

As Introduced

134th General Assembly

Regular Session

2021-2022

H. B. No. 401

Representative Edwards

**Cosponsors: Representatives Stein, Carruthers, Wiggam, Plummer, McClain,
Jordan, Bird, Brinkman, Stoltzfus, Ghanbari, Miller, K., Gross, Kick, Powell,
Ferguson, Creech, Loychik, Hall, Cross, Click, Jones**

A BILL

To amend section 4123.01 and to enact section 1
4113.65 of the Revised Code to exempt an injury 2
or disability caused by an employer-mandated 3
COVID-19 vaccination from the Workers' 4
Compensation Law and to allow the employee to 5
sue the employer for damages. 6

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 4123.01 be amended and section 7
4113.65 of the Revised Code be enacted to read as follows: 8

Sec. 4113.65. (A) As used in this section: 9

(1) "Employee" means any person who performs a service for 10
wages or other remuneration for an employer. 11

(2) "Employer" means any person who has one or more 12
employees. "Employer" includes an agent of an employer, the 13
state or any agency or instrumentality of the state, and any 14
municipal corporation, county, township, school district, or 15
other political subdivision or any agency or instrumentality 16

thereof. 17

(B) Notwithstanding any provision of the Revised Code to 18
the contrary, an employee may bring a claim against an employer 19
in a court of competent jurisdiction for damages caused by a 20
COVID-19 vaccination if both of the following apply: 21

(1) The employer required the employee to receive the 22
vaccine as a condition of employment. 23

(2) The employee brings the claim within five years after 24
the date on which the employee received the vaccine. 25

Sec. 4123.01. As used in this chapter: 26

(A) (1) "Employee" means: 27

(a) Every person in the service of the state, or of any 28
county, municipal corporation, township, or school district 29
therein, including regular members of lawfully constituted 30
police and fire departments of municipal corporations and 31
townships, whether paid or volunteer, and wherever serving 32
within the state or on temporary assignment outside thereof, and 33
executive officers of boards of education, under any appointment 34
or contract of hire, express or implied, oral or written, 35
including any elected official of the state, or of any county, 36
municipal corporation, or township, or members of boards of 37
education. 38

As used in division (A) (1) (a) of this section, the term 39
"employee" includes the following persons when responding to an 40
inherently dangerous situation that calls for an immediate 41
response on the part of the person, regardless of whether the 42
person is within the limits of the jurisdiction of the person's 43
regular employment or voluntary service when responding, on the 44
condition that the person responds to the situation as the 45

person otherwise would if the person were on duty in the 46
person's jurisdiction: 47

(i) Off-duty peace officers. As used in division (A)(1)(a) 48
(i) of this section, "peace officer" has the same meaning as in 49
section 2935.01 of the Revised Code. 50

(ii) Off-duty firefighters, whether paid or volunteer, of 51
a lawfully constituted fire department. 52

(iii) Off-duty first responders, emergency medical 53
technicians-basic, emergency medical technicians-intermediate, 54
or emergency medical technicians-paramedic, whether paid or 55
volunteer, of an ambulance service organization or emergency 56
medical service organization pursuant to Chapter 4765. of the 57
Revised Code. 58

(b) Every person in the service of any person, firm, or 59
private corporation, including any public service corporation, 60
that (i) employs one or more persons regularly in the same 61
business or in or about the same establishment under any 62
contract of hire, express or implied, oral or written, including 63
aliens and minors, household workers who earn one hundred sixty 64
dollars or more in cash in any calendar quarter from a single 65
household and casual workers who earn one hundred sixty dollars 66
or more in cash in any calendar quarter from a single employer, 67
or (ii) is bound by any such contract of hire or by any other 68
written contract, to pay into the state insurance fund the 69
premiums provided by this chapter. 70

(c) Every person who performs labor or provides services 71
pursuant to a construction contract, as defined in section 72
4123.79 of the Revised Code, if at least ten of the following 73
criteria apply: 74

