

SECOND REGULAR SESSION

HOUSE BILL NO. 2358

101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE EVANS.

5072H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 213.055, 287.067, and 288.030, RSMo, and to enact in lieu thereof three new sections relating to COVID-19 vaccine mandates.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 213.055, 287.067, and 288.030, RSMo, are repealed and three
2 new sections enacted in lieu thereof, to be known as sections 213.055, 287.067, and 288.030,
3 to read as follows:

213.055. 1. It shall be an unlawful employment practice:

2 (1) For an employer, because of the race, color, religion, national origin, sex, ancestry,
3 age or disability of any individual:

4 (a) To fail or refuse to hire or to discharge any individual, or otherwise to discriminate
5 against any individual with respect to his compensation, terms, conditions, or privileges of
6 employment, because of such individual's race, color, religion, national origin, sex, ancestry,
7 age or disability;

8 **a. If an individual requests a reasonable accommodation from a COVID-19**
9 **vaccine mandate based on sincerely held religious, ethical, moral, or conscientious**
10 **beliefs, the employer shall make reasonable accommodations, including, but not limited**
11 **to, an exemption from vaccine or testing, unless if doing so as established by clear and**
12 **convincing evidence would cause undue hardship to the employer;**

13 (b) To limit, segregate, or classify his employees or his employment applicants in any
14 way which would deprive or tend to deprive any individual of employment opportunities or
15 otherwise adversely affect his status as an employee, because of such individual's race, color,
16 religion, national origin, sex, ancestry, age or disability;

EXPLANATION — Matter enclosed in bold-faced brackets ~~thus~~ in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 (2) For a labor organization to exclude or to expel from its membership any
18 individual or to discriminate in any way against any of its members or against any employer
19 or any individual employed by an employer because of race, color, religion, national origin,
20 sex, ancestry, age or disability of any individual; or to limit, segregate, or classify its
21 membership, or to classify or fail or refuse to refer for employment any individual, in any way
22 which would deprive or tend to deprive any individual of employment opportunities, or would
23 limit such employment opportunities or otherwise adversely affect his status as an employee
24 or as an applicant for employment, because of such individual's race, color, religion, national
25 origin, sex, ancestry, age or disability; or for any employer, labor organization, or joint labor-
26 management committee controlling apprenticeship or other training or retraining, including
27 on-the-job training programs to discriminate against any individual because of his race, color,
28 religion, national origin, sex, ancestry, age or disability in admission to, or employment in,
29 any program established to provide apprenticeship or other training;

30 (3) For any employer or employment agency to print or circulate or cause to be
31 printed or circulated any statement, advertisement or publication, or to use any form of
32 application for employment or to make any inquiry in connection with prospective
33 employment, which expresses, directly or indirectly, any limitation, specification, or
34 discrimination, because of race, color, religion, national origin, sex, ancestry, age or
35 disability unless based upon a bona fide occupational qualification or for an employment
36 agency to fail or refuse to refer for employment, or otherwise to discriminate against, any
37 individual because of his or her race, color, religion, national origin, sex, ancestry, age as it
38 relates to employment, or disability, or to classify or refer for employment any individual
39 because of his or her race, color, religion, national origin, sex, ancestry, age or disability.

40 2. Notwithstanding any other provision of this chapter, it shall not be an unlawful
41 employment practice for an employer to apply different standards of compensation, or
42 different terms, conditions or privileges of employment pursuant to a bona fide seniority or
43 merit system, or a system which measures earnings by quantity or quality of production or to
44 employees who work in different locations, provided that such differences or such systems
45 are not the result of an intention or a design to discriminate, and are not used to discriminate,
46 because of race, color, religion, sex, national origin, ancestry, age or disability, nor shall it be
47 an unlawful employment practice for an employer to give and to act upon the results of any
48 professionally developed ability test, provided that such test, its administration, or action
49 upon the results thereof, is not designed, intended or used to discriminate because of race,
50 color, religion, national origin, sex, ancestry, age or disability.

51 3. Nothing contained in this chapter shall be interpreted to require any employer,
52 employment agency, labor organization, or joint labor-management committee subject to this
53 chapter to grant preferential treatment to any individual or to any group because of the race,

54 color, religion, national origin, sex, ancestry, age or disability of such individual or group on
55 account of an imbalance which may exist with respect to the total number or percentage of
56 persons of any race, color, religion, national origin, sex, ancestry, age or disability employed
57 by any employer, referred or classified for employment by any employment agency or labor
58 organization, admitted to membership or classified by any labor organization, or admitted to
59 or employed in any apprenticeship or other training program, in comparison with the total
60 number or percentage of persons of such race, color, religion, national origin, sex, ancestry,
61 age or disability in any community, state, section, or other area, or in the available workforce
62 in any community, state, section, or other area.

