

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
2 employers in Wyoming from requiring a COVID-19 vaccination
3 as a condition of employment except as specified; providing
4 for exemptions; providing for reasonable alternative
5 measures for employees unable or unwilling to receive the
6 COVID-19 vaccine; specifying liability for employers whose
7 employees voluntarily terminate employment or are
8 involuntarily terminated because of a COVID-19 vaccination
9 requirement; amending the worker's compensation program to
10 provide a presumption that an injury caused by a mandated
11 or required COVID-19 vaccination is compensable as
12 specified; creating the health care shortage relief and
13 worker incentive program; creating a program to provide for

1 COVID-19 testing and COVID-19 antibody testing for
2 employers; providing civil penalties; appropriating federal
3 funds; authorizing rulemaking; providing conditional sunset
4 dates; providing applicability; providing legislative
5 findings; and providing for an effective date.

6

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

8

9 **Section 1.**

10

11 (a) The legislature finds that:

12

13 (i) COVID-19 continues to have a devastating
14 impact on the state of Wyoming. The impact of COVID-19 is
15 felt especially in Wyoming health care facilities. Many
16 health care facilities, including at least twelve (12)
17 hospitals, are facing a critical shortage of workers due to
18 a variety of factors, including fatigue from treating
19 COVID-19. Wyoming hospitals are dangerously close to
20 needing to ration care due to staffing shortages and an
21 increased number of patients;

22

1 (ii) At the same time, Wyoming, like the rest of
2 the nation, is facing a general worker shortage across many
3 industries. Job postings are staying open longer and many
4 jobs are remaining unfilled;

5
6 (iii) Individual employers in the state of
7 Wyoming have signaled that they will require or mandate
8 employees to be vaccinated against COVID-19 as a condition
9 of employment. While these vaccine mandates are likely
10 well-intentioned, there is a high probability that the
11 vaccine mandates will lead to an even greater shortage of
12 workers in Wyoming;

13
14 (iv) To protect the health, safety and welfare
15 of the people of Wyoming, it is necessary for the
16 legislature to exercise its police power to ensure the
17 state of Wyoming does not experience a greater shortage of
18 workers in general, and health care workers in particular,
19 by imposition of unconditional employer COVID-19 vaccine
20 mandates.

21
22 (b) As used in the non-codified sections of this act:

23

1 (i) "American Rescue Plan Act funds" means funds
2 appropriated or disbursed to the state of Wyoming through
3 the Coronavirus State Fiscal Recovery Fund established
4 under section 602 of title VI of the federal Social
5 Security Act, as created by section 9901 of the American
6 Rescue Plan Act of 2021, P.L. No. 117-2;

7

8 (ii) "COVID-19" means as defined by W.S.
9 1-1-141(a)(ii);

10

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

14

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

17

18 (v) "Employer" means as defined by W.S.
19 27-1-115(d)(ii);

20

21 (vi) "Health care employer" means an employer
22 whose primary purpose is to provide services or products
23 intended to diagnose, cure, treat or prevent conditions

1 which affect an individual's physical or mental condition,
2 including but not limited to, hospital, medical, surgical,
3 dental, vision and pharmaceutical services or products.

4

5 **Section 2.**

6

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

12

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

18

19 (ii) The employer provides and accepts
20 exemptions to the requirement or mandate upon submission of
21 legitimate written evidence of an objection on medical or
22 religious grounds, including the results of a serologic
23 test from an employee proving that the employee has tested

1 positive for COVID-19 antibodies. This test is also known
2 as a COVID-19 antibody test;

3

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

12

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

19

20 (B) COVID-19 testing of the employee in a
21 form and frequency that is consistent with current public
22 health guidelines.

23

1 (iv) The COVID-19 vaccine requirement or mandate
2 does not take effect until at least sixty (60) days after
3 the effective date of this act.

4

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

13

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

18

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

1 COVID-19 vaccination or declines to disclose his COVID-19
2 vaccination status; or

3

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

10

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

19

20 (e) No employer shall be required to provide
21 severance pay to any person under subsection (c) of this
22 section if:

23

1 (i) The employer had established a COVID-19
2 vaccination requirement or mandate that took effect before
3 October 31, 2021;

4

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

8

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

13

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

19

20 (g) Nothing in this section shall be construed to
21 limit or preclude an employee who is unemployed under one
22 (1) of the circumstances specified in subsection (c) of

1 this section from receiving any other benefit to which the
2 employee is entitled to receive under law.

