SENATE FILE NO. SF1001

COVID-19 Vaccine employer mandates-2.

Sponsored by: Senator(s) Hicks, Boner, Cooper, Dockstader, Driskill, Hutchings, Kinskey, Kolb, Kost, Salazar and Steinmetz and Representative(s) Barlow, Bear, Burkhart, Duncan, Greear, Heiner, Oakley, Olsen, Sommers, Western and Wilson

A BILL
for

1 AN ACT relating to labor and employment; prohibiting employers in Wyoming from requiring a COVID-19 vaccination as a condition of employment except as specified; providing for exemptions; providing for reasonable alternative measures for employees unable or unwilling to receive the COVID-19 vaccine; specifying liability for employers whose employees voluntarily terminate employment or are involuntarily terminated because of a COVID-19 vaccination requirement; amending the worker's compensation program to provide a presumption that an injury caused by a mandated or required COVID-19 vaccination is compensable as specified; creating the health care shortage relief and worker incentive program; creating a program to provide for
COVID-19 testing and COVID-19 antibody testing for employers; providing civil penalties; appropriating federal funds; authorizing rulemaking; providing conditional sunset dates; providing applicability; providing legislative findings; and providing for an effective date.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1.

(a) The legislature finds that:

(i) COVID-19 continues to have a devasting impact on the state of Wyoming. The impact of COVID-19 is felt especially in Wyoming health care facilities. Many health care facilities, including at least twelve (12) hospitals, are facing a critical shortage of workers due to a variety of factors, including fatigue from treating COVID-19. Wyoming hospitals are dangerously close to needing to ration care due to staffing shortages and an increased number of patients;
(ii) At the same time, Wyoming, like the rest of the nation, is facing a general worker shortage across many industries. Job postings are staying open longer and many jobs are remaining unfilled;

(iii) Individual employers in the state of Wyoming have signaled that they will require or mandate employees to be vaccinated against COVID-19 as a condition of employment. While these vaccine mandates are likely well-intentioned, there is a high probability that the vaccine mandates will lead to an even greater shortage of workers in Wyoming;

(iv) To protect the health, safety and welfare of the people of Wyoming, it is necessary for the legislature to exercise its police power to ensure the state of Wyoming does not experience a greater shortage of workers in general, and health care workers in particular, by imposition of unconditional employer COVID-19 vaccine mandates.

(b) As used in the non-codified sections of this act:
(i) "American Rescue Plan Act funds" means funds appropriated or disbursed to the state of Wyoming through the Coronavirus State Fiscal Recovery Fund established under section 602 of title VI of the federal Social Security Act, as created by section 9901 of the American Rescue Plan Act of 2021, P.L. No. 117-2;

(ii) "COVID-19" means as defined by W.S. 1-1-141(a)(ii);

(iii) "COVID-19 vaccine" means any vaccine that is marketed to prevent COVID-19 or any vaccine that is marketed to diminish or decrease the symptoms of COVID-19;

(iv) "Employee" means a person permitted to work by an employer in employment;

(v) "Employer" means as defined by W.S. 27-1-115(d)(ii);

(vi) "Health care employer" means an employer whose primary purpose is to provide services or products intended to diagnose, cure, treat or prevent conditions
which affect an individual's physical or mental condition, including but not limited to, hospital, medical, surgical, dental, vision and pharmaceutical services or products.

Section 2.

(a) Notwithstanding any Wyoming law to the contrary, no employer in the state of Wyoming shall require or mandate an employee to receive a COVID-19 vaccine as a condition of employment, unless all of the following requirements are met:

(i) The employer determines that requiring or mandating employee COVID-19 vaccinations is critical to ensuring the health, safety and welfare of the workplace and the employer provides written evidence of that determination to the department of workforce services;

(ii) The employer provides and accepts exemptions to the requirement or mandate upon submission of legitimate written evidence of an objection on medical or religious grounds, including the results of a serologic test from an employee proving that the employee has tested
positive for COVID-19 antibodies. This test is also known as a COVID-19 antibody test;

(iii) The employer provides reasonable alternative measures to employees who have not received the COVID-19 vaccine or who will not disclose the employee's COVID-19 vaccine status. The reasonable alternative measures shall be consistent with any measures required by the employer of a person who submitted an exemption under paragraph (ii) of this subsection. Reasonable alternative measures shall include but are not limited to:

(A) Reassignment of work duties or work stations that limits potential exposure from the employee to other employees, patients or the public. A reassignment of work duties or work stations shall only be required if the reassignment does not impose an undue burden on the employer;

(B) COVID-19 testing of the employee in a form and frequency that is consistent with current public health guidelines.
(iv) The COVID-19 vaccine requirement or mandate does not take effect until at least sixty (60) days after the effective date of this act.

(b) An employer who first requires or mandates employees to receive a COVID-19 vaccine as a condition of employment on or after October 31, 2021 and whose requirement or mandate does not conform to the requirements of subsection (a) of this section shall have committed an unfair employment practice and shall be subject to a civil penalty of one hundred dollars ($100.00) per day for each day the unlawful requirement or mandate is in effect.

(c) Except as provided in subsection (e) of this section, an employer shall provide severance pay to any person entitled to severance pay as specified in subsection (d) of this section if the person is unemployed because:

(i) The person voluntarily terminates his employment with his employer because the employer has imposed a COVID-19 vaccination requirement or mandate that does not conform to the requirements of subsection (a) of this section and the employee declines to receive a
COVID-19 vaccination or declines to disclose his COVID-19 vaccination status; or

(ii) The person is terminated from employment because the employer has imposed a COVID-19 vaccination requirement or mandate that does not conform to the requirements of subsection (a) of this section and the employee declines to receive a COVID-19 vaccination or declines to disclose his COVID-19 vaccination status.

