

Amendment No.

CHAMBER ACTION

Senate

House

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1 Representative Nixon offered the following:

2

3 **Amendment**

4 Remove lines 99-239 and insert:

5 reasons; religious reasons; COVID-19 immunity; periodic testing;

6 and the use of employer-provided personal protective equipment.

7 For purposes of this section, the term "COVID-19" means the

8 novel coronavirus identified as SARS-CoV-2; any disease caused

9 by SARS-CoV-2, its viral fragments, or a virus mutating

10 therefrom; and all conditions associated with the disease which

11 are caused by SARS-CoV-2, its viral fragments, or a virus

12 mutating therefrom. Employers shall use forms adopted by the

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13 Department of Health, or substantially similar forms, for
14 employees to submit exemption statements.

15 (a) To claim an exemption based on medical reasons, the
16 employee must present to the employer an exemption statement,
17 dated and signed by a physician or a physician assistant who
18 holds a valid, active license under chapter 458 or chapter 459,
19 or an advanced practice registered nurse who holds a valid,
20 active license under chapter 464, who has examined the employee.
21 The statement must provide that, in the professional opinion of
22 the physician, physician assistant, or advanced practice
23 registered nurse, COVID-19 vaccination is not in the best
24 medical interest of the employee.

25 (b) To claim an exemption based on religious reasons, the
26 employee must present to the employer an exemption statement
27 indicating that the employee declines COVID-19 vaccination
28 because of a sincerely held religious belief.

29 (c) To claim an exemption based on COVID-19 immunity, the
30 employee must present to the employer an exemption statement
31 demonstrating competent medical evidence that the employee has
32 immunity to COVID-19, documented by the results of a valid
33 laboratory test performed on the employee. The Department of
34 Health shall adopt a standard for demonstrating competent
35 medical evidence of such immunity.

36 (d) To claim an exemption based on periodic testing, the
37 employee must present to the employer an exemption statement

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38 indicating that the employee agrees to comply with regular
39 testing for the presence of COVID-19 at no cost to the employee.

40 (e) To claim an exemption based on employer-provided
41 personal protective equipment, the employee must present to the
42 employer an exemption statement indicating that the employee
43 agrees to comply with the employer's reasonable written
44 requirement to use employer-provided personal protective
45 equipment when in the presence of other employees or other
46 persons.

47 (2) If an employer receives a completed exemption
48 statement authorized by subsection (1), the employer must allow
49 the employee to opt out of the employer's COVID-19 vaccination
50 mandate.

51 (3) An employee may file a complaint with the Department
52 of Legal Affairs alleging that an exemption has not been offered
53 or has been improperly applied or denied in violation of this
54 section. If the department investigates and finds that the
55 exemption was not offered or was improperly applied or denied,
56 it must notify the employer of its determination and allow the
57 employer the opportunity to cure the noncompliance.

58 (4) (a) An employer who fails to comply with this section
59 and terminates an employee based on a COVID-19 vaccination
60 mandate commits a violation of this section. Termination
61 includes the functional equivalent of termination. The
62 terminated employee may file a complaint with the Department of

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63 Legal Affairs alleging that an exemption has not been offered or
64 has been improperly applied or denied, resulting in the
65 employee's termination. The Department of Legal Affairs shall
66 conduct an investigation of the complaint filed by a terminated
67 employee. The investigation, at a minimum, must determine
68 whether the employer has imposed a COVID-19 vaccination mandate,
69 whether the employee has submitted a proper exemption statement
70 and complied with any specified condition, and whether the
71 employee was terminated as a result of the COVID-19 vaccination
72 mandate. If the Attorney General finds that an employee has been
73 improperly terminated, the Attorney General must impose an
74 administrative fine not to exceed:

75 1. For an employer with fewer than 100 employees, \$10,000
76 per violation of this subsection.

77 2. For an employer with 100 or more employees, \$50,000 per
78 violation of this subsection.

79
80 However, the Attorney General may not impose a fine on an
81 employer that reinstates, prior to the issuance of a final
82 order, a terminated employee with back pay to the date that the
83 complaint was received by the department under this subsection.

84 (b) In determining the amount of fine to be levied for a
85 violation, the Attorney General may consider any of the
86 following factors:

87 1. Whether the employer knowingly and willfully violated

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88 this section.

89 2. Whether the employer has shown good faith in attempting
90 to comply with this section.

91 3. Whether the employer has taken action to correct the
92 violation.

93 4. Whether the employer has previously been assessed a
94 fine for violating this section.

95 5. Any other mitigating or aggravating factor that
96 fairness or due process requires.

97 (c) The decision of the Attorney General under this
98 subsection constitutes agency action for purposes of chapter
99 120.

100 (d) Fines collected pursuant to this subsection must be
101 deposited in the General Revenue Fund.

102 (5)(a) If an employer fails to comply with subsections (1)
103 and (2) and terminates an employee based on the employee's
104 noncompliance with a COVID-19 vaccination mandate, the
105 terminated employee may be eligible for reemployment assistance
106 under chapter 443 in addition to any other remedy available to
107 the employee.

108 (b) If an employee is terminated for refusing to comply
109 with a COVID-19 vaccination mandate and the employer did not
110 offer and properly apply the exemptions required under this
111 section:

112 1. Such refusal may not be deemed misconduct for the

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113 purpose of reemployment assistance under chapter 443.

114 2. Notwithstanding any provision of chapter 443, work is
115 not deemed suitable and benefits may not be denied under s.
116 443.101 to the terminated employee for refusing to accept new
117 work if the terminated employee is otherwise eligible and the
118 position requires compliance with a COVID-19 vaccination mandate
119 contrary to this section or s. 112.0441.

120 (6) Notwithstanding s. 120.74(4) and (5), the Department
121 of Health, the Department of Legal Affairs, and the Department
122 of Economic Opportunity are authorized, and all conditions are
123 deemed met, to adopt emergency rules pursuant to s. 120.54(4)
124 and this section. Such rulemaking must occur initially by filing
125 emergency rules within 15 days after the effective date of this
126 act. An employer COVID-19 vaccination mandate is deemed invalid
127 until the Department of Health files its emergency rules or 15
128 days after the effective date of this act, whichever occurs
129 first.

130 (a) The Department of Health shall adopt emergency rules
131 to specify requirements for the frequency and methods of testing
132 which may be used by employers, to establish standards for
133 competent medical evidence that the employee has immunity to
134 COVID-19, and to create the following:

135 1. A form for use by a physician, a physician assistant,
136 or an advanced practice registered nurse to document an
137 exemption based on medical reasons.

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