

**Baker
McKenzie.**



Reflecting on 2021 and Strategizing for 2022: Focus on Labor & Employment

Annual Illinois Employer Update | Part 1 | December 14, 2021



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1

COVID-19 Developments: What Employers Need to Know Now



Government mandates and prohibitions



**57% of all organizations said they
either require or plan to require
vaccinations**

Willis Towers Watson November 2021 Survey

Government mandates

There are federal, state and local laws that may require vaccination for employees

1

Federal employee / worksite EO:

Requires all federal employees to be vaccinated, with no option to be regularly tested instead

2

Federal contractor EO:

Contractors must ensure that all covered contractor employees are fully vaccinated for COVID-19

3

OSHA ETS:

Requires employers with 100 or more employees to ensure each of their workers is fully vaccinated or tests for COVID-19 on at least a weekly basis

4

Centers for Medicare & Medicaid Services (CMS):

Requires health care workers at facilities participating in Medicare and Medicaid to be fully vaccinated

5

State laws:

For certain employees (mostly healthcare and teachers, e.g. ME, CA, MN, DE, IL, MA, CO, WA, RI, NJ, NY, NM, NV, CT, PA, MA, OR)

6

Local laws:

For certain businesses (NYC, SF and LA mandates for bars, restaurants, large events, etc.) Starting to see city-wide mandates for private employers (NYC)

Government prohibitions

On the other hand, a number of states have moved to limit employer vaccine mandates, for example:

- **Alabama:** Employers can't require employees to receive vaccine as condition of employment without providing employee opportunity to be exempt for religious or medical reasons.
- **Arkansas:** Employers that require vaccination of employees must provide exemption process that includes options for employees to produce negative test or proof of immunity.
- **Arizona:** Employers must provide reasonable accommodation for employees' known sincerely held religious belief unless accommodation would pose undue hardship and more than de minimis cost.
- **Florida:** Private employers banned from mandating COVID-19 vaccines unless several exemptions are offered to employees.
- **Iowa:** Employers that require employees or applicants to receive vaccine must waive requirement if employee requests waiver and provides statement that vaccine would be injurious to their health or the health of someone they reside with, or that vaccine would conflict with religious beliefs.
- **Montana:** It's unlawful for employers to discriminate on basis of vaccination status or possession of immunity passport. Employers can't require vaccines whose use is permitted under emergency authorization status or are undergoing safety trials.

Government prohibitions (continued)

On the other hand, a number of states have moved to limit employer vaccine mandates, for example:

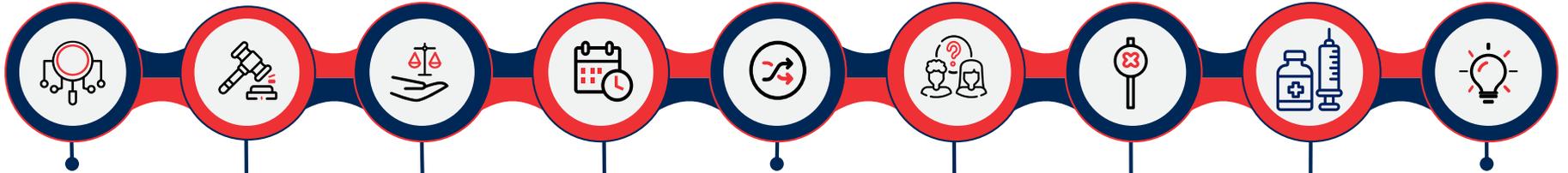
- **Tennessee:** Employers can't take adverse action or compel a person to show proof of vaccination if the person objects to receiving a COVID-19 vaccine.
- **Texas:** No entity can compel employees to receive vaccine if they object for any reason of personal conscience, religious belief, or medical reason, including prior recovery from COVID-19.
- **Utah:** Requires employers to relieve an employee from a COVID-19 vaccination requirement/mandate under certain conditions: (1) if receiving the vaccine would be injurious to the health and wellbeing of the employee or prospective employee; (2) if receiving the vaccine would conflict with a sincerely held religious belief, practice, or observance of the employee or prospective employee; or (3) if receiving the vaccine would conflict with a "sincerely held personal belief" of the employee or prospective employee.
- **West Virginia:** Employers that require vaccine as condition of continued employment or hiring must exempt employees from requirement if they present certification from health care professional that receiving vaccine is medically inadvisable or that employee has developed antibodies due to exposure or certification that employee has religious beliefs that prevent them from taking COVID-19 vaccine.



Federal and state litigation

Federal litigation: vaccine mandates

An overview



Multiple state AGs filed suit to stop enforcement of the ETS. Major unions and industry groups have joined the wave of lawsuits as well. Argument: OSHA exceeded its powers and hasn't shown the requisite "grave danger" required to issue such a rule without a formal notice and comment process.

