

Representative Jefferson S. Burton proposes the following substitute bill:

COVID-19 VACCINE EXEMPTIONS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jefferson S. Burton

Senate Sponsor: Kirk A. Cullimore

LONG TITLE

General Description:

This bill amends provisions related to COVID-19 in the workplace.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires an employer to exempt an employee or a prospective employee from a COVID-19 vaccine requirement if the employee or prospective employee submits a primary care provider's note stating that the employee or prospective employee was previously infected by COVID-19;
- ▶ amends provisions related to recordkeeping;
- ▶ amends applicability of provisions;
- ▶ prohibits an employer from keeping or maintaining a record or copy of an employee's COVID-19 test results, except as otherwise required by law; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None



26 **Utah Code Sections Affected:**

27 ENACTS:

28 **34A-12-201**, Utah Code Annotated 1953

29 RENUMBERS AND AMENDS:

30 **34A-12-101**, (Renumbered from 26-68-201, as enacted by Laws of Utah 2021, Second
31 Special Session, Chapter 9)



33 *Be it enacted by the Legislature of the state of Utah:*

34 Section 1. Section **34A-12-101**, which is renumbered from Section 26-68-201 is
35 renumbered and amended to read:

36 **CHAPTER 12. WORKPLACE COVID-19 PROVISIONS**

37 **Part 1. General Provisions**

38 ~~[26-68-201]~~. **34A-12-101. Definitions.**

39 ~~[(+)]~~ As used in this ~~[section]~~ chapter:

40 ~~[(a)-(i)]~~ (1) (a) "Adverse action" means an action that results in:

41 ~~[(A)]~~ (i) the refusal to hire a potential employee; or

42 ~~[(B)]~~ (ii) the termination of employment, demotion, or reduction of wages of an
43 employee.

44 ~~[(ii)]~~ (b) "Adverse action" does not include~~[-(A)]~~ an employer's reassignment of an
45 employee~~[-or]~~.

46 ~~[(B)]~~ ~~the termination of an employee, if reassignment of the employee is not practical.]~~

47 ~~[(b)]~~ (2) "COVID-19 vaccine" means a substance that is:

48 ~~[(i)-(A)]~~ (a) (i) approved for use by the United States Food and Drug Administration;

49 or

50 ~~[(B)]~~ (ii) authorized for use by the United States Food and Drug Administration under
51 an emergency use authorization under 21 U.S.C. Sec. 360bbb-3;

52 ~~[(ii)]~~ (b) injected into or otherwise administered to an individual; and

53 ~~[(iii)]~~ (c) intended to immunize an individual against COVID-19 as defined in Section

54 **78B-4-517.**

55 ~~[(e)]~~ (3) "Employee" means an individual suffered or permitted to work by an
56 employer.

57 ~~[(d)(i)]~~ (4) (a) Except as provided in Subsection ~~[(1)(d)(ii)]~~ (4)(c), "employer" means
58 the same as that term is defined in Section [34A-6-103](#).

59 (b) Except as provided in Subsection (4)(c), "employer" includes a federal contractor.

60 ~~[(ii)]~~ (c) "Employer" does not include:

61 ~~[(A)]~~ (i) a person that is subject to a regulation by the Centers for Medicare and
62 Medicaid Services regarding a COVID-19 vaccine, ~~[unless the person is the state or a political~~
63 ~~subdivision of the state that is not an academic medical center]~~ during the period that the
64 regulation is in effect; or

65 ~~[(B) a federal contractor;]~~

66 (ii) a health care provider, as defined in Section [78B-3-403](#), that is a participating
67 provider for the Centers for Medicare and Medicaid Services.

68 (5) "Nurse practitioner" means an individual who is licensed to practice as an advanced
69 practice registered nurse under Chapter 31b, Nurse Practice Act.

70 (6) "Physician" means an individual licensed to practice as a physician or osteopath
71 under Chapter 67, Utah Medical Practice Act, or Chapter 68, Utah Osteopathic Medical
72 Practice Act.

73 (7) "Physician assistant" means an individual who is licensed to practice as a physician
74 assistant under Chapter 70a, Utah Physician Assistant Act.

75 (8) "Primary care provider" means a nurse practitioner, physician, or physician
76 assistant.

77 ~~[(e)]~~ (9) "Workplace" means the same as that term is defined in Section [34A-6-103](#).

