

**TO: State employees, Healthcare employees, Nursing students, College Students, Vendors and Others**

**FROM: Margaret S. Clarke, General Counsel, Eagle Forum of Alabama**

**DATE: September 19, 2021**

**RE: State Law Limits on Vaccine Mandates**

**I. STATE PROTECTIONS**

Vaccination information, including COVID-19 vaccine records, is protected as confidential by the Alabama Vaccine Passport Ban law (Act No. 2021-493). The Act does much more than merely bar private businesses from refusing services for failure to provide vaccination information, as has been largely published. It limits governments and educational institutions. COVID-19 vaccination information collected in the state health immunization registry, under Ala. Code §§ 22-11B-1 and 2, is also confidential. These laws protect your privacy and prevent discrimination against you for not sharing your vaccine history.

**Seek advice from your attorney before you take an unwanted COVID-19 shot or share your COVID-19 vaccination status with others. You might lose your right to object to sharing that information in the future.**

**II. ALABAMA VACCINE PASSPORT BAN**

Attorney General Steve Marshall issued a Public Notice this summer in July (PNJ), which clarified the scope of the recently enacted Alabama Vaccine Passport Ban. He said the Act accomplished four things:

1. Section 1(a) bars state and local governmental entities from issuing or requiring the publication or sharing of immunization records not otherwise required by law;

2. Section 1(b) bars state and local governmental entities from requiring vaccination as a condition for receiving government services or for entry into a government building;

3. Section 1(c) bars institutions of education—both public and private—from requiring students to prove any new immunization status as a condition of attendance; and

4. Section 1(d) bars businesses from refusing to provide goods or services, or refusing to allow admission, to an individual based on the customer’s immunization status or lack of immunization documentation.

**“In other words, no government, school, or business in Alabama may demand that a constituent, student, or customer, respectively, be vaccinated for COVID-19 or show proof of his or her vaccination for COVID-19. The law’s new protections are in addition to existing medical or religious-based exemptions from immunization…”** (PNJ, p. 1).

On the other hand, as the Attorney General noted, this Act does not prevent some private businesses from requiring its employees to be vaccinated.

**A. Prohibitions of State Vaccine Cards and Sharing Vaccine Information**

Section 1(a) applies to state and local government entities. It is illegal for state entities to issue COVID-19 cards to document or certify “an individual” COVID-19 vaccination status. Entities include all public schools and colleges, and public healthcare providers. The definition of an “individual” is not limited under the Act. Therefore, individuals include everyone interacting with government entities and may include employees, trainees, students, doctors with hospital privileges, volunteers, vendors, etc. It is also unlawful for them to “require the publication or sharing” of COVID-19 vaccination information. Since a state or local entity cannot require proof of vaccination, the state entity may not treat a person differently from others due to the failure to provide the information. In effect, the government may not impose a vaccine mandate. (PNJ p. 2).

“This means that a state or local government actor ***may not release a list*** of those who have (or have not) received a vaccine and may not require an individual to show proof of his or her immunization status. By prohibiting the requirement of proof of immunization status, state and local governments are inherently prohibited from ***discriminating*** against an individual based upon his or her refusal to vaccinate against Covid-19 or to present immunization records.” (PNJ p. 2).

As to whether an entity requiring vaccination information is part of a state or local government, that question that should be addressed with your lawyer. Attorney General Steve Marshall sent a cease and desist letter to UAB Health System on September 7th, asking for clarification on the status of all UAB affiliates. See:

<https://drive.google.com/file/d/1EpFcRbvDAYJEwSaWWAtulG4ktd7rOwwU/view>

**B. Prohibitions of Required Vaccines for State Services or Entry**

In August the Attorney General provided further guidance about Section 1(b) of the Act (PNA). He advised that a state and local government entity is prevented from requiring an individual to provide proof of vaccination in order to receive “any government service or for entry into a government building.” Services include public education. (See, PNA p. 2-4). A state entity may issue vaccine policies, but it may not require proof of vaccination for entrance into a government building thereby preventing discrimination and enforcement. The August public notice summarizes that “-**these policies could not be enforced against those who choose not to provide their immunization status**.” (PNA p. 2)

**C. Prohibition of Vaccine Status Required to Attend School**

All students, **both public and private**, have additional protections under Section 1(c). This section prevents “institutions of education” from requiring “students” to prove vaccination status “as a condition of attendance,” if that vaccination was not required on December 31, 2020. The effect is to block these institutions from requiring COVID-19 Vaccines for students. There is no limit on the definition of “institutions of education” or “student”, therefore this provision includes public and private K-12, college level, and medical schools of all levels. (PNA p.1-4).

“A “condition of attendance” may be reasonably interpreted as an impediment to a student’s progression or completion of coursework or educational attainment. An institution of education should reasonably and meaningfully accommodate students who choose not to receive the COVID-19 vaccination, much as it would a student claiming a medical or religious exemption from any other required vaccine…- because proof of immunization cannot be required as a condition of attendance**-these policies could not be enforced against those who choose not to provide their immunization status.” (PNA p. 2).**

**D. Prohibition of Vaccine Status for Goods and Services**

Finally, private institutions of education must comply with Section 1(d) of the Act. The Attorney General points out that,

“**Similarly, a private school “may not refuse to provide any goods or services, or refuse to allow admission to a customer”-including a student-“based on the customer’s immunization.”** With the exception that the institution may require a vaccine that it required as a condition for attendance on or before January 1, 2021. Id. § 1(c)-(d)” (PNA p. 2).

The Attorney General stated,

“We have received reports of an education institution requiring each student to submit documentation showing that he or she has received a COVID-19 vaccination before the student is permitted to return to campus for the Fall 2021 semester. Such a policy is a clear violation of Act 2021(493), whether implemented by a private or public institution.” (PNA p. 2).

Therefore, an institution of education may issue vaccine policies, but it may not require proof of vaccination. Thereby the act prevents discrimination and enforcement.

**E. Confidentiality of State Immunization Registry**

Ala. Code §§ 22-11B-1 and 2 establish a registry of immunization information maintained by the Alabama Department of Public Heath (“ADPH”), and provided for ADPH to establish rules protecting the confidentiality of information collected there. On September 8, 2021, Attorney General Steve Marshall issued a press release, and declared it unlawful for healthcare employers, **both public or private**, to obtain employee information regarding COVID-19 vaccination status using the Alabama state immunization registry. Marshall advised that an employer had improperly accessed the registry and directed that it be halted.

If your employer has advised you of your vaccination status, you may want to see how your employer acquired that knowledge. Even though a private employer is not prohibited by the Vaccine Passport Ban from requiring its employees to be vaccinated, the registry is not available for employers to check on its employees.

**III. OVERALL: MANDATORY COVID-19 VACCINES ARE DIFFICULT TO ENFORCE IN ALABAMA**

**Before you take an unwanted COVID-19 shot or share your COVID-19 immunization status with anyone, including your supervisor, or employer, ask your attorney what are your rights under the law. You have rights under Alabama state law, as well as federal anti-discrimination law, providing exemption due to health disability and sincerely held religious beliefs.**

The Attorney General summed up his position on enforcing mandatory COVID-19 vaccinations. He said, “It is not necessary for an individual to claim a religious (or medical, for that matter) exemption to avoid mandatory vaccination for COVID-19 in the circumstances covered by the Act 2021-493.” (PNJ p.3)