The US Court of Appeals for the 6th Circuit was granted control of the consolidated case after winning a multi-circuit lottery from among circuits where petitions were filed.

On Dec. 3, the 6th Circuit rejected the Biden Administration's request for an expedited briefing schedule on its motion to dissolve the stay, saying the court "reserves judgment" to set deadlines for reviewing the merits of the emergency rule. Also rejected an employer request to send the case to the 5th Circuit and a union petition to transfer to the D.C. Circuit.

On Nov. 30, a federal district judge in Kentucky granted a preliminary injunction against the **federal contractor vaccine mandate** in 3 states, citing government overreach in contracts. On December 7, a federal judge in Georgia blocked the mandate nationwide.

On November 8, the US District Court for the District of Columbia declined to block the Biden Administration's **federal employee vaccine mandate** in a case brought by civilian employees and active duty service members. Several cases are pending.

The US Court of Appeals for the 5th Circuit suspended implementation on Nov. 6, and reaffirmed the stay on Nov. 15. On Nov. 16, OSHA suspended activities related to the implementation and enforcement of the ETS pending future developments in litigation

The Biden Administration asked the 6th Circuit to dissolve the 5th Circuit's stay. The briefing schedule would run past the Dec. 6 OSHA ETS implementation deadline, so the Biden Administration asked for briefing on the stay to be completed by Dec. 6, with briefing on the merits to be completed by Dec. 29. Opponents of the ETS objected.

Parties must file responses to the Biden Administration's motion to dissolve the stay by Dec. 7, and the government must respond by Dec. 10. **The briefing has run past the Dec. 6 first deadline of the ETS.**

The **CMS vaccine mandate for certain health care workers** has been blocked nationwide. A federal district court in Missouri blocked the mandate on Nov. 29 for 10 states, and a federal district court in Louisiana blocked the mandate for remaining states on Nov. 30.

Federal litigation: vaccine mandates

Current status

1

Federal employee
/ worksite EO:

IN EFFECT

2

Federal
contractor EO:

**HALTED
NATIONWIDE**

3

OSHA ETS:

**HALTED
NATIONWIDE**

4

Centers for
Medicare &
Medicaid
Services (CMS):
**HALTED
NATIONWIDE**

Litigation against state anti-vaccination laws

Employers have begun to challenge anti-vaccination / “no proof” laws



Norwegian Cruise Lines Ltd. v. Scott Rivkees, M.D., Case No. 1:21-CV-22492, in the US District Court for the Southern District of Florida

- Employer’s successful challenge to Florida’s law banning proof of vaccination for employees and customers through lawsuit against the surgeon general of Florida and the head of Florida’s department of public health
- Court said:
 - Public health would be jeopardized if the cruise line is forced to suspend its vaccination requirement, while state officials could not show it would be hurt in allowing the cruise line to make the request
 - Without being able to require proof of vaccination, the company’s reputation could suffer if passengers became sick, or it could be forced to suffer the financial impact of canceling cruises
 - Dropping the proof-of-vaccination requirement would also impact the cruise line and passengers, who cross state, federal and international waters, each of which have different regulations for dealing with the COVID-19
 - **Order:** Norwegian’s motion for preliminary injunction granted.
- The matter has been stayed pending Defendant’s appeal of the preliminary injunction to the Eleventh Circuit.



Litigation against state anti-vaccination laws

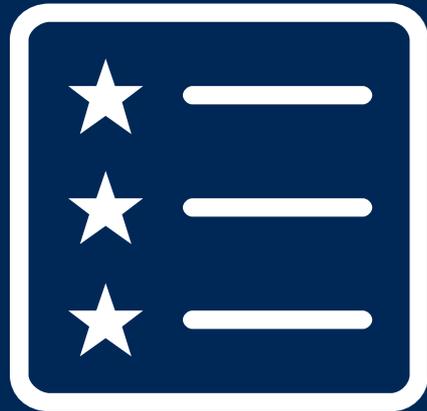
Employers have begun to challenge anti-vaccination / “no proof” laws



Employer concerns and considerations

- Health and safety of employees / customers
- Avoiding claims of violation of other applicable laws / regulations / guidance (such as CDC and OSHA guidance)
- Keeping a competitive advantage in industries with substantial face-to-face interaction (such as cruise lines or retail)





**Next steps for
employers**

What does this all mean?

- The rules that apply therefore differ greatly by location, employee type, business type, and even how courts are addressing the lawsuits
- Of course, the rules are continually changing as the country adjusts to variants (delta, omicron), with some jurisdictions just recently re-imposing lock downs and mask mandates



How should employers proceed?