63 4. Notwithstanding any other provision of this chapter, it shall not be an unlawful
64 employment practice for the state or any political subdivision of the state to comply with the
65 provisions of 29 U.S.C. Section 623 relating to employment as firefighters or law
66 enforcement officers.

287.067. 1. In this chapter the term "occupational disease" is hereby defined to mean,
2 unless a different meaning is clearly indicated by the context, an identifiable disease arising
3 with or without human fault out of and in the course of the employment. Ordinary diseases of
4 life to which the general public is exposed outside of the employment shall not be
5 compensable, except where the diseases follow as an incident of an occupational disease as
6 defined in this section. The disease need not to have been foreseen or expected but after its
7 contraction it must appear to have had its origin in a risk connected with the employment and
8 to have flowed from that source as a rational consequence.

9 2. An injury or death by occupational disease is compensable only if the occupational
10 exposure was the prevailing factor in causing both the resulting medical condition and
11 disability. The "prevailing factor" is defined to be the primary factor, in relation to any other
12 factor, causing both the resulting medical condition and disability. Ordinary, gradual
13 deterioration, or progressive degeneration of the body caused by aging or by the normal
14 activities of day-to-day living shall not be compensable.

15 3. An injury due to repetitive motion is recognized as an occupational disease for
16 purposes of this chapter. An occupational disease due to repetitive motion is compensable
17 only if the occupational exposure was the prevailing factor in causing both the resulting
18 medical condition and disability. The "prevailing factor" is defined to be the primary factor,
19 in relation to any other factor, causing both the resulting medical condition and disability.
20 Ordinary, gradual deterioration, or progressive degeneration of the body caused by aging or
21 by the normal activities of day-to-day living shall not be compensable.

22 4. "Loss of hearing due to industrial noise" is recognized as an occupational disease
23 for purposes of this chapter and is hereby defined to be a loss of hearing in one or both ears

24 due to prolonged exposure to harmful noise in employment. "Harmful noise" means sound
25 capable of producing occupational deafness.

26 5. "Radiation disability" is recognized as an occupational disease for purposes of this
27 chapter and is hereby defined to be that disability due to radioactive properties or substances
28 or to Roentgen rays (X-rays) or exposure to ionizing radiation caused by any process
29 involving the use of or direct contact with radium or radioactive properties or substances or
30 the use of or direct exposure to Roentgen rays (X-rays) or ionizing radiation.

31 6. Disease of the lungs or respiratory tract, hypotension, hypertension, or disease of
32 the heart or cardiovascular system, including carcinoma, may be recognized as occupational
33 diseases for the purposes of this chapter and are defined to be disability due to exposure to
34 smoke, gases, carcinogens, inadequate oxygen, of paid firefighters of a paid fire department
35 or paid police officers of a paid police department certified under chapter 590 if a direct
36 causal relationship is established, or psychological stress of firefighters of a paid fire
37 department or paid peace officers of a police department who are certified under chapter 590
38 if a direct causal relationship is established.

39 7. Any employee who is exposed to and contracts any contagious or communicable
40 disease arising out of and in the course of his or her employment shall be eligible for benefits
41 under this chapter as an occupational disease.

42 8. **When a COVID-19 vaccination is required or mandated by an employer as a**
43 **condition of employment, any injury, disability, or death resulting from the vaccination**
44 **is considered an occupational disease for purposes of this chapter and is compensable if**
45 **the vaccination was any factor in causing the resulting medical condition, disability, or**
46 **death.**

47 9. With regard to occupational disease due to repetitive motion, if the exposure to the
48 repetitive motion which is found to be the cause of the injury is for a period of less than three
49 months and the evidence demonstrates that the exposure to the repetitive motion with the
50 immediate prior employer was the prevailing factor in causing the injury, the prior employer
51 shall be liable for such occupational disease.

288.030. 1. As used in this chapter, unless the context clearly requires otherwise, the
2 following terms mean:

3 (1) "Appeals tribunal", a referee or a body consisting of three referees appointed to
4 conduct hearings and make decisions on appeals from administrative determinations,
5 petitions for reassessment, and claims referred pursuant to subsection 2 of section 288.070;

6 (2) "Base period", the first four of the last five completed calendar quarters
7 immediately preceding the first day of an individual's benefit year;

8 (3) "Benefit year", the one-year period beginning with the first day of the first week
9 with respect to which an insured worker first files an initial claim for determination of such

10 worker's insured status, and thereafter the one-year period beginning with the first day of the
11 first week with respect to which the individual, providing the individual is then an insured
12 worker, next files such an initial claim after the end of the individual's last preceding benefit
13 year;

14 (4) "Benefits", the money payments payable to an insured worker, as provided in this
15 chapter, with respect to such insured worker's unemployment;

16 (5) "Calendar quarter", the period of three consecutive calendar months ending on
17 March thirty-first, June thirtieth, September thirtieth, or December thirty-first;