(i) The person is required to comply with instructions from the other contracting party regarding the manner or method of performing services;	75 76 77
(ii) The person is required by the other contracting party to have particular training;	78 79
(iii) The person's services are integrated into the regular functioning of the other contracting party;	80 81
(iv) The person is required to perform the work personally;	82 83
(v) The person is hired, supervised, or paid by the other contracting party;	84 85
(vi) A continuing relationship exists between the person and the other contracting party that contemplates continuing or recurring work even if the work is not full time;	86 87 88
(vii) The person's hours of work are established by the other contracting party;	89 90
(viii) The person is required to devote full time to the business of the other contracting party;	91 92
(ix) The person is required to perform the work on the premises of the other contracting party;	93 94
(x) The person is required to follow the order of work set by the other contracting party;	95 96
(xi) The person is required to make oral or written reports of progress to the other contracting party;	97 98
(xii) The person is paid for services on a regular basis such as hourly, weekly, or monthly;	99 100
(xiii) The person's expenses are paid for by the other	101

contracting party;	102
(xiv) The person's tools and materials are furnished by	103
the other contracting party;	104
(xv) The person is provided with the facilities used to	105
perform services;	106
(xvi) The person does not realize a profit or suffer a	107
loss as a result of the services provided;	108
(xvii) The person is not performing services for a number	109
of employers at the same time;	110
(xviii) The person does not make the same services	111
available to the general public;	112
(xix) The other contracting party has a right to discharge	113
the person;	114
(xx) The person has the right to end the relationship with	115
the other contracting party without incurring liability pursuant	116
to an employment contract or agreement.	117
Every person in the service of any independent contractor	118
or subcontractor who has failed to pay into the state insurance	119
fund the amount of premium determined and fixed by the	120
administrator of workers' compensation for the person's	121
employment or occupation or who is a self-insuring employer and	122
who has failed to pay compensation and benefits directly to the	123
employer's injured and to the dependents of the employer's	124
killed employees as required by section 4123.35 of the Revised	125
Code, shall be considered as the employee of the person who has	126
entered into a contract, whether written or verbal, with such	127
independent contractor unless such employees or their legal	128
representatives or beneficiaries elect, after injury or death,	129

to regard such independent contractor as the employer.	130
(d) Every person who operates a vehicle or vessel in the	131
performance of services for or on behalf of a motor carrier	132
transporting property, unless all of the following factors apply	133
to the person:	134
(i) The person owns the vehicle or vessel that is used in	135
performing the services for or on behalf of the carrier, or the	136
person leases the vehicle or vessel under a bona fide lease	137
agreement that is not a temporary replacement lease agreement.	138
For purposes of this division, a bona fide lease agreement does	139
not include an agreement between the person and the motor	140
carrier transporting property for which, or on whose behalf, the	141
person provides services.	142
(ii) The person is responsible for supplying the necessary	143
personal services to operate the vehicle or vessel used to	144
provide the service.	145
(iii) The compensation paid to the person is based on	146
factors related to work performed, including on a mileage-based	147
rate or a percentage of any schedule of rates, and not solely on	148
the basis of the hours or time expended.	149
(iv) The person substantially controls the means and	150
manner of performing the services, in conformance with	151
regulatory requirements and specifications of the shipper.	152
(v) The person enters into a written contract with the	153
carrier for whom the person is performing the services that	154
describes the relationship between the person and the carrier to	155
be that of an independent contractor and not that of an	156
employee.	157
(vi) The person is responsible for substantially all of	158

the principal operating costs of the vehicle or vessel and 159
equipment used to provide the services, including maintenance, 160
fuel, repairs, supplies, vehicle or vessel insurance, and 161
personal expenses, except that the person may be paid by the 162
carrier the carrier's fuel surcharge and incidental costs, 163
including tolls, permits, and lumper fees. 164

(vii) The person is responsible for any economic loss or 165
economic gain from the arrangement with the carrier. 166

(2) "Employee" does not mean any of the following: 167

(a) A duly ordained, commissioned, or licensed minister or 168
assistant or associate minister of a church in the exercise of 169
ministry; 170

(b) Any officer of a family farm corporation; 171

(c) An individual incorporated as a corporation; 172

(d) An officer of a nonprofit corporation, as defined in 173
section 1702.01 of the Revised Code, who volunteers the person's 174
services as an officer; 175

(e) An individual who otherwise is an employee of an 176
employer but who signs the waiver and affidavit specified in 177
section 4123.15 of the Revised Code on the condition that the 178
administrator has granted a waiver and exception to the 179
individual's employer under section 4123.15 of the Revised Code; 180

(f) (i) A qualifying employee described in division (A) (14) 181
(a) of section 5703.94 of the Revised Code when the qualifying 182
employee is performing disaster work in this state during a 183
disaster response period pursuant to a qualifying solicitation 184
received by the employee's employer; 185