- **Step 1:** Understand which rules apply or are likely to apply to your employees and locations
- **Step 2:** Closely monitor legal developments with new laws and litigation
- **Step 3:** Decide if the company wants a policy notwithstanding any law compelling one, and where permitted
- **Step 4:** Comply with state and local laws to extent not inconsistent with laws that are likely to apply pending litigation



Step 5: Prepare to comply with federal laws that will apply if they take effect

- Preemption?
- Collecting data
- Preparing template policies / forms
- OSHA published template vaccine policies

Mandatory Vaccination Policy Template

The OSHA COVID-19 Emergency Temporary Standard (ETS) on Vaccination and Testing generally requires employers to establish, implement, and enforce a written mandatory vaccination policy (29 CFR 1910.501(d)(1)).¹ Employers may use this template to develop a mandatory COVID-19 vaccination policy for their workplaces.

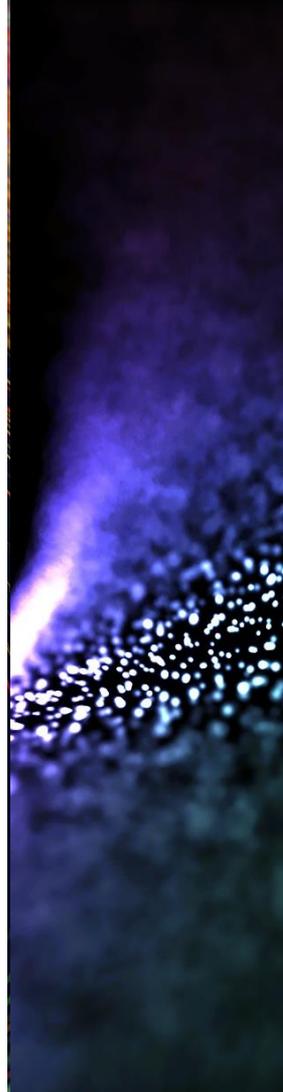
Employers using this template will need to customize areas marked with blue text and modify (change, add, or remove sections of) this document to accurately represent their policies. Text that is italicized is sample language employers may use when developing their policies; however, that text is not comprehensive and not all of that text will be applicable to all workplaces. Employers will need to add to or revise the italicized text to ensure the final policy matches the specific procedures that will be implemented in their workplaces.

Lastly, employers using this template should consider incorporating their policies and procedures for non-employees (e.g., visitors, customers) and for employees of other employers (e.g., contractor employees).

COVID-19 Vaccination, Testing and Face Covering Policy Template

The OSHA COVID-19 Emergency Temporary Standard (ETS) on Vaccination and Testing generally requires covered employers to establish, implement, and enforce a written mandatory vaccination policy (29 CFR 1910.501(d)(1)). However, there is an exemption from that requirement for employers that establish, implement, and enforce a written policy allowing any employee not subject to a mandatory vaccination policy to either choose to be fully vaccinated against COVID-19 or provide proof of regular testing for COVID-19 and wear a face covering in lieu of vaccination (29 CFR 1910.501(d)(2)). Employers may use this template to develop a policy that provides employees the choice of COVID-19 vaccination or regular COVID-19 testing and face covering use.

Employers using this template will need to customize areas marked with blue text and modify (change, add, or remove sections of) this document to accurately represent their policies. Text that is italicized is sample language employers may use when developing their policies; however, that text is not comprehensive and not all of that text will be applicable to all workplaces. Employers will need to add to or revise the italicized text to ensure the final policy matches the specific procedures that will be implemented in their workplaces.



Health information collection

Data privacy law considerations



HIPAA applies in very limited circumstances to 'covered entities' and their 'business associates' and the collection of vaccine information by employers can generally fall outside the scope of HIPAA.



Privacy laws may limit employers' ability to legally collect health information and other categories of sensitive personal information.



Health information should be stored separately from employee files. Unauthorized access to or disclosure of health information may trigger breach notification duties and liability for a company.



Health information collection

Practical recommendations based on data privacy laws

-  Collect health information only where legally required or absolutely necessary
-  Prepare detailed privacy notices, consent forms, data handling protocols
-  Apply adequate security measures
-  Limit systems, access, retention locations, retention periods



Step 6: Understand and handle / process exemptions



Employees can request two types of exemptions:

1. Medical
2. Sincerely-held religious belief



Reasonable accommodations



Medical / disability accommodations

- Provide a form for health care provider to complete.
 - Relatively narrow circumstances:
 - Employee for whom a vaccine is medically contraindicated;
 - Employees for who medical necessity requires a delay in vaccination; or
 - Employees who are legally entitled to a reasonable accommodation under the law because they have a disability.
-



Accommodations for sincerely-held religious belief accommodations

- Provide a form with questions for employee.
 - Sincerely-held "religious belief" defined broadly.
 - Employers must accept unless objective reason to reject.
 - Practically, most requests will meet the exemption.

Accommodation best practices



Ask employee to submit the request for an accommodation in writing, and provide a company form.



Determine whether the religious belief conflicts with the vaccination policy / whether the disability or medical need requires an accommodation.



