review any claims
28 denied during the period of September 9, 2021, through the effective date
29 of this act to determine if the claimant was disqualified from receiving
30 benefits on the grounds that the claimant was discharged or suspended for
31 misconduct as the result of the claimant's refusal to comply with a
32 COVID-19 vaccine requirement after the individual requested an
33 exemption or accommodation from such requirement provided by state or
34 federal law and such request was denied. If the claimant has not requested
35 retroactive payment of such benefits as provided by subparagraph (A), the
36 secretary shall retroactively pay benefits to such claimant for any week
37 that the claimant would otherwise have been eligible for such benefits.

38 (C) The claimant or the employer may appeal an award or denial of
39 benefits made pursuant to this subsection as provided in K.S.A. 44-709,
40 and amendments thereto.

41 (D) The secretary of labor shall develop and implement procedures to
42 enable claimants to retroactively substantiate and file claims under this
43 paragraph.

1 (3) As used in this subsection, terms mean the same as in the
2 employment security law.

3 (e) As used in this section:

4 (1) "COVID-19 vaccine" means an immunization, vaccination or
5 injection against disease caused by the novel coronavirus identified as
6 SARS-CoV-2 or disease caused by a variant of the virus;

7 (2) "COVID-19 vaccine requirement" means that an employer:

8 (A) Requires an employee to receive a COVID-19 vaccine;

9 (B) requires an employee to provide documentation certifying receipt
10 of a COVID-19 vaccine; or

11 (C) enforces a requirement described in subparagraph (A) or (B) that
12 is imposed by the federal government or any other entity;

13 (3) "employee" means:

14 (A) An individual who is employed in this state for wages by an
15 employer;

16 (B) an applicant for employment by an employer; or

17 (C) a noncompensated intern or apprentice for an employer;

18 (4) "employer" means any person in this state who employs one or
19 more persons and includes the state of Kansas and all political
20 subdivisions of the state;

21 (5) "person" means an individual, partnership, association,
22 organization, corporation, legal representative, trustee, trustee in
23 bankruptcy or receiver;

24 (6) "physician" means an individual licensed by the state board of
25 healing arts to practice medicine and surgery;

26 (7) "punitive action" means any of the following actions related to the
27 employee's exemption request: Dismissal, demotion, transfer,
28 reassignment, suspension, reprimand, warning of possible dismissal,
29 withholding of work or assessing any monetary penalty or unreasonable
30 charge; and

31 (8) "religious beliefs" includes, but is not limited to, theistic and non-
32 theistic moral and ethical beliefs as to what is right and wrong that are
33 sincerely held with the strength of traditional religious views.

34 Sec. 2. This act shall take effect and be in force from and after its
35 publication in the Kansas register.