



BEFORE THE SENATE GENERAL GOVERNMENT BUDGET COMMITTEE
Testimony on House Bill 218
December 7, 2021

Chair Peterson, Vice Chair Cirino, Ranking Member Craig, and members of the Senate General Government Budget Committee, my name is Keith Lake and I am the Vice President of Government Affairs for the Ohio Chamber of Commerce. I am here today to testify on House Bill 218 and the matter of vaccination-related policies.

The Ohio Chamber is the state's leading business advocate, and we represent thousands of companies that do business in Ohio. Our mission is to aggressively champion free enterprise, economic competitiveness and growth for the benefit of all Ohioans.

The current pandemic has been raging now for almost two years. Employers across Ohio have struggled with the fallout from the pandemic since the beginning. They have dealt with shut downs and the ensuing cashflow and financial difficulties, with the problem of how to encourage customers to return to their physical locations, with the difficulty of supply chain disruptions, and with the challenge of labor shortages. And, of course, from the very beginning of the pandemic and still to this day, with the need to ensure the health and safety of their employees, customers, and visitors.

Not only do employers have a legal obligation to provide a safe workplace for employees and customers, but health and safety measures are paramount to a business's profitability and survival, as well. A manufacturing facility, for example, that suffers a COVID-19 outbreak amongst its workers could be forced to shut down production, idling the factory and making it impossible for the company to fill its orders, potentially putting it at financial risk.

Ultimately, employers know that the key to getting our economy fully back to normal is stopping the spread of the virus – and that they have a role in making sure this happens. Therefore, employers have implemented numerous recommended or best-practice

workplace safety standards. They have, and continue, to ensure distancing, to require face coverings, to have modified workstations and shift change patterns, to limit common space interaction and have staggered lunch and break times, and to have employees work remotely, perform daily symptom assessments, and quarantine if exposed. These are just some of the most common protocols.

A limited number have also implemented a requirement that employees be vaccinated against COVID-19, in some instances coupled with a requirement to be tested for the virus regularly if an employee chooses not to receive the vaccine.

All of these different health and safety measures are done for one reason: to keep the workplace safe and minimize the risk of exposure to the virus, in order to strengthen and speed our economic recovery. Businesses continue to do the best they can in responding to the many challenges and consequences of the COVID crisis. They don't need to be micro-managed by the government telling them how to best run their business.

Earlier this year, the Biden Administration imposed three separate federal mandates related to vaccines. One required employees of federal contractors to be fully vaccinated, the second required all employers with 100 or more employees to ensure each of their workers is fully vaccinated or tests for COVID-19 on at least a weekly basis, and the third was a requirement that health care workers at facilities participating in Medicare and Medicaid are fully vaccinated. Subsequent legal challenges have resulted in all three mandates being blocked in Ohio, and in mid-November the Occupational Safety and Health Administration (OSHA) suspended activities related to the implementation and enforcement of the mandate for employers with 100 or more employees, pending future developments in the litigation.

So, for now, in the absence of any enforceable federal mandate, employers appropriately have the legal authority to determine for themselves what workplace safety protocols that protect against the spread of the COVID-19 virus to put into place. This would include requiring employees be vaccinated as a condition of employment, or putting in place requirements on customers or patrons that they be vaccinated in order to enter a particular place of business.

To be clear, the Ohio Chamber opposed the Biden Administration's plans. By dictating that employers must mandate vaccinations, the Biden Administration sought to limit employers' freedom to operate their businesses.

Unfortunately, so does HB 218. Both HB 218 and the approach taken by the Biden Administration are just different sides of the same coin. One tells employers what they must do, the other what they cannot do. The Ohio Chamber applauds Attorney General Dave Yost for suing the Administration to stop implementation of the federal mandates, and we are filing an amicus brief at the 6th Circuit Court of Appeals to highlight our concerns with the proposed OSHA rule dictating all employers with more than 100 employees must implement a vaccination or testing policy for COVID-19.

The Ohio Chamber has long been an advocate for allowing employers to manage their workplaces free of undue interference from all levels of government, whether that is at the federal level or the state level. That is why we oppose HB 218 – because it threatens an employer’s ability to implement and enforce safety precautions in their workplaces meant to protect their employees, clients, patrons, and others.

It also upends Ohio’s at-will employment doctrine. This doctrine is a two-way street. While it allows an employer to terminate an employee at any time for almost any reason – such as an employee’s refusal to comply with a vaccination requirement – it also gives employees the same option: they have the freedom to walk away from a job for any reason, including if that job imposes safety protocols with which they disagree. Ultimately, Ohio’s existing at-will employment doctrine already ensures no one can be forced to receive a vaccination they do not want to get.

Technically, HB 218 still permits employers to require employees be vaccinated. However, the bill allows employees to claim an exemption from the requirement for any of the following three reasons:

1. medical contraindications
2. natural immunity
3. reasons of personal conscience, including religious convictions

To claim an exemption for “reasons of personal conscience,” the bill specifies that an employee “shall submit to the employer a written statement and shall not be required to submit any additional information beyond the written statement.” In other words, the bill grants exemptions so broad as to make a vaccine requirement essentially meaningless.

The exemptions in HB 218 are also problematic because they do not mirror existing exemptions under federal law. This lack of uniformity would create potential liability for Ohio employers if a federal requirement dictating their employees must be vaccinated takes effect, since federal law will not recognize HB 218’s broader exemptions including “personal conscience.” As a result, the passage of HB 218 may put Ohio employers in an

unenviable position of having to decide to comply with federal requirements or state law since dual compliance would become impossible when an employee seeks an exemption for “personal conscience.”

Second, under HB 218, an employee is not responsible for any costs or fees associated with measures required by an employer to prevent the spread of any disease, including testing for active infection and masking. This would result in a substantial increase in operating costs for many Ohio employers. If, as proposed by HB 218, Ohio were to prevent a business from passing along the cost of testing to employees who make the choice not to receive the vaccine, Ohio employers will see higher operating costs that businesses in other states will not face. This harms our business climate by making Ohio less competitive and makes it more difficult for Ohio companies to recover from the pandemic.

Third, HB 218 prohibits any business from requiring an individual to show proof of vaccination against COVID-19 in order to enter a place of business or to receive a service provided by a business. Once again, this provision interferes with employers’ freedom to make decisions about protecting their workforce, and to develop the health and safety policies and practices that meet the needs of their individual workplaces. In short, they limit employers’ freedom to operate their businesses. This is especially problematic for sports, music, and entertainment venues, many of whom are simply abiding by the wishes of performers that require ticketholders to show proof of vaccination for entry in order to book shows.

In general, we believe legislative action on vaccine mandates is unnecessary. Market forces will more appropriately reward or punish companies based on their vaccine-related decisions. Staffing considerations, workplace morale, and reputational concerns are all factors employers must take into account. For example, backlash against some airlines that implemented or considered implementing a vaccine mandate caused other major airlines to forego their own mandates. The free market is working.

The Ohio Chamber urges you not to unnecessarily infringe upon the rights of Ohio’s employers. One-size-fits-all government mandates that limit the ability of employers to set their own workplace policies are not the right approach. It is imperative that we let our businesses manage their workplaces free from government interference. Please do not pass HB 218.