For disability accommodation, determine the essential functions of the job. If the individual cannot perform the essential functions of the job with the requested accommodation, then Company does not have to provide that particular accommodation.



When exploring potential reasonable accommodations, consider pandemic-familiar measures, such as remote work, periodic testing, masking, social distancing, the installation of barriers in the office, one-way hallways, modified work schedules, modified work duties, temporary transfers to a different position, etc.

Accommodation best practices



Encourage employees to propose an accommodation when submitting their requests for an accommodation, while making clear that Company is not obligated to accept the specific accommodation proposed by the employee.



When considering whether available accommodations would cause an "undue hardship," be sure to apply the correct standard (disability v. religious belief).



Check in periodically. Does the accommodation need to be modified? Is it still necessary?

Step 7: Don't forget about testing / masking / distancing

- Cost of testing
- Pay for testing time



Cost of Testing

Do employers have to pay for the actual tests?

Possibly. The ETS itself does not require employers to pay for any costs associated with testing, companies may be required to pay for such costs by other applicable laws or regulations

Some states (e.g., Illinois and California) have statutes predating COVID-19 that require employers to pay for mandatory medical tests or require that employers reimburse for any such testing, and so employers would not be able to pass the cost of required COVID-19 testing to their employees.

What about for the time spent testing?

Likely yes, while there is little guidance on this issue, a 1997 opinion letter by the DOL's Wage and Hour Division states, "[A]ttendance by an employee at a meeting during or outside of working hours for the purpose of submitting to a mandatory drug test imposed by the employer would constitute hours worked for FLSA purposes, as would attendance at a licensing physical examination during or outside of normal working hours."

The DOL has also advised, "For many employees, undergoing COVID-19 testing may be compensable because the testing is necessary for them to perform their jobs safely and effectively during the pandemic. For example, if a grocery store cashier who has significant interaction with the general public is required by her employer to undergo a COVID-19 test on her day off, such time is likely compensable because it is integral and indispensable to her work during the pandemic."

Some state laws may also require employers to pay for time to obtain a COVID-19 test. For example, CA's DIR issued guidance explicitly stating that, "If an employer requires an employee to obtain a COVID-19 test or vaccination...then the employer must pay for the time it takes for the testing or vaccination, including travel time" because such time is considered "hours worked."



**Illinois state and local
laws to keep in mind**

Illinois state and local laws to keep in mind

Leave laws



Illinois Employee Sick Leave Act: Amended April 2021 to allow employees to use personal sick leave benefits, if provided by their employer, to provide personal care to family members. "Personal care" means ensuring that family members' basic medical, hygiene, nutritional, or safety needs are met, providing them with transportation to medical appointments, and being physically present to provide emotional support for family members with a serious health condition receiving inpatient or home care.



Chicago Paid Sick Leave Ordinance and Cook County Earned Sick Leave Ordinance:

- Under the Chicago Paid Sick Leave Ordinance, all Chicago businesses must provide paid sick leave to covered employees (any employee who works at least 80 hours for an employer in Chicago within any 120-day period), and for every 40 hours worked, employees accrue one hour of paid sick leave.
- The language of each ordinance largely mirrors the other. Where an employer falls under the jurisdiction of both, Cook County defers to the City of Chicago.
- Cook County jurisdictions can opt out of the county's paid sick leave laws. Most cities chose to opt out. By the time Cook County's Earned Sick Leave Ordinance took effect on July 1, 2017, over 80% of suburban municipalities opted out (but since then, five municipalities have opted back in).
- The Chicago Paid Sick Leave Ordinance was amended August 2021 to expand bases to take paid leave, including to care for a family member subject to quarantine, or if employee's place of business is closed by order of a public health official due to a public health emergency.

Illinois state and local laws to keep in mind

Anti-retaliation



Chicago Anti-Retaliation Ordinance

Prohibits employers from retaliating against employees for obeying an order issued by the Mayor, Governor, Chicago Department of Public Health, or healthcare provider having to do with COVID-19. Employers are also prohibited from taking any adverse action against an employee for caring for someone who has been issued certain orders having to do with COVID-19.