3

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

6

7 **27-14-102. Definitions.**

8

9 (a) As used in this act:

10

11 (xi) "Injury" means any harmful change in the
12 human organism other than normal aging and includes damage
13 to or loss of any artificial replacement and death, arising
14 out of and in the course of employment while at work in or
15 about the premises occupied, used or controlled by the
16 employer and incurred while at work in places where the
17 employer's business requires an employee's presence and
18 which subjects the employee to extrahazardous duties
19 incident to the business. For the period beginning October
20 31, 2021 through March 31, 2022, if any employee suffers an
21 injury caused by a COVID-19 vaccination that the employer
22 required or mandated on or after October 31, 2021 as a
23 condition of employment, it shall be presumed that the

1 injury arises out of and in the course of employment.

2 "Injury" does not include:

3

4 **Section 4.**

5

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

13

14 (b) Stipends awarded under this section shall not
15 exceed one million five hundred thousand dollars
16 (\$1,500,000.00) to each eligible health care employer and
17 shall be limited to no more than one (1) stipend per health
18 care employer.

19

20 (c) Stipends awarded under this section shall be
21 conditioned upon the eligible health care employer
22 agreeing:

23

1 (i) To not impose a COVID-19 vaccine mandate as
2 a condition of employment unless required to do so to
3 comply with federal law or regulations; or

4
5 (ii) That if the health care employer does
6 require or mandate employees to receive a COVID-19 vaccine
7 as a condition of employment or enforces a COVID-19
8 vaccination requirement imposed by the federal government,
9 the health care employer will comply with the requirements
10 of section 2(a)(ii) and (iii) of this act, as enacted into
11 law, or the requirements of the federal government as
12 applicable;

13
14 (iii) To repay all funds provided under this
15 section plus interest at the rate of five percent (5%) per
16 annum if the eligible health care employer uses stipend
17 funds for expenses not authorized by this section or if the
18 eligible health care employer fails to comply with the
19 requirements of this subsection.

20
21 (d) There is appropriated twenty million dollars
22 (\$20,000,000.00) to the office of the governor from any
23 unexpended, unobligated American Rescue Plan Act funds that

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

15

16 **Section 5.** There is appropriated ten million dollars
17 (\$10,000,000.00) to the department of workforce services
18 from any unexpended, unobligated American Rescue Plan Act
19 funds that were appropriated in 2021 Wyoming Session Laws,
20 Chapter 166, Section 5(b). This appropriation is for
21 purposes of implementing a program through the department
22 of workforce services to provide COVID-19 tests and
23 COVID-19 antibody tests to employers that adopt a COVID-19

1 vaccine mandate that conforms to the requirements of
2 section 2(a) of this act, as enacted into law. This
3 appropriation shall be expended consistent with the terms
4 of the American Rescue Plan Act, excluding the provision of
5 government services related to a reduction in revenue. The
6 department may promulgate rules and regulations as
7 necessary for the enforcement of this section, including
8 adopting emergency rules. The program created under this
9 section shall expire on March 31, 2022. Any unobligated,
10 unexpended funds remaining from this appropriation on June
11 1, 2022, may be transferred and expended upon approval by
12 the governor for any other purpose authorized by the
13 legislature and consistent with the terms of the American
14 Rescue Plan Act. Transfers and expenditures under this
15 subsection shall be reported to the legislature through the
16 B-11 process as authorized by W.S. 9-2-1005(b)(ii) and
17 reported pursuant to W.S. 9-2-1013(b).

18

19 **Section 6.**

20

21 (a) The provisions of section 2 of this act shall be
22 repealed upon the earlier of:

23

1 (i) The date a federal law, regulation, rule or
2 standard takes legal effect that has the effect of
3 requiring Wyoming employers to comply with a federal
4 COVID-19 vaccine mandate and any challenge to the federal
5 law, regulation, rule or standard in the federal court
6 system is exhausted. The governor shall certify to the
7 secretary of state any occurrence subject to this
8 paragraph; or

9

10 (ii) March 31, 2022.

11

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

17

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

22

23

(END)