(d) Except as provided in subsection (e) of this section, an employer shall pay any person who is unemployed because of a reason specified in subsection (c) of this section severance pay equal to fifty percent (50%) of the amount of wages and benefits that the person would have received if the person had worked for the immediately succeeding thirteen (13) weeks after the person's unemployment began.

(e) No employer shall be required to provide severance pay to any person under subsection (c) of this section if:
(i) The employer had established a COVID-19 vaccination requirement or mandate that took effect before October 31, 2021;

(ii) The vaccination requirement or mandate related to the person's unemployment was established in accordance with subsection (a) of this section; or

(iii) The person began employment and was subject to a previously established COVID-19 vaccination requirement that complies with paragraphs (i) or (ii) of this subsection.

(f) The department of workforce services shall enforce the provisions of this section. The department may promulgate rules and regulations as necessary for the enforcement of this section, including adopting emergency rules.

(g) Nothing in this section shall be construed to limit or preclude an employee who is unemployed under one (1) of the circumstances specified in subsection (c) of
this section from receiving any other benefit to which the employee is entitled to receive under law.

Section 3. W.S. 27-14-102(a)(xi)(intro) is amended to read:

27-14-102. Definitions.

(a) As used in this act:

(xi) "Injury" means any harmful change in the human organism other than normal aging and includes damage to or loss of any artificial replacement and death, arising out of and in the course of employment while at work in or about the premises occupied, used or controlled by the employer and incurred while at work in places where the employer's business requires an employee's presence and which subjects the employee to extrahazardous duties incident to the business. For the period beginning October 31, 2021 through March 31, 2022, if any employee suffers an injury caused by a COVID-19 vaccination that the employer required or mandated on or after October 31, 2021 as a condition of employment, it shall be presumed that the
injury arises out of and in the course of employment. "Injury" does not include:

Section 4.

(a) The health care shortage relief and worker incentive program is hereby created. The governor shall establish and administer this temporary program for the purpose of preventing health care worker shortages in Wyoming. Pursuant to the program, the governor may award stipends to health care employers to prevent health care worker shortages.

(b) Stipends awarded under this section shall not exceed one million five hundred thousand dollars ($1,500,000.00) to each eligible health care employer and shall be limited to no more than one (1) stipend per health care employer.

(c) Stipends awarded under this section shall be conditioned upon the eligible health care employer agreeing:
(i) To not impose a COVID-19 vaccine mandate as a condition of employment unless required to do so to comply with federal law or regulations; or

(ii) That if the health care employer does require or mandate employees to receive a COVID-19 vaccine as a condition of employment or enforces a COVID-19 vaccination requirement imposed by the federal government, the health care employer will comply with the requirements of section 2(a)(ii) and (iii) of this act, as enacted into law, or the requirements of the federal government as applicable;

(iii) To repay all funds provided under this section plus interest at the rate of five percent (5%) per annum if the eligible health care employer uses stipend funds for expenses not authorized by this section or if the eligible health care employer fails to comply with the requirements of this subsection.

(d) There is appropriated twenty million dollars ($20,000,000.00) to the office of the governor from any unexpended, unobligated American Rescue Plan Act funds that
were appropriated in 2021 Wyoming Session Laws, Chapter 166, Section 5(b). This appropriation is for purposes of implementing this section and shall be expended consistent with the terms of the American Rescue Plan Act, excluding the provision of government services related to a reduction in revenue. Any unobligated, unexpended funds remaining from this appropriation on October 1, 2024, may be transferred and expended upon approval by the governor for any other purpose authorized by the legislature and consistent with the terms of the American Rescue Plan Act. Transfers and expenditures under this subsection shall be reported to the legislature through the B-11 process as authorized by W.S. 9-2-1005(b)(ii) and reported pursuant to W.S. 9-2-1013(b).

Section 5. There is appropriated ten million dollars ($10,000,000.00) to the department of workforce services from any unexpended, unobligated American Rescue Plan Act funds that were appropriated in 2021 Wyoming Session Laws, Chapter 166, Section 5(b). This appropriation is for purposes of implementing a program through the department of workforce services to provide COVID-19 tests and COVID-19 antibody tests to employers that adopt a COVID-19
vaccine mandate that conforms to the requirements of section 2(a) of this act, as enacted into law. This appropriation shall be expended consistent with the terms of the American Rescue Plan Act, excluding the provision of government services related to a reduction in revenue. The department may promulgate rules and regulations as necessary for the enforcement of this section, including adopting emergency rules. The program created under this section shall expire on March 31, 2022. Any unobligated, unexpended funds remaining from this appropriation on June 1, 2022, may be transferred and expended upon approval by the governor for any other purpose authorized by the legislature and consistent with the terms of the American Rescue Plan Act. Transfers and expenditures under this subsection shall be reported to the legislature through the B-11 process as authorized by W.S. 9-2-1005(b)(ii) and reported pursuant to W.S. 9-2-1013(b).

Section 6.

(a) The provisions of section 2 of this act shall be repealed upon the earlier of:
(i) The date a federal law, regulation, rule or standard takes legal effect that has the effect of requiring Wyoming employers to comply with a federal COVID-19 vaccine mandate and any challenge to the federal law, regulation, rule or standard in the federal court system is exhausted. The governor shall certify to the secretary of state any occurrence subject to this paragraph; or

(ii) March 31, 2022.

Section 7. The provisions of this act regulating employer COVID-19 vaccine mandates shall apply only to employers that require or mandate that their employees receive a COVID-19 vaccination as a condition of employment on and after October 31, 2021.

Section 8. This act is effective immediately upon completion of all acts necessary for a bill to become law as provided by Article 4, Section 8 of the Wyoming Constitution.