(ii) A qualifying employee described in division (A) (14) 186

(b) of section 5703.94 of the Revised Code when the qualifying 187
employee is performing disaster work in this state during a 188
disaster response period on critical infrastructure owned or 189
used by the employee's employer; 190

(iii) As used in division (A)(2)(f) of this section, 191
"critical infrastructure," "disaster response period," "disaster 192
work," and "qualifying employee" have the same meanings as in 193
section 5703.94 of the Revised Code. 194

Any employer may elect to include as an "employee" within 195
this chapter, any person excluded from the definition of 196
"employee" pursuant to division (A)(1)(d) or (A)(2)(a), (b), 197
(c), or (e) of this section in accordance with rules adopted by 198
the administrator, with the advice and consent of the bureau of 199
workers' compensation board of directors. If an employer is a 200
partnership, sole proprietorship, individual incorporated as a 201
corporation, or family farm corporation, such employer may elect 202
to include as an "employee" within this chapter, any member of 203
such partnership, the owner of the sole proprietorship, the 204
individual incorporated as a corporation, or the officers of the 205
family farm corporation. Nothing in this section shall prohibit 206
a partner, sole proprietor, or any person excluded from the 207
definition of "employee" pursuant to division (A)(2)(a), (b), 208
(c), or (e) of this section from electing to be included as an 209
"employee" under this chapter in accordance with rules adopted 210
by the administrator, with the advice and consent of the board. 211

In the event of an election, the employer or person 212
electing coverage shall serve upon the bureau of workers' 213
compensation written notice naming the person to be covered and 214
include the person's remuneration for premium purposes in all 215
future payroll reports. No partner, sole proprietor, or person 216

excluded from the definition of "employee" pursuant to division 217
(A) (1) (d) or (A) (2) (a), (b), (c), or (e) of this section, shall 218
receive benefits or compensation under this chapter until the 219
bureau receives written notice of the election permitted by this 220
section. 221

For informational purposes only, the bureau shall 222
prescribe such language as it considers appropriate, on such of 223
its forms as it considers appropriate, to advise employers of 224
their right to elect to include as an "employee" within this 225
chapter a sole proprietor, any member of a partnership, or a 226
person excluded from the definition of "employee" under division 227
(A) (1) (d) or (A) (2) (a), (b), (c), or (e) of this section, that 228
they should check any health and disability insurance policy, or 229
other form of health and disability plan or contract, presently 230
covering them, or the purchase of which they may be considering, 231
to determine whether such policy, plan, or contract excludes 232
benefits for illness or injury that they might have elected to 233
have covered by workers' compensation. 234

(B) (1) "Employer" means: 235

(a) The state, including state hospitals, each county, 236
municipal corporation, township, school district, and hospital 237
owned by a political subdivision or subdivisions other than the 238
state; 239

(b) Every person, firm, professional employer 240
organization, alternate employer organization, and private 241
corporation, including any public service corporation, that (i) 242
has in service one or more employees or shared employees 243
regularly in the same business or in or about the same 244
establishment under any contract of hire, express or implied, 245
oral or written, or (ii) is bound by any such contract of hire 246

or by any other written contract, to pay into the insurance fund 247
the premiums provided by this chapter. 248

All such employers are subject to this chapter. Any member 249
of a firm or association, who regularly performs manual labor in 250
or about a mine, factory, or other establishment, including a 251
household establishment, shall be considered an employee in 252
determining whether such person, firm, or private corporation, 253
or public service corporation, has in its service, one or more 254
employees and the employer shall report the income derived from 255
such labor to the bureau as part of the payroll of such 256
employer, and such member shall thereupon be entitled to all the 257
benefits of an employee. 258

(2) "Employer" does not include a franchisor with respect 259
to the franchisor's relationship with a franchisee or an 260
employee of a franchisee, unless the franchisor agrees to assume 261
that role in writing or a court of competent jurisdiction 262
determines that the franchisor exercises a type or degree of 263
control over the franchisee or the franchisee's employees that 264
is not customarily exercised by a franchisor for the purpose of 265
protecting the franchisor's trademark, brand, or both. For 266
purposes of this division, "franchisor" and "franchisee" have 267
the same meanings as in 16 C.F.R. 436.1. 268

(C) "Injury" includes any injury, whether caused by 269
external accidental means or accidental in character and result, 270
received in the course of, and arising out of, the injured 271
employee's employment. "Injury" does not include: 272

