



*BEFORE THE OHIO HOUSE HEALTH COMMITTEE
OPPONENT TESTIMONY ON HOUSE BILL 248*

BY SARA JODKA, ESQ. ON BEHALF OF THE OHIO CHAMBER OF COMMERCE

Chairman Lipps, Vice Chair Holmes, Ranking Member Russo, and Members of the Ohio House Health Committee, thank you for the opportunity to provide Opponent Testimony for the Ohio Chamber of Commerce on House Bill 248, which prohibits Ohio businesses from inquiring about employee vaccination status or asking employees to receive any vaccine as a condition of employment.

My name is Sara Jodka and I am a 20-year management-side employment lawyer. I have spent the pandemic working closely with Ohio companies large and small who have struggled to both maintain a safe workplace and keep their doors open. I advise businesses on their COVID-19 protocols across industries including, manufacturing, hospitality, retail, healthcare, and transportation. With support from Ohio's legislature, the Ohio business community rose to the challenge of COVID-19 and continues to do so every day.

I wish to highlight three key concerns of the employer community with HB 248.

Return to Onerous Safety Precautions

Many Ohio employers believe increased vaccination rates are the key to a "return to normalcy" in the workplace and the end of pandemic practices that were both unpopular among employees as well as challenging and costly to implement.

Because HB 248 prohibits employers from tracking vaccinations and requiring vaccines (subject to exemptions), it places Ohio companies in a box. Make no mistake: If HB 248 were to pass, in order to maintain a safe workplace and avoid liability, many Ohio employers will be coerced into requiring employees to once again undergo alternative onerous COVID-19 safety precautions. Some we can expect:

- Mandatory masks (including for those vaccinated)
- Frequent nasal swab testing to confirm no COVID-19 contraction
- Continued social distancing and its associated shift-cutting
- Continued reduced capacity events
- Mandatory work-from-home

Thus, under HB 248, rather than allow employers to set vaccination goals, they will be forced to subject employees to these unpleasant protective measures as a condition of employment. And of course, the business will need to underwrite the significant cost of these practices as well as absorb the workplace disruption they cause. And as Delta variant cases are on the rise, employers will be faced with this grim scenario for an indefinite amount of time into the future. The damage to our state's business climate – while certainly unintended— would be significant. This is a key reason we oppose HB 248.

Existing Exemptions Render Legislation Unnecessary

We believe individual protections under existing federal and state law render HB 248 unnecessary. Current law protects individuals who object to vaccination for legitimate medical or religious reasons. Title VII of the federal Civil Rights Act of 1964 provides for religious accommodations for vaccine mandates. Also, the Americans with Disabilities Act provides for disability/medical accommodations for medical mandates. In fact, the Equal Employment Opportunity Commission, which enforces those federal laws, has been clear that employers must afford their employees religious and disability exemptions from mandatory vaccine requirements. At the state level, the Ohio Civil Rights Act (ORC Chapter 4112) mirrors these exemptions.

These laws are in addition to other federal and state health orders governing the workplace including the Equal Opportunity Commission's guidance to employers confirming their ability to require vaccines (subject to exemptions); (2) OSHA and its COVID-19 requirements for employers which remain in place; and (3) the CDC's guidance.

Ohioans for whom vaccination presents medical issues or who maintain sincerely held religious beliefs against vaccination are protected under current law. We believe this strikes the correct balance.

HB 248 is Government Overreach

As the Ohio Chamber testified last June, we believe HB 248 needlessly upends Ohio's at-will employment doctrine and is an inappropriate government intrusion into the private sector.

The bill creates a new class of protected individuals under Ohio civil rights law: those refusing to be vaccinated or those asked their vaccination status. But shielding these individuals from adverse employment action based on nothing more than a stated objection to vaccination for non-health or non-religious reasons runs counter to longstanding civil rights law. Protected classes have always been based on characteristics that individuals are born into such as their race, gender, ethnicity, national origin, or those they grow into, such as their age, military status, veteran status, or disability.

This HB 248 expansion of protected classes turns state government into a "super HR department" for Ohio employers. Passage would cripple employers' ability to make decisions for how to best protect their workforces. This would set a dangerous employment law precedent

by mandating a protected class based on a person's vaccination preferences rather than their immutable characteristics.

For example, HB 248 states "it is the policy of this state that individuals have a right to expect that their personal health choices shall not result in discriminatory treatment." If passed, we should expect employees and their plaintiff lawyers to come up with all sorts of creative behaviors they would classify as merely "personal health choices."

Overnight, refusal to submit to mandatory drugs tests or refrain from marijuana, bringing weapons into the workplace, making certain dietary choices, e.g., veganism, etc., all could be argued as "personal health choices." Employers could be barred from applying their policies to employees making these "health choices." Company handbooks and employment policies (and associated discipline, including termination) would immediately be rendered uncertain in the face of this new, nebulous legal standard.

For these reasons, in addition to the Ohio Chamber's prior testimony, we strongly oppose HB 248. Thank you and I am happy to take your questions.