

2023 Kansas Statutes

44-663. Employer COVID-19 vaccine requirements; exemptions required for certain employees; waiver requests; complaint and investigation process for violations to be administered by secretary of labor; enforcement actions by the attorney general; civil penalties to be imposed by the court; definitions. (a) Notwithstanding any provision of law to the contrary, if an employer implements a COVID-19 vaccine requirement, the employer shall exempt an employee from such requirement, without punitive action, if the employee submits a written waiver request to the employer stating that complying with such requirement would:

(1) Endanger the life or health of the employee or an individual who resides with the employee, as evidenced by an accompanying written statement signed by a physician or another person who performs acts pursuant to practice agreements, protocols or at the order, direction or delegation of a physician; or

(2) violate sincerely held religious beliefs of the employee, as evidenced by an accompanying written statement signed by the employee.

(b) An employer shall grant an exemption requested in accordance with this section based on sincerely held religious beliefs without inquiring into the sincerity of the request.

(c) (1) An employee aggrieved by a violation of this section may file a complaint with the secretary of labor alleging that an employer failed to offer an exemption, improperly denied an exemption request, took punitive action against the employee or committed any other violation of this section.

(2) (A) The secretary of labor shall promptly commence an investigation of each complaint filed pursuant to this subsection. The secretary shall complete such investigation and issue a final order within 60 calendar days after the filing of the complaint. At a minimum, the investigation shall determine whether:

(i) The employer imposed a COVID-19 vaccine requirement;

(ii) the employee submitted a written waiver request in accordance with this section; and

(iii) the employer committed any violation of this section.

(B) Upon completing the investigation, the secretary of labor shall issue an order containing findings and conclusions as to whether the employer violated this section and provide such order to the employee and the employer. Such order is a final order for purposes of judicial review and shall state the right of the employee or the employer to appeal as provided in the Kansas judicial review act.

(C) If the secretary of labor issues a final order finding that an employer violated this section, the secretary shall issue an order containing such findings and provide such order to the employee, the employer and the attorney general.

(3) (A) Except as provided in paragraph (3)(B), upon receipt of an order from the secretary of labor pursuant to paragraph (2), the attorney general shall secure enforcement of such order by filing an action in an appropriate district court to impose civil penalties.

(B) The attorney general shall not file a civil action against an employer if the employer reinstates the terminated employee with back pay to the date that the complaint was received by the secretary of labor under this subsection.

(C) In an action filed pursuant to this subsection, the court may impose a civil penalty not to exceed:

(i) \$10,000 per violation for an employer with fewer than 100 employees; or

(ii) \$50,000 per violation for an employer with 100 or more employees.

(D) In determining the amount of the civil penalty for a violation, the court may consider the following factors:

(i) Whether the employer knowingly and willfully violated this section;

(ii) whether the employer has shown good faith in attempting to comply with this section;

(iii) whether the employer has taken action to correct the violation;

(iv) whether the employer has been previously assessed a civil penalty for violating this section; and

(v) any other mitigating or aggravating factor that fairness or due process requires.

(4) All civil penalties assessed and collected under this subsection shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the employment security fund, established by K.S.A. 44-712, and amendments thereto.

(d) As used in this section:

(1) "COVID-19 vaccine" means an immunization, vaccination or injection against disease caused by the novel coronavirus identified as SARS-CoV-2 or disease caused by a variant of the virus;

(2) "COVID-19 vaccine requirement" means that an employer:

(A) Requires an employee to receive a COVID-19 vaccine;

(B) requires an employee to provide documentation certifying receipt of a COVID-19 vaccine; or

(C) enforces a requirement described in subparagraph (A) or (B) that is imposed by the federal government or any other entity;

(3) "employee" means:

(A) An individual who is employed in this state for wages by an employer;

(B) an applicant for employment by an employer; or

(C) a noncompensated intern or apprentice for an employer;

(4) "employer" means any person in this state who employs one or more persons and includes the state of Kansas and all political subdivisions of the state;

(5) "person" means an individual, partnership, association, organization, corporation, legal representative, trustee, trustee in bankruptcy or receiver;

(6) "physician" means an individual licensed by the state board of healing arts to practice medicine and surgery;

(7) "punitive action" means any of the following actions related to the employee's exemption request: Dismissal, demotion, transfer, reassignment, suspension, reprimand, warning of possible dismissal, withholding of work or assessing any monetary penalty or unreasonable charge; and

(8) "religious beliefs" includes, but is not limited to, theistic and non-theistic moral and ethical beliefs as to what is right and wrong that are sincerely held with the strength of traditional religious views.

History: L. 2021, ch. 1, § 1 (Special Session); November 23.