

October 10, 2023

Chairman and Members  
Texas Senate Health & Human Services Committee

Subject: SB 7 relating to prohibiting an employer from adopting or enforcing certain COVID-19 vaccine mandates; authorizing an administrative penalty.

Dear Senator Kolkhorst and Committee Members:

The entities joining this letter share a common interest—which we share with you and all members of the Legislature—is ensuring Texas remains the best place in the nation to live, work, and conduct business. As a general rule, we believe Texas employers act responsibly and, therefore, additional regulation of the employer/employee relationship is not necessary. However, if the legislature is determined to pass a bill regarding COVID-19 vaccination mandates, we believe the following principles should govern legislation prohibiting Texas employers from requiring employees be vaccinated for COVID-19.

1. The employment-at-will doctrine has governed employment relationships in Texas for decades. It gives employers flexibility to compete in a fast-paced global economy. There are exceptions to the doctrine, mostly created by the federal government. For example, employers are prohibited from discrimination in employment practices based on race and gender, and employers are required to make reasonable accommodations for those who have disabilities and for religious practices. We support these exceptions. But the creation of new exceptions to the employment-at-will doctrine creates the opportunity for abuse, including substantial, excessive, and sometimes frivolous litigation. Therefore, exceptions to the employment-at-will doctrine should be limited.
2. If an exception to the employment-at-will doctrine is created, it should apply only to a narrow band of employees deserving special protection, such as those whose health may be negatively affected by having to take a COVID-19 vaccination and those with sincerely-held religious beliefs or conscientious objections to the vaccine.
3. An employee seeking to avoid rules applicable to all other employees should have to present some evidence (such as a signed doctor's statement) to support his or her claim.
4. There should be exceptions to the anti-vaccination mandate. For example, an employer whose customers or employees are particularly vulnerable to COVID-19 should be able to require vaccinations for any employee who will be in contact with the vulnerable customers or employees.

5. If an exception to the employment-at-will doctrine is created, it should be modeled on existing law. Today, employers are required to make reasonable accommodations for employees with disabilities and for religious practices and beliefs. An employer is entitled to adjust the accommodated employees' job duties, work environment, and so forth. If an anti-COVID-vaccine regulation is imposed on Texas employers, it should follow this general structure. Employers should be required to make *reasonable* accommodations and allowed to make reasonable changes to the employee's duties, location, dress code, and other such things. As a matter of fairness, employees objecting to COVID-19 vaccination should not be afforded protections greater than those afforded to disabled employees or those seeking religious accommodations.
6. The law should not, either explicitly or by implication, create a new way to sue Texas employers. Any legislation creating a new anti-COVID-vaccine exception to the employment-at-will doctrine should specifically state that a private right of action is not being created and cannot be implied.
7. The enforcement mechanism should be reasonable, but not excessively inviting. An employer's good faith should be presumed.
8. A Texas law should explicitly state that it will yield to a federal law or requirement to the extent of a conflict, to address the possibility that the federal government could impose a vaccination mandate on employers in the future. Otherwise, employers may be placed in the untenable position of having to either comply with Texas or federal law.

The rapid creation and deployment of a safe and effective vaccination against COVID-19 *achieved, in part, because government got out of the way, thus allowing private employers to innovate and succeed.* We urge you to continue to foster a common-sense, low-regulation environment that allows Texas employers to succeed.

Respectfully,

National Federation of Independent Business  
Texas Association of Business  
Texas Healthcare and Bioscience Institute  
Texas Hospital Association  
Texas Chemical Council  
Texas Civil Justice League

Associated General Contractors –  
Texas Building Branch  
Texans for Lawsuit Reform  
Texas Association of Manufacturers  
Allen Fairview Chamber of Commerce  
Cuero Chamber of Commerce  
Longview Chamber of Commerce  
Temple Chamber of Commerce