



Governor Abbott Issues Order Prohibiting Vaccine Mandates

On October 11, 2021, Governor Greg Abbott issued an Executive Order banning all state entities, including private employers, from mandating the COVID-19 vaccine. Specifically, the Texas Executive Order provides that no Texas employer can compel receipt of a COVID-19 vaccine by any individual, including an employee or a consumer, who objects to such vaccination for: (1) any reason of personal conscience; (2) based on a religious belief; or (3) for medical reasons, including prior recovery from COVID-19.

The Texas Executive Order provides for a maximum \$1,000 fine for failure to comply but provides that confinement in jail is not an available penalty. There is not, however, a clear indication of when a violation of this Texas Executive Order would occur or how the \$1,000 fine would be calculated (per employee? per day? per challenge?). Nor is there a clear enforcement mechanism for this Texas Executive Order as it does not appear to create a private right of action for Texas employees affected by an employer vaccine mandate.

This Texas Executive Order does, however, put Texas employers in a difficult position given the two anticipated Federal mandates for COVID-19 vaccines. One mandate applies to Federal contractors and subcontractors who sign contracts and/or amendments with the soon to be released COVID-19 vaccine mandate clause. The other Federal mandate applies to all employers with over 100 employees, which will be issued by OSHA in the coming weeks in an Emergency Temporary Standard.

While both the Federal contractor clause and the OSHA Emergency Temporary Standard will provide exemptions for legitimate religious beliefs and medical reasons, the Federal vaccine mandates do not provide exemptions for reasons of personal conscience or a previous recovery from COVID-19. Therefore, Texas employers may face uncertainty if some of their employees want to opt out of the vaccine mandate for those reasons specified in the Texas Executive Order.

Employers will still be able to comply with both the Texas Executive Order and anticipated OSHA regulation by testing those employees for COVID-19 at least once per week. There is, however, no testing option for Federal contractors. All covered employees of Federal contractors and subcontractors must be vaccinated. Covered employees include all full-time and part-time employees working in connection with a Federal contract or potentially interacting with those employees. There is also a limited exemption for employees working in separate facilities from those working on or in connection with Federal Projects. Employers must affirmatively determine that none of the employees in the separate facility will come in contact with covered

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employees. The exemption's requirement extends to prohibiting contact in common areas such as lobbies, elevators, etc.

It is anticipated that Federal law will prevail over this Texas Executive Order. As such, several large Texas employers have already indicated that they will not abide by the Texas Executive Order given the anticipated countervailing Federal mandates for employee COVID-19 vaccinations. Further, legal challenges to the Texas Executive Order are expected. We will, of course, keep you posted.

For more information, please contact [Tony Stergio](#).