(1) Psychiatric conditions except where the claimant's 273
psychiatric conditions have arisen from an injury or 274
occupational disease sustained by that claimant or where the 275
claimant's psychiatric conditions have arisen from sexual 276

conduct in which the claimant was forced by threat of physical harm to engage or participate;	277 278
(2) Injury or disability caused primarily by the natural deterioration of tissue, an organ, or part of the body;	279 280
(3) Injury or disability incurred in voluntary participation in an employer-sponsored recreation or fitness activity if the employee signs a waiver of the employee's right to compensation or benefits under this chapter prior to engaging in the recreation or fitness activity;	281 282 283 284 285
(4) A condition that pre-existed an injury unless that pre-existing condition is substantially aggravated by the injury. Such a substantial aggravation must be documented by objective diagnostic findings, objective clinical findings, or objective test results. Subjective complaints may be evidence of such a substantial aggravation. However, subjective complaints without objective diagnostic findings, objective clinical findings, or objective test results are insufficient to substantiate a substantial aggravation.	286 287 288 289 290 291 292 293 294
<u>(5) Injury or disability caused by a COVID-19 vaccination if the employer required the employee to receive the vaccine as a condition of employment.</u>	295 296 297
(D) "Child" includes a posthumous child and a child legally adopted prior to the injury.	298 299
(E) "Family farm corporation" means a corporation founded for the purpose of farming agricultural land in which the majority of the voting stock is held by and the majority of the stockholders are persons or the spouse of persons related to each other within the fourth degree of kinship, according to the rules of the civil law, and at least one of the related persons	300 301 302 303 304 305

is residing on or actively operating the farm, and none of whose 306
stockholders are a corporation. A family farm corporation does 307
not cease to qualify under this division where, by reason of any 308
devise, bequest, or the operation of the laws of descent or 309
distribution, the ownership of shares of voting stock is 310
transferred to another person, as long as that person is within 311
the degree of kinship stipulated in this division. 312

(F) "Occupational disease" means a disease contracted in 313
the course of employment, which by its causes and the 314
characteristics of its manifestation or the condition of the 315
employment results in a hazard which distinguishes the 316
employment in character from employment generally, and the 317
employment creates a risk of contracting the disease in greater 318
degree and in a different manner from the public in general. 319

(G) "Self-insuring employer" means an employer who is 320
granted the privilege of paying compensation and benefits 321
directly under section 4123.35 of the Revised Code, including a 322
board of county commissioners for the sole purpose of 323
constructing a sports facility as defined in section 307.696 of 324
the Revised Code, provided that the electors of the county in 325
which the sports facility is to be built have approved 326
construction of a sports facility by ballot election no later 327
than November 6, 1997. 328

(H) "Private employer" means an employer as defined in 329
division (B) (1) (b) of this section. 330

(I) "Professional employer organization" has the same 331
meaning as in section 4125.01 of the Revised Code. 332

(J) "Public employer" means an employer as defined in 333
division (B) (1) (a) of this section. 334

(K) "Sexual conduct" means vaginal intercourse between a 335
male and female; anal intercourse, fellatio, and cunnilingus 336
between persons regardless of gender; and, without privilege to 337
do so, the insertion, however slight, of any part of the body or 338
any instrument, apparatus, or other object into the vaginal or 339
anal cavity of another. Penetration, however slight, is 340
sufficient to complete vaginal or anal intercourse. 341

(L) "Other-states' insurer" means an insurance company 342
that is authorized to provide workers' compensation insurance 343
coverage in any of the states that permit employers to obtain 344
insurance for workers' compensation claims through insurance 345
companies. 346

(M) "Other-states' coverage" means both of the following: 347

(1) Insurance coverage secured by an eligible employer for 348
workers' compensation claims of employees who are in employment 349
relationships localized in a state other than this state or 350
those employees' dependents; 351

(2) Insurance coverage secured by an eligible employer for 352
workers' compensation claims that arise in a state other than 353
this state where an employer elects to obtain coverage through 354
either the administrator or an other-states' insurer. 355

(N) "Limited other-states coverage" means insurance 356
coverage provided by the administrator to an eligible employer 357
for workers' compensation claims of employees who are in an 358
employment relationship localized in this state but are 359
temporarily working in a state other than this state, or those 360
employees' dependents. 361

(O) "Motor carrier" has the same meaning as in section 362
4923.01 of the Revised Code. 363

(P) "Alternate employer organization" has the same meaning	364
as in section 4133.01 of the Revised Code.	365
Section 2. That existing section 4123.01 of the Revised	366
Code is hereby repealed.	367