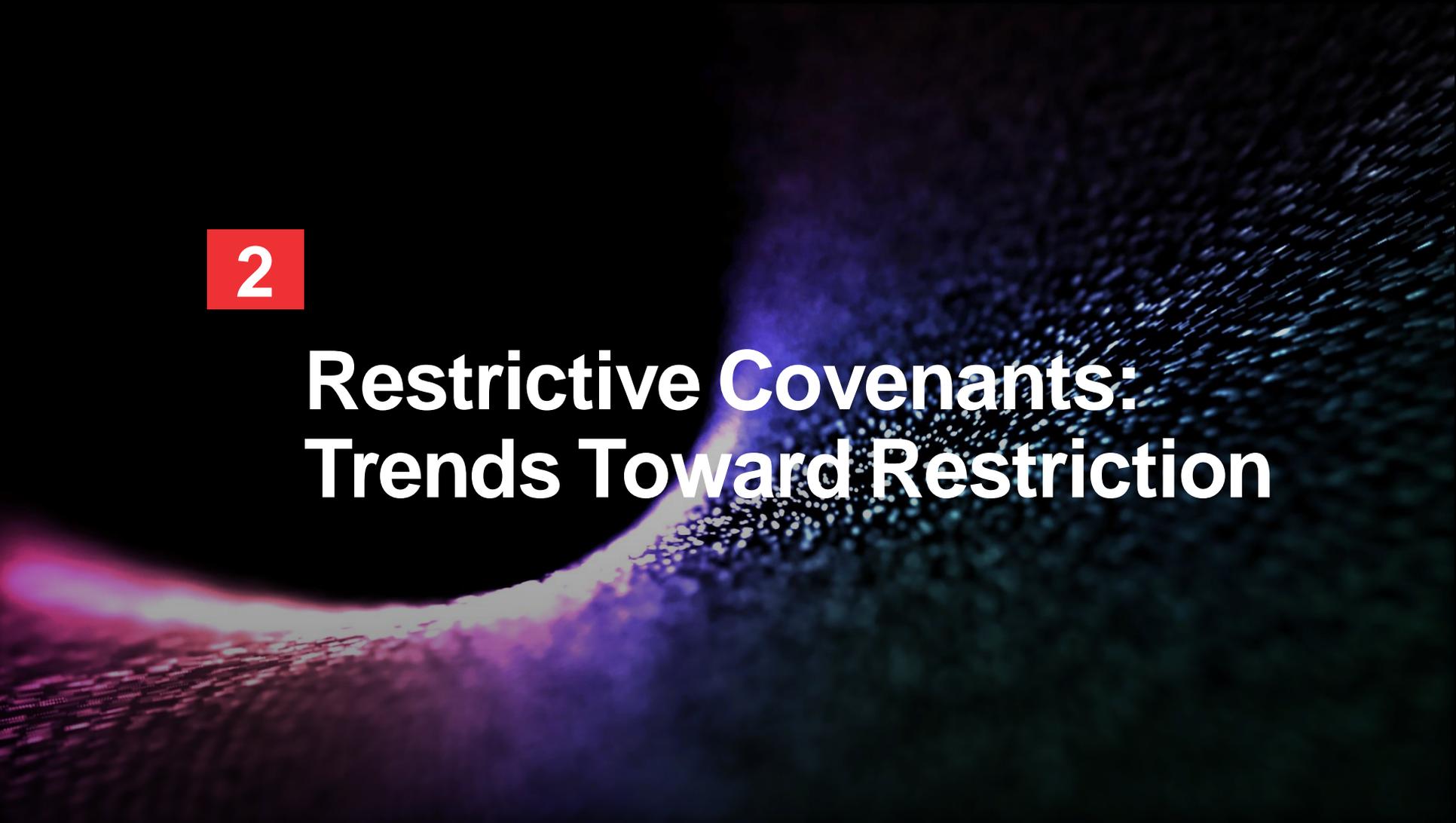


Cook County COVID-19 Vaccination Rights for Employees and Prohibition of Retaliation by Employers Ordinance

If an employer mandates vaccination, employees who get vaccinated during their shift must receive compensation at the regular rate of pay for the time it takes to attend a vaccination appointment, **up to four hours** per vaccination dose. If vaccination is mandated, the employer cannot require employee to use accrued available PTO or sick time to cover the time missed for vaccination.

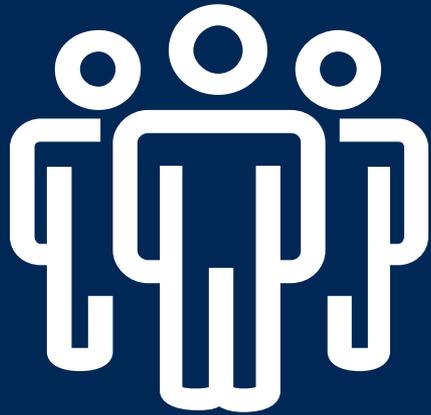
Employers:

- Cannot require that an employee get vaccinated only during non-shift hours.
- Cannot take adverse or negative personnel actions against an employee for taking time during a shift to get a vaccine regardless of whether there is a mandatory vaccination policy in place.
- Cannot require an employee to locate a replacement to cover the shift during the employee's vaccination appointment.
- Cannot give the employee attendance consequences for the absence under an attendance policy.



2

Restrictive Covenants: Trends Toward Restriction



US noncompete developments and trends

US developments and trends



Executive Order on Promoting Competition in the American Economy

- Encourages the chair of the FTC to "curtail the unfair use" of noncompetes and other agreements that may "unfairly limit worker mobility."
- Encourages the AG and chair of the FTC to consider revising antitrust guidance to better protect workers from wage collusion.