78 ~~[(2) Except as provided in Subsection (6), an employer who requires an employee or~~
79 ~~prospective employee to receive or show proof that the employee or prospective employee has~~
80 ~~received a COVID-19 vaccine shall relieve the employee or prospective employee of the~~
81 ~~requirement if the employee or prospective employee submits to the employer]~~

82 ~~[a statement that receiving a COVID-19 vaccine would:]~~

83 ~~[(a) be injurious to the health and well-being of the employee or prospective~~
84 ~~employee;]~~

85 ~~[(b) conflict with a sincerely held religious belief, practice, or observance of the~~
86 ~~employee or prospective employee; or]~~

87 ~~[(c) conflict with a sincerely held personal belief of the employee or prospective~~

88 employee:]

89 ~~[(3) Except as provided in Subsection (6), an employer shall pay for all COVID-19~~
90 ~~testing an employee receives in relation to or as a condition of the employee's presence at the~~
91 ~~workplace:]~~

92 ~~[(4) Except as provided in Subsection (6), an employer may not take an adverse action~~
93 ~~against an employee because of an act the employee makes in accordance with this section:]~~

94 ~~[(5) (a) An employer may not keep or maintain a record or copy of an employee's proof~~
95 ~~of vaccination, unless:]~~

96 ~~[(i) otherwise required by law;]~~

97 ~~[(ii) an established business practice or industry standard requires otherwise; or]~~

98 ~~[(iii) the provisions of this section do not apply as described in Subsection (6)(a):]~~

99 ~~[(b) Subsection (5)(a) does not prohibit an employer from recording whether an~~
100 ~~employee is vaccinated:]~~

101 ~~[(6) (a) The provisions of this section do not apply to a contract for goods or services~~
102 ~~entered into before November 5, 2021, unless the contract is between an employer and the~~
103 ~~employer's employee:]~~

104 ~~[(b) An employer may require an employee or prospective employee to receive or show~~
105 ~~proof that the employee or prospective employee has received a COVID-19 vaccination~~
106 ~~without providing the relief described in Subsection (2), if the employer:]~~

107 ~~[(i) employs fewer than 15 employees; and]~~

108 ~~[(ii) establishes a nexus between the requirement and the employee's assigned duties~~
109 ~~and responsibilities:]~~

110 Section 2. Section **34A-12-201** is enacted to read:

111 **Part 2. Vaccinations, Recordkeeping, and Testing**

112 **34A-12-201. Employee COVID-19 vaccination, recordkeeping, and testing**
113 **provisions.**

114 (1) (a) Except as provided in Subsection (4), an employer who requires an employee or
115 prospective employee to receive or show proof that the employee or prospective employee has
116 received a COVID-19 vaccine shall exempt the employee or prospective employee from the
117 requirement if the employee or prospective employee submits to the employer:

118 (i) a statement that receiving a COVID-19 vaccine would:

119 (A) be injurious to the health and well-being of the employee or prospective employee;

120 (B) conflict with a sincerely held religious belief, practice, or observance of the

121 employee or prospective employee; or

122 (C) conflict with a sincerely held personal belief of the employee or prospective

123 employee; or

124 (ii) a letter from the employee or prospective employee's primary care provider stating

125 that the employee or prospective employee was previously infected by COVID-19.

126 (b) (i) An employer may not keep or maintain a record or copy of an employee's proof

127 of vaccination, unless:

128 (A) otherwise required by law; or

129 (B) an established business practice or industry standard requires otherwise.

130 (ii) Subsection (1)(b)(i) does not prohibit an employer from verbally asking an

131 employee to voluntarily disclose whether the employee is vaccinated.

132 (2) (a) Except as provided in Subsection (4), an employer shall pay for all COVID-19

133 testing an employee receives in relation to or as a condition of the employee's presence at the

134 workplace.

135 (b) An employer may not keep or maintain a record or copy of an employee's

136 COVID-19 test results, unless otherwise required by law.

137 (3) Except as provided in Subsection (4), an employer may not take an adverse action

138 against an employee because of an act the employee makes in accordance with this chapter.

139 (4) If a requirement imposed on an employer under this chapter substantially impairs

140 the fulfillment of a contract entered into before May 4, 2022 to which the employer is a party,

141 the requirement does not apply to the employer.