Tennessee Closes the Loop on Workplace Vaccine Mandates

Insights
3.23.22

Do you have a mandatory vaccination policy? Are you exempt from Tennessee's COVID-19 vaccine protection law because you're a federally regulated company, healthcare provider governed by the U.S. Centers for Medicare & Medicaid Services (CMS) vaccine mandate, or a federal contractor or grant recipient? If so, you are likely covered by new Tennessee legislation that further expands protections for workers subject to workplace vaccine mandates. The new law, which went into immediate effect on March 11 and amends and supplements the state's previous COVID-19 legislation – also known as Title 14 – brings Tennessee employers who are exempt from other provisions of Title 14 into the loop by requiring religious and medical exemptions and prohibiting retaliation against employees and applicants who request or receive exemptions. Although these new restrictions are potentially significant, they apply only to employers not otherwise covered by Title 14. If you are already covered by the provision of Title 14 prohibiting you from compelling your employees provide proof of vaccination, there's nothing new to see here. If not, keep reading for our assessment of the new amendments and how they may impact your ability to impose vaccination requirements.

Who is Covered by the New Amendments?

Unlike the original provisions of Title 14, which broadly apply to nearly all public and private employers, government entities, and public schools in the state, the new amendments apply only to those Tennessee employers who are not already covered by the provision of Title 14 which prohibit employers from compelling proof of vaccination (Section 14-2-102(a)).

The only employers exempted from Section 14-2-102(a) are certain federally regulated employers, most healthcare providers regulated by CMS, and federal contractors and grant recipients who have applied for an exemption from the Tennessee Comptroller. Only employers who fall into these categories are subject to the new amendments.

What Are the New Exemption Requirements?

The largest impact of the new amendments is the imposition of new requirements for employers to grant requests for exemptions based on medical conditions or religious beliefs. Covered employers who require employees to receive or provide proof of vaccination must grant exemptions to these requirements if employees either: (1) request an exemption based on a medical condition or (2)

Copyright © 2024 Fisher Phillips LLP. All Rights Reserved.

attest that they have a sincerely held religious belief that prevents them from complying with the requirements. Once these exemption requests are submitted, you must make the decision to grant or deny the request within 10 business days. If any request is denied, you must provide a written statement to the employee explaining the reasons for the denial.

Requests for medical exemptions *must* be granted if they are supported by a statement, signed and dated by a licensed physician, that the employee has a clinical condition "recognized under generally accepted medical standards as a basis for the medical exemption." No specific requirements must be met for a religious exemption request to be granted beyond the attestation being in writing.

These requirements significantly expand the protections afforded under federal law to employees who request medical and religious accommodations. Under Title VII, employers are generally allowed, though it may not be advisable in most circumstances, to make limited factual inquiries and seek additional supporting information if there is an objective basis for questioning the religious nature or the sincerity of an employee's espoused belief. In stark contrast, the new Tennessee amendments explicitly prohibit employers from requiring employees requesting religious exemptions to provide any proof, beyond their initial statement, of their sincerely held religious belief or that the belief prevents them from receiving vaccination or providing proof of vaccination for the request to be granted. In an additional, and perhaps most notable, expansion of existing federal protections, the new amendments do not include any provision allowing employers to deny medical or religious exemptions if granting the exemption would create an undue hardship for the employer or pose a direct threat to the health of others.

However, the amendments do provide one limited exception to these requirements for CMS-governed healthcare providers. These employers are not required to "take or refrain from any action contrary to enforceable requirements imposed by" CMS. Questions remain as to how this exception will be enforced, as the amendments do not provide any additional information for CMS-governed employers to assess whether denying an exemption under the amendments would be "contrary to" CMS requirements and thus allowable under the amendments.

Considering that the CMS mandate provides that employers must grant exemptions only if required by federal law, it appears that CMS-governed employers could deny requests that do not qualify for exemption under Title VII or the ADA, request additional information pertaining to religious beliefs as allowed under Title VII, and deny requests if granting the exemption would cause an undue hardship or the employee would pose a direct threat.

