

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 scope 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 **34-56-102**, Utah Code Annotated 1953

29 **34-56-201** , Utah Code Annotated 1953

30 RENUMBERS AND AMENDS:

31 **34-56-101**, (Renumbered from 26-68-201, as enacted by Laws of Utah 2021, Second
32 Special Session, Chapter 9)



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

35 Section 1. Section **34-56-101**, which is renumbered from Section 26-68-201 is
36 renumbered and amended to read:

37 **CHAPTER 56. WORKPLACE COVID-19 PROVISIONS**

38 **Part 1. General Provisions**

39 ~~[26-68-201].~~ **34-56-101. Definitions.**

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

41 ~~[(a)(i)]~~ (1) (a) "Adverse action" means:

42 (i) an action that results in:

43 (A) the refusal to hire a potential employee; or

44 (B) the termination of employment, demotion, or reduction of wages of an employee~~[-];~~

45 or

46 (ii) a governmental entity separating an employee from another employee solely
47 because of the COVID-19 vaccination status of the employee.

48 ~~[(i)]~~ (b) "Adverse action" does not include~~[-(A)]~~ an employer's reassignment of an
49 employee~~[-; or]~~, if the employee's COVID-19 vaccination status is not the only reason for the
50 reassignment.

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

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

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

54 or

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

57 [(ii)] (b) injected into or otherwise administered to an individual; and
58 [(iii)] (c) intended to immunize an individual against COVID-19 as defined in Section
59 [78B-4-517](#).

60 (3) "COVID-19 vaccination status" means the state of whether an individual has
61 received a COVID-19 vaccine.

62 [(e)] (4) "Employee" means an individual suffered or permitted to work by an
63 employer.

64 [(d)(i)] (5) (a) Except as provided in Subsection [(1)(d)(ii)] (5)(c), "employer" means
65 the same as that term is defined in Section [34A-6-103](#).

66 (b) Except as provided in Subsection (5)(c), "employer" includes a federal contractor.

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

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

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

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

75 (6) "Governmental entity" means:

76 (a) an executive branch agency as defined in Section [63A-16-102](#);

77 (b) the legislative branch;

78 (c) the judicial branch;

79 (d) the State Board of Education;

80 (e) the Utah Board of Higher Education;

81 (f) an institution of higher education; and

82 (g) a political subdivision of the state;

83 (i) as defined in Section [17B-1-102](#); and

84 (ii) including a school district.

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

87 (8) "Physician" means an individual licensed to practice as a physician or osteopath

88 under Chapter 67, Utah Medical Practice Act, or Chapter 68, Utah Osteopathic Medical
89 Practice Act.

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

92 (10) "Primary care provider" means a nurse practitioner, physician, or physician
93 assistant.

94 ~~[(e)]~~ (11) "Workplace" means the same as that term is defined in Section 34A-6-103.

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

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

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

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

104 ~~[(c) conflict with a sincerely held personal belief of the employee or prospective~~
105 ~~employee;]~~

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

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

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

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

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

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

116 ~~[(b) Subsection (5)(a) does not prohibit an employer from recording whether an~~
117 ~~employee is vaccinated.]~~

118 ~~[(6) (a) The provisions of this section do not apply to a contract for goods or services~~

119 entered into before November 5, 2021, unless the contract is between an employer and the
120 employer's employee.]

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

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

125 ~~[(ii) establishes a nexus between the requirement and the employee's assigned duties~~
126 ~~and responsibilities.]~~

127 Section 2. Section **34-56-102** is enacted to read:

128 **34-56-102. Scope.**

129 If a requirement imposed on an employer under this chapter substantially impairs the
130 fulfillment of a contract entered into before May 4, 2022 to which the employer is a party, the
131 requirement does not apply to the employer.

132 Section 3. Section **34-56-201** is enacted to read:

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

134 **34-56-201. Employee COVID-19 vaccination, recordkeeping, and testing**

135 **provisions.**

136 (1) (a) Except as provided in Subsection (1)(b), an employer who requires an employee
137 or prospective employee to receive or show proof that the employee or prospective employee
138 has received a COVID-19 vaccine shall exempt the employee or prospective employee from
139 the requirement if the employee or prospective employee submits to the employer:

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

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

142 (B) conflict with a sincerely held religious belief, practice, or observance of the
143 employee or prospective employee; or

144 (C) conflict with a sincerely held personal belief of the employee or prospective
145 employee; or

146 (ii) a letter from the employee or prospective employee's primary care provider stating
147 that the employee or prospective employee was previously infected by COVID-19.

148 (b) An employer may require an employee or prospective employee to receive or show
149 proof that the employee or prospective employee has received a COVID-19 vaccination

150 without providing an exemption described in Subsection (1)(a), if:

151 (i) the employer establishes a nexus between the requirement and the employee's
152 assigned duties and responsibilities; and

153 (ii) reassignment of the employee is not practical.

154 (c) (i) An employer may not keep or maintain a record or copy of an employee's proof
155 of vaccination, unless:

156 (A) otherwise required by law; or

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

158 (ii) Subsection (1)(c)(i) does not prohibit an employer from verbally asking an
159 employee to voluntarily disclose whether the employee is vaccinated.

160 (2) (a) An employer shall pay for all COVID-19 testing an employee receives in
161 relation to or as a condition of the employee's presence at the workplace.

162 (b) An employer may not keep or maintain a record or copy of an employee's
163 COVID-19 test results, unless otherwise required by law.

164 (3) An employer may not take an adverse action against an employee because of an act
165 the employee makes in accordance with this chapter.