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Texas Bans COVID-19 Vaccine Mandates for Employees and Contractors

Law and the Workplace on **November 24, 2023**

Texas Governor Greg Abbott has signed into law SB 7, which bans private employers of any size from imposing or enforcing COVID-19 vaccine mandates as a condition of employment. The law will take effect on February 6, 2024.

Specifically, under the law, a covered employer will not be permitted to:

- adopt or enforce a mandate requiring an employee, contractor, or applicant for employment or a contract position to be vaccinated against COVID-19 as a condition of employment or a contract position; or
- take an adverse action against an employee, contractor, applicant for employment or a contract position for a refusal to be vaccinated against COVID-19.

An "adverse action" is defined as "an action taken by an employer that a reasonable person would consider was for the purpose of punishing, alienating, or otherwise adversely affecting an employee, contractor, applicant for employment, or applicant for a contract position."

The law contains a limited exception for healthcare facilities and providers, which "may establish and enforce a reasonable policy that includes requiring the use of protective medical equipment by an individual who is an employee or contractor of the facility, provider, or physician and who is not vaccinated against COVID-19 based on the level of risk the individual presents to patients from the individual 's routine and direct exposure to patients." Establishing or enforcing such a policy would not constitute an adverse action under the law.

The new law will be enforced by the Texas Workforce Commission ("Commission"), and workers may file complaints with the Commission if they believe they suffered an adverse action under the law. Upon receipt of a complaint, the Commission will conduct an investigation into the alleged adverse action and may request that the state Attorney General bring an action for injunctive relief against the employer to prevent further violations of the law.

Employers who violate the law may be fined an administrative penalty of $50,000 for each violation, unless the employer: (i) hires the applicant for employment or contract position; or (ii) reinstates the employee or contractor and provides them with back pay and reestablishment of employee benefits from the date the adverse action took place. The Commission may also recover from the employer "reasonable investigative costs" incurred by the Commission in conducting the investigation, regardless of whether the employer took the mitigating actions noted above.

The law will apply only to actions taken by an employer that occur on or after the effective date.

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