State trend to limit / prohibit noncompetes against employees, or to protect lower wage employees from noncompetes

- Several states only allow noncompetes between the seller and the buyer in the sale of business goodwill, or between partners in the dissolution of a partnership or disassociation of one partner from a continuing partnership.
- Nine states have enacted legislation limiting the use of noncompete agreements for low-wage earners in recent years, including Illinois, Massachusetts, Washington, and Oregon.



Washington, D.C. Ban on Non-compete Agreements Amendments Act of 2020

- Described as the strictest ban on noncompetes in the US.
- Subject to extremely narrow exceptions, will make noncompetes entered into after the law's effective date void and unenforceable.

US developments and trends—Takeaways

Practical tips for employers

Stay updated on noncompete laws in states where they have employees, given the continuing trend of states enacting or amending laws to further restrict noncompetes.

Keep an eye out for action by the FTC in line with the Executive Order—but also expect legal challenges to FTC action.

Inventory and review noncompete agreements, ensure the agreements continue to comply with applicable law, and take any steps necessary to bring errant agreements back into compliance.



Consider the impact of any wide-spread rulemaking to how the organization manages employee-raiding/poaching, maintenance of trade secrets and confidential information and M&A.

Educate managers / executives involved in the hiring process.

For employers with multi-national workforces, re-evaluate the company's use of noncompetes globally.



Illinois noncompetes

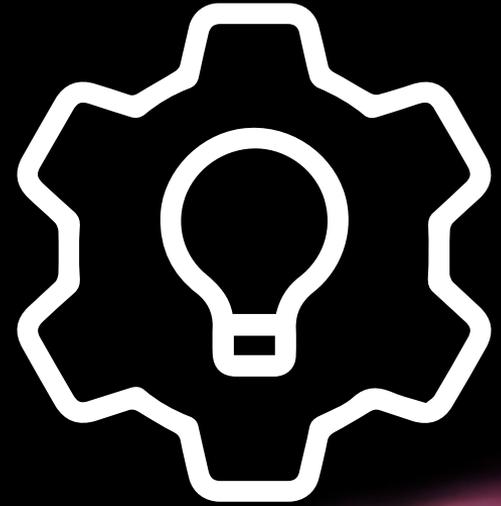
Illinois noncompetes—Severe restrictions

Amendments to Illinois Freedom to Work Act

-  Effective January 1, 2022—not retroactive.
-  Requires employers to provide time for review and to advise attorney consultation.
-  Noncompete agreements banned for employees making \$75,000 per year or less.
-  Defines meaning of "adequate consideration" (though it's still unclear) and "legitimate business interest."
-  Nonsolicitation agreements banned for employees making \$45,000 per year or less.
-  Scope of prohibited agreements unclear.
-  Excludes certain agreements from the definition of "covenants not to compete."
-  Provides for methods of enforcement—including attorneys' fees for employees if employers don't prevail.

Illinois noncompetes—Takeaways

- Review and inventory existing "form" employee agreements containing restrictive covenants, and assess whether any updates are necessary for positions that do not meet the salary threshold.
- Train HR to ensure that policies and procedures regarding the presentation of employment offers and restrictive covenants for Illinois based employees are in compliance with the new law.
- Limit the extraterritorial scope of the new law.
- Amend compensation approaches / packages and on- and off-boarding procedures to allow for maximum protection of the company's confidential information and trade secrets, and to curb unlawful competition.
- Review pandemic-related reduction in force policies and practices to ensure that nonsolicitation agreements are not used for downsized employees and, if noncompetes are used, they meet the statutory exception with respect to pay.
- Consider implementing other viable strategies to suppress unlawful competition and protect confidential and trade secret information.





Global noncompetes

Global noncompetes—Europe

- Noncompetes are typically allowed to protect a company's legitimate business interests, with some exceptions, though approaches can vary.
- Preliminary Injunctions can be hard to come by in civil law countries where liquidated damages/penalty Clauses are often used
- In the EU, consider the following factors to determine whether a restriction will be enforceable, based on the laws in the specific jurisdiction: (1) limitations on geographic scope; (2) limitations on duration (typically no longer than two years); (3) requirements of the legitimate business interest of the employer; and (4) support for ongoing compensation during the noncompete period.
- Several EU countries require separate, post-termination compensation in addition to any other termination payments.
- Some (including Spain and Italy) prohibit employers from unilaterally waiving a noncompete once it is signed.

