

ASSEMBLY BILL

No. 1993

**Introduced by Assembly Members Wicks, Aguiar-Curry, Low, and
Akilah Weber**

(Principal coauthors: Senators Newman, Pan, and Wiener)

(Coauthors: Assembly Members Quirk and Stone)

(Coauthor: Senator Dodd)

February 10, 2022

An act to add Section 12940.4 to the Government Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1993, as introduced, Wicks. Employment: COVID-19 vaccination requirements.

Existing law, the California Fair Employment and Housing Act (FEHA), establishes the Department of Fair Employment and Housing within the Business, Consumer Services, and Housing Agency and sets forth its powers and duties relating to the enforcement of civil rights laws with respect to housing and employment.

Existing federal law, the Federal Food, Drug, and Cosmetic Act, authorizes the United States Secretary of Health and Human Services to approve new drugs and products, including vaccines, for introduction into interstate commerce, and authorizes the secretary to authorize vaccines for use in an emergency upon declaring a public health emergency. On February 4, 2020, the secretary determined that there is a public health emergency and declared circumstances exist justifying the authorization of emergency use of drugs and biological products. The secretary subsequently authorized the emergency use of 3 vaccines

for the prevention of COVID-19, and on August 23, 2021, the secretary approved a vaccine for the prevention of COVID-19.

The California Emergency Services Act authorizes the Governor to declare a state of emergency during conditions of disaster or extreme peril to persons or property, including epidemics. On March 4, 2020, the Governor declared a state of emergency relating to the COVID-19 pandemic. Pursuant to this authority, the Governor issued several executive orders requiring individuals in specified employment, health care, school, or other settings to provide proof of a COVID-19 vaccination status, unless specified exceptions are met.

This bill would require an employer to require each person who is an employee or independent contractor, and who is eligible to receive the COVID-19 vaccine, to show proof to the employer, or an authorized agent thereof, that the person has been vaccinated against COVID-19. This bill would establish an exception from this vaccination requirement for a person who is ineligible to receive a COVID-19 vaccine due to a medical condition or disability or because of a sincerely held religious belief, as specified, and would require compliance with various other state and federal laws. The bill would require proof-of-vaccination status to be obtained in a manner that complies with federal and state privacy laws and not be retained by the employer, unless the person authorizes the employer to retain proof.

This bill would require, on January 1, 2023, each employer to affirm, in a form and manner provided by the department, that each employee or independent contractor complied with these provisions, and would require the employer to affirm that each new employee or independent contractor is in compliance at the time of hiring or contracting with that person. The bill would require the department to impose a penalty of an unspecified amount on an employer for any violation of these provisions.

This bill would repeal these provisions when the federal Centers for Disease Control and Prevention's Advisory Committee on Immunization Practices determines that COVID-19 vaccinations are no longer necessary for the health and safety of individuals.

This bill would include findings that changes proposed by this bill address a matter of statewide concern rather than a municipal affair and, therefore, apply to all cities, including charter cities.

This bill would declare that its provisions are severable.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 12940.4 is added to the Government
2 Code, to read:

3 12940.4. (a) Notwithstanding any provision of this chapter or
4 any other law, an employer shall require each employee or
5 independent contractor to provide proof to the employer, or an
6 authorized agent thereof, that the person has been vaccinated
7 against COVID-19.

8 (b) For purposes of this section, the following definitions apply:

9 (1) "Proof" means valid documentation of the person's
10 COVID-19 vaccination record, which may be their vaccine card
11 or a copy or a digital version thereof, as provided by their health
12 care provider, the State Department of Public Health, or another
13 state or federal agency.

14 (2) (A) "Vaccinated against COVID-19" means that the person
15 is fully vaccinated against COVID-19 by a vaccine authorized by
16 the United States Food and Drug Administration or the World
17 Health Organization.

18 (B) Notwithstanding subparagraph (A), a person is considered
19 "vaccinated against COVID-19" for purposes of this section if the
20 person has received the first dose of a two-dose COVID-19 vaccine
21 authorized by the United States Food and Drug Administration or
22 the World Health Organization, provides proof of that first dose,
23 and provides proof of receiving the second dose of the vaccine
24 within 45 days after receiving the first dose.

25 (c) (1) The requirement that a person be "vaccinated against
26 COVID-19" pursuant to subdivision (a) does not apply to a person
27 who is ineligible to receive a COVID-19 vaccine due to a medical
28 condition or disability or because of a sincerely held religious
29 belief that precludes the person from receiving a vaccination,
30 subject to verification thereof, and in compliance with this chapter
31 and other state and federal laws, including the reasonable
32 accommodation provisions of the federal Americans with
33 Disabilities Act of 1990 (Public Law 101-336) and Title VII of
34 the federal Civil Rights Act of 1964 (Public Law 88-352).

35 (2) The department shall consult with the State Department of
36 Public Health and the Division of Occupational Safety and Health
37 to provide guidance to employers on what constitutes a medical

1 condition or disability, or a sincerely held religious belief, for
2 purposes of this subdivision.

3 (d) (1) Proof-of-vaccination status required pursuant to this
4 section shall be obtained in a manner that complies with federal
5 and state privacy laws and shall not be retained by the employer,
6 unless the person authorizes the employer to retain proof.

7 (2) An employer or authorized agent that obtains
8 proof-of-vaccination status pursuant to this section shall not share,
9 transfer, or sell that information with or to a third party.

10 (3) The department shall provide guidance to employers on how
11 to obtain and protect this information.

12 (e) (1) This section applies to both private and public employers.

13 (2) “Public employer,” for purposes of this section, means:

14 (A) The state and every state entity, including, but not limited
15 to, the Legislature, the judicial branch, the University of California,
16 and the California State University.

17 (B) A political subdivision of the state, or agency or
18 instrumentality of the state or subdivision of the state, including,
19 but not limited to, a city, county, city and county, charter city,
20 charter county, school district, community college district, joint
21 powers authority, joint powers agency, and any public agency,
22 authority, board, commission, or district.

23 (f) (1) On January 1, 2023, each employer shall affirm, in a
24 form and manner provided by the department, that each employee
25 or independent contractor is in compliance with this section.

26 (2) After January 1, 2023, each employer shall affirm, in a form
27 and manner determined by the department, that each new employee
28 or independent contractor is in compliance with this section at the
29 time of hiring or contracting with that person.

30 (g) The department shall impose a penalty of up to ____ dollars
31 (\$____) on an employer who violates this section.

32 (h) The Legislature finds and declares that protecting the public
33 health and well-being of the people of California by requiring
34 proof of vaccination against COVID-19 for employment pursuant
35 to this section is a matter of statewide concern and is not a
36 municipal affair as that term is used in Section 5 of Article XI of
37 the California Constitution. Therefore, this section applies to all
38 cities, including charter cities.

39 (i) This section shall remain operative until the federal Centers
40 for Disease Control and Prevention’s Advisory Committee on

1 Immunization Practices determines that COVID-19 vaccinations
2 are no longer necessary for the health and safety of individuals,
3 and as of that date is repealed.

4 SEC. 2. The provisions of this act are severable. If any
5 provision of this act or its application is held invalid, that invalidity
6 shall not affect other provisions or applications that can be given
7 effect without the invalid provision or application.

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