



# Indiana Employers Should Remain on Guard as Governor Holcomb Ends COVID-19 State of Emergency

Insights

3.09.22

Indiana just joined a growing number of states that have rescinded their COVID-19 states of emergency while also enacting new pandemic-related legislation – but employers shouldn't completely let down their guard just yet. Indiana Governor Eric Holcomb first declared a COVID-19 a public health emergency on March 6, 2020. Almost two long years later and after over 20 renewals, Governor Holcomb rescinded that order on March 3, ending Indiana's state of emergency status. Across the Ohio River, Kentucky's state of emergency will likewise lapse in April 2022, unless renewed. What do employers need to know about this encouraging development?

## Governor Holcomb Signs HB 1001 and Executive Order 22-09

Governor Holcomb has been vocal about ending the public health emergency, provided certain changes were made by the state legislature first. Accordingly, the end of the state of emergency comes after the Indiana General Assembly passed a bill allowing the state to continue to receive certain types of federal funding for COVID-19 without requiring the state to be under a state of emergency to do so. House Bill 1001, signed by the governor without much fanfare on March 3, also joins several other states in prohibiting governmental entities from requiring an "immunization passport."

Notably, the bill makes several changes to current Indiana law. First, private employers may no longer impose vaccine mandates unless the employer provides individual exemptions that allow an employee to opt out of the requirement on the basis of any of the following:

- medical reasons;
- religious reasons;
- an employee has immunity from COVID-19 acquired from prior infection with COVID-19.

The third of these bases is new, and has been seen in other states such as Florida. The new law does allow employers to request those employees claiming an exemption for immunity from COVID-19 provide a new lab test every three months (specifically, a PCR test, and antigen test, or an antibody/serology test). It likewise clarifies that those employees requesting an exemption for medical reasons provide documentation from a physician, physician's assistant, or APRN. The legislation compels employers to abide by this accommodation process by allowing employees who

are terminated after following these requirements to file for unemployment. Importantly, the law includes within the definition of employee: (1) independent contractors; (2) subcontractors; and (3) students working as trainees or interns.

The bill changed at several points in the legislative process. Earlier versions would have forced employers to accept any religious exemption request without question and provided funds to reimburse employers for the costs of COVID-19 testing. These provisions were ultimately eliminated.

## **Special Provisions for Certain Employers**

There is a special requirement for Indiana employers who are federal contractors if the Federal Contractor Vaccine Mandate survives a legal challenge. Any employer subject to a vaccination requirement because of the Federal Contractor Vaccine Mandate must file proof of that contract, subcontract, or “postsecondary grant” with the secretary of state’s business services division. This “proof” must include the section of the contract requiring vaccination of employees. The legislation states these documents are to be made available to the public by the business services division, but allows employers to redact sensitive financial or business information from the proof they submit.

For healthcare employers subject to a federal immunization requirement, neither the federal contractor provisions nor the accommodation provisions apply. Professional sports organizations and entertainment venues are also exempted from the additional accommodation requirements. All employers, however, are prohibited from requiring their unvaccinated employees to submit to a COVID-19 test more than twice a week.

## **What Should Employers Do Now?**

Indiana employers should remain cautious of letting down their guard. While the state may be lowering restrictions, federal OSHA (and, by virtue, Indiana OSHA) still are operating under prior guidance – and continue to cite employers who ignore COVID-19 precautions. With the current changing landscape, Indiana employers with a vaccine mandate should consult with your local Fisher Phillips office to ensure you are complying with the most up-to-date requirements, particularly those with operations in multiple states.

## **Conclusion**

We will continue to monitor the developing COVID-19 situation in Indiana and provide updates as appropriate. Make sure you are subscribed to Fisher Phillips’ Insight System to get the most up-to-date information. For further information, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in any of our Louisville office.

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