What to expect in 2022



All eyes on the UK, where a commission is considering the possibility of major reforms, including taking the California approach



Nordic countries continue to whittle away at “template agreements” and often require bespoke restrictions for each employee

Global noncompetes—Canada and Latin America

- Post-termination noncompete and customer nonsolicitation provisions in Latin America are typically unenforceable in actual practice and require extra effort on behalf of the employer.
- Employers in Latin America usually focus on trade secret misappropriation to challenge employee disloyalty and it is possible to leverage both the civil and criminal courts depending on the facts

Recent development



- Canada** recently shifted from an employer-friendly jurisdiction to a jurisdiction where post-termination restraints are increasingly difficult to enforce.
- Noncompetes are generally permissible if they restrict the employee's activities as minimally as possible and go no further than necessary to protect the employer's legitimate business interests.
 - However, keep an eye on proposed legislation in Ontario that would significantly change the enforcement landscape.

Global noncompetes—Asia Pacific

- Many countries permit noncompete agreements (with the notable exceptions of India and Malaysia).
- Some of the common factors for determining whether post-termination noncompetition and nonsolicitation covenants are enforceable are whether they are (1) reasonable in the light of the facts; (2) supported by adequate consideration; and (3) protecting a legitimate business interest.
- Separate, post-termination consideration during the restriction period is typically not required in Asia (with the exception of China).

What we'll be watching in 2022



Will Hong Kong and Singapore courts continue to shorten restrictions?



Will more employers choose to arbitrate Pan-Asia enforcement in Singapore?



How will outcomes vary across different cities / regions in China?

Global noncompetes—Takeaways



Balance protection of company's rights against the employee's right to make a living

- Jurisdictions may prohibit / disfavor noncompetes, require separate consideration, or limit duration, scope, or type of employee that can be limited.



One size does not fit all

- Structure and terms vary significantly by jurisdiction.



Keep noncompetes separate from employee's global equity awards

- If structured correctly, the company can argue the equity is not part of local compensation, and should not be included in calculation of labor benefits, including severance.



Noncompetes can be difficult to enforce, but be serious about enforcement

- Localize restrictive covenants. A restriction that is unenforceable sends a message that the company is not serious about enforcement.

The background features a glowing, tunnel-like effect with a purple and blue color palette. The light source is at the bottom left, creating a bright, curved glow that fades into a dark, starry space as it recedes into the distance. The overall aesthetic is futuristic and high-tech.

3

Pay Equity: US and Global Developments



US pay equity trends and developments

Pay equity

US trends to watch



Trending: Salary history bans



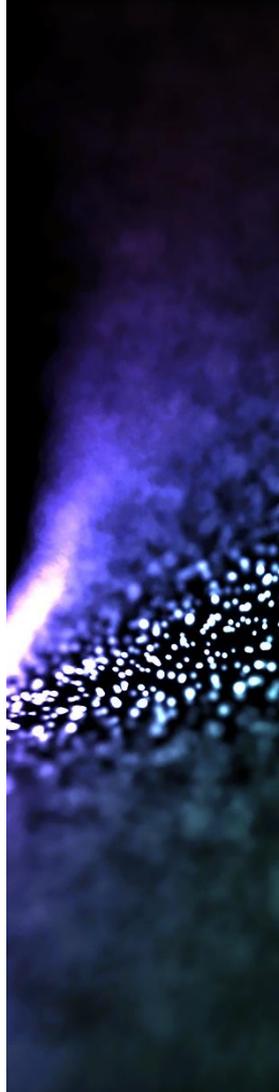
The latest to add salary history bans for private sector employers are **Nevada** (salary history ban effective October 1, 2021) and **Rhode Island** (salary history ban effective January 1, 2023).



There are 16 other states / localities outlawing pay history questions for private-sector employers: Alabama, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Massachusetts, New Jersey, New York, Oregon, Puerto Rico, Vermont and Washington.



Cities / local jurisdictions banning salary history questions for private employers: San Francisco, CA; Kansas City, MO; New York City, NY; Albany County, NY; Suffolk County, NY; Westchester County, NY; Cincinnati, OH; Toledo, OH; Philadelphia, PA; and Columbia, South Carolina.



Pay equity

US trends to watch



Trending: Required reporting/ retention



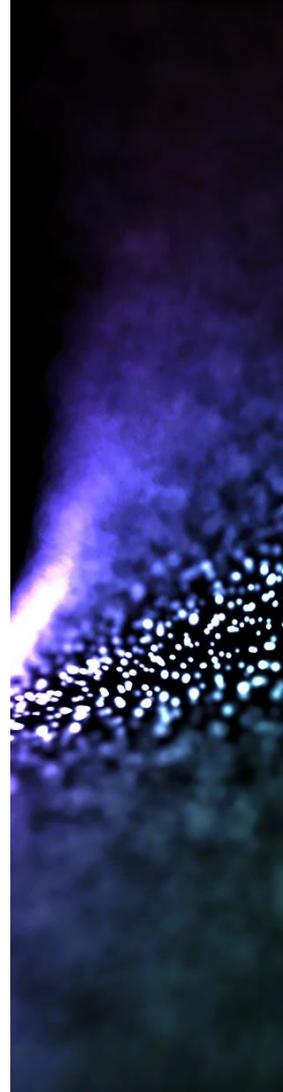
Illinois: covered employers must list employees broken down by gender, race and ethnicity as reported in the business's most recently filed Employer Information Report (EEO-1) with the EEOC, including salary information, and must file EEO-1 employment data with the Illinois Secretary of State's Office.