What Additional Restrictions Do the Amendments Impose?

In addition to the new exemption requirements, the amendments prohibit employers from retaliating against employees or applicants who have requested or been granted an exemption. If an employee requests or receives an exemption, you may not discharge or threaten to discharge the employee or reduce their compensation, benefits, or hours because they requested or received an exemption.

Copyright © 2024 Fisher Phillips LLP. All Rights Reserved.

The amendments also provide new protections for employees who were previously discharged for failing to comply with a mandatory vaccination requirement, sought a medical or religious exemption provided for in the amendments, and whose discharge would have been prohibited by the amendments if they were in place at the time. The amendments provide that these former employees may apply for reemployment with your company and you cannot reject their application solely based on the fact that they previously sought an exemption from your mandatory vaccination requirement.

What Happens if You Violate the New Amendments?

Unlike the other provisions of Title 14, the new amendments do not provide a private right of action to allow employees to sue their employers. Rather, employers who fail to comply with the exemption requirements or the anti-retaliation provisions are subject legal actions brought by the state Attorney General and Reporter to enjoin further violations and recover civil penalties of $10,000 per violation.

The Attorney General and Reporter will be developing a process for violations to be reported.

What Should You Do Next?

You must determine whether you are covered by the new amendments. If you are one of the employers exempt from Section 14-2-102(a) of Title 14 and require your employees to receive and/or provide proof of vaccination, you must comply with the requirements of the new amendments and develop a process for compliance. This includes ensuring you have proper forms, policies, and procedures in place for employees to request medical and religious exemptions under the amendments, training your managers/human resources personnel who will be evaluating exemption requests, and taking steps to ensure employees who make requests for or are granted exemptions are protected from retaliation. All other Tennessee employers must simply continue to comply with the other requirements of Title 14.

Additionally, as discussed above, CMS-governed employers seem to be excluded from the amendments' requirements if compliance would be "contrary to enforceable requirements imposed by" CMS. Because the meaning and extent of this exception is not entirely clear, however, healthcare employers who have questions regarding whether granting or denying an exemption or taking other actions would run afoul of the amendments or the CMS mandate, or how to reconcile potential conflict between the two, should contact their employment attorney for guidance.

Conclusion

Fisher Phillips will continue to monitor this developing situation and provide updates as appropriate. Companies who have a national presence should note that there are multiple states that currently have or are considering limiting vaccine mandates. Make sure you are subscribed to Fisher Phillips' Insight system to get the most up-to-date information. If you have questions, visit our Vaccine

Copyright © 2024 Fisher Phillips LLP. All Rights Reserved.

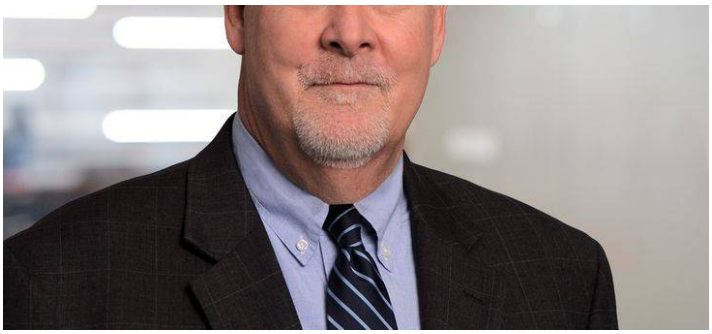
Resource Center for Employers or contact your Fisher Phillips attorney, the authors of this Insight, any attorney on our FP Vaccine Subcommittee, or any attorney in our Tennessee offices.

Related People

Marilyn Higdon
Associate
Email

Courtney Leyes
Partner
615.488.2902
Email

Copyright © 2024 Fisher Phillips LLP. All Rights Reserved.



Robert M. Robenalt
Partner
614.453.7611
Email

Trending

COVID-19/Vaccine Resource Center

Related Offices

Memphis

Nashville

Copyright © 2024 Fisher Phillips LLP. All Rights Reserved.