California: covered employers must report pay data annually on March 31 for specified job categories by gender, race, and ethnicity.



Colorado: employers must maintain job descriptions and wage-rate history for current employees and for former employees two years after employment ends.



Pay equity

US trends to watch



**Trending:
Voluntary
reporting**

"Arjuna" type reporting: several leading US corporations have responded to Arjuna Capital's shareholder resolutions by agreeing to provide gender and racial pay gap disclosures



Global pay equity developments

Pay equity

A quick trip around the world

UK

Has strict reporting regulations around the gender pay gap (since April 2017), requiring companies with 250 or more employees to report their gender pay gap both publicly and to the government.

Australia

The government publishes aggregated pay gap data from which individual companies cannot be identified.

Iceland

Shifts the responsibility of proving no income discrepancy between men and women onto the employer, requiring all public and private organizations with more than 25 employees to be independently certified as paying equal wages for work of equal value or face daily fines (and the reputational impact of violating the law).

France

Beginning March 2019, companies with more than 1,000 employees were required to report on their websites the score they receive on a gender pay index that comprises five gender-related criteria, with sanctions as high as 1% of the employer's total monthly payroll.

Pay equity

A quick trip around the world



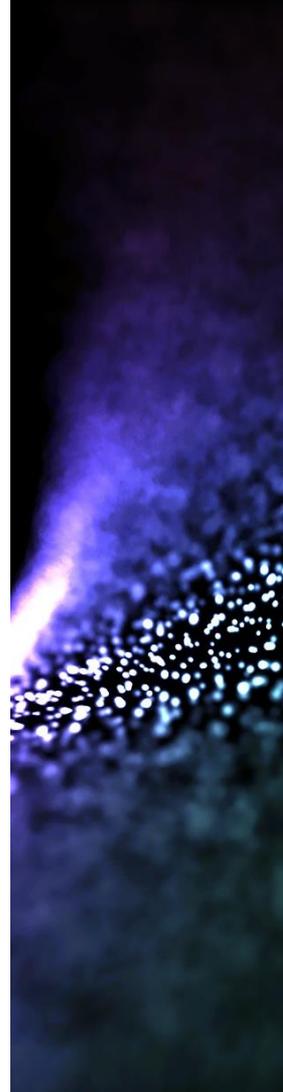
Spain

Beginning January 14, 2021, new regulations in Spain reinforced the principle of equal pay for work of equal value, introducing specific criteria or factors for assessing jobs, which will require a gender-based review of existing company policies for job assessment. In particular, companies that draw up equality plans will have to carry out or review existing jobs in order to comply with the pay register and pay audit obligations.



Middle East

Recent developments in the labor laws of the United Arab Emirates (UAE), Saudi Arabia and Bahrain have been issued to bridge the gender pay gap between men and women. The updates have been in relation to: (i) prohibiting discrimination, whether in pay or otherwise, between male and female employees who carry out the same job in the UAE, Saudi Arabia and Bahrain; (ii) introducing paternity leave in the UAE; and (iii) granting female workers in Saudi Arabia further rights in the workplace (including working in hazardous workplaces and at night).



EU pay transparency directive

Proposed regulation



Proposed in March 2021 (and if passed, likely implemented in 2024), the directive would reinforce the entitlement to equal pay for men and women for the same work, or work of equal value.



If adopted, the rules would:

- Apply to employers with 250+ employees.
- Require measures to ensure employers pay the same work, or work of equal value, equally.
- Require employers to provide **initial salary (or salary range) information** to job applicants, pre-interview.
- Prohibit employers from asking job applicants about **salary history**.
- Create a right for a worker to request **information** about their own pay level and **average pay levels** (broken down by gender and categories of workers doing the same work / work of equal value).
- Require **gender pay gap (GPG) reporting** for employers with 250+ employees.
- Create joint pay assessments if GPG is 5%+ for any category of workers doing the same work or work of equal value, and employer has not justified the GPG.

EU pay transparency directive

Proposed regulation



The proposed new rules will be a significant development in the many EU jurisdictions that do not currently have GPG reporting, but for those jurisdictions that do already have reporting rules (for example, Spain, Italy, France and Belgium), the proposed new rules would create a common standard throughout the union.



Pay equity—Takeaways

Proactively get ahead of pay gaps and violations



Upcoming Events

Annual Illinois Employer Update Webinar

Part 2: Focus on Global Immigration & Mobility and
Compensation & Benefits

Thursday, December 16, 2021

1:00 pm – 2:15 pm CT

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Baker McKenzie.

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