18 (6) "Claimant", an individual who has filed an initial claim for determination of such
19 individual's status as an insured worker, a notice of unemployment, a certification for waiting
20 week credit, or a claim for benefits;

21 (7) "Commission", the labor and industrial relations commission of Missouri;

22 (8) "Common paymaster", two or more related corporations in which one of the
23 corporations has been designated to disburse remuneration to concurrently employed
24 individuals of any of the related corporations;

25 (9) "Contributions", the money payments to the unemployment compensation fund
26 required by this chapter, exclusive of interest and penalties;

27 (10) "Decision", a ruling made by an appeals tribunal or the commission after a
28 hearing;

29 (11) "Deputy", a representative of the division designated to make investigations and
30 administrative determinations on claims or matters of employer liability or to perform related
31 work;

32 (12) "Determination", any administrative ruling made by the division without a
33 hearing;

34 (13) "Director", the administrative head of the division of employment security;

35 (14) "Division", the division of employment security which administers this chapter;

36 (15) "Employing unit", any individual, organization, partnership, corporation,
37 common paymaster, or other legal entity, including the legal representatives thereof, which
38 has or, subsequent to June 17, 1937, had in its employ one or more individuals performing
39 services for it within this state. All individuals performing services within this state for any
40 employing unit which maintains two or more separate establishments within this state shall be
41 deemed to be employed by a single employing unit for all the purposes of this chapter. Each
42 individual engaged to perform or to assist in performing the work of any person in the service
43 of an employing unit shall be deemed to be engaged by such employing unit for all the
44 purposes of this chapter, whether such individual was engaged or paid directly by such
45 employing unit or by such person, provided the employing unit had actual or constructive
46 knowledge of the work;

47 (16) "Employment office", a free public employment office operated by this or any
48 other state as a part of a state controlled system of public employment offices including any
49 location designated by the state as being a part of the one-stop career system;

50 (17) "Equipment", a motor vehicle, straight truck, tractor, semitrailer, full trailer, any
51 combination of these and any other type of equipment used by authorized carriers in the
52 transportation of property for hire;

53 (18) "Fund", the unemployment compensation fund established by this chapter;

54 (19) "Governmental entity", the state, any political subdivision thereof, any
55 instrumentality of any one or more of the foregoing which is wholly owned by this state and
56 one or more other states or political subdivisions and any instrumentality of this state or any
57 political subdivision thereof and one or more other states or political subdivisions;

58 (20) "Initial claim", an application, in a form prescribed by the division, made by an
59 individual for the determination of the individual's status as an insured worker;

60 (21) "Insured work", employment in the service of an employer;

61 (22) (a) As to initial claims filed after December 31, 1990, "insured worker", a
62 worker who has been paid wages for insured work in the amount of one thousand dollars or
63 more in at least one calendar quarter of such worker's base period and total wages in the
64 worker's base period equal to at least one and one-half times the insured wages in that
65 calendar quarter of the base period in which the worker's insured wages were the highest, or
66 in the alternative, a worker who has been paid wages in at least two calendar quarters of such
67 worker's base period and whose total base period wages are at least one and one-half times the
68 maximum taxable wage base, taxable to any one employer, in accordance with subsection 2 of
69 section 288.036. For the purposes of this definition, "wages" shall be considered as wage
70 credits with respect to any benefit year, only if such benefit year begins subsequent to the date
71 on which the employing unit by which such wages were paid has become an employer;

72 (b) As to initial claims filed after December 31, 2004, wages for insured work in the
73 amount of one thousand two hundred dollars or more, after December 31, 2005, one thousand
74 three hundred dollars or more, after December 31, 2006, one thousand four hundred dollars or
75 more, after December 31, 2007, one thousand five hundred dollars or more in at least one
76 calendar quarter of such worker's base period and total wages in the worker's base period
77 equal to at least one and one-half times the insured wages in that calendar quarter of the base
78 period in which the worker's insured wages were the highest, or in the alternative, a worker
79 who has been paid wages in at least two calendar quarters of such worker's base period and
80 whose total base period wages are at least one and one-half times the maximum taxable wage
81 base, taxable to any one employer, in accordance with subsection 2 of section 288.036;

82 (23) "Misconduct", only as the term is used in this chapter, conduct or failure to act in
83 a manner that is connected with work, regardless of whether such conduct or failure to act

84 occurs at the workplace or during work hours~~[, which]~~. **"Misconduct" does not include**
85 **failure to take any COVID-19 vaccine based on sincerely held religious, ethical, moral,**
86 **or conscientious beliefs, and termination or discharge from employment as a result of**
87 **such failure shall not disqualify an employee from unemployment compensation.**

88 **"Misconduct"** shall include:

89 (a) Conduct or a failure to act demonstrating knowing disregard of the employer's
90 interest or a knowing violation of the standards which the employer expects of his or her
91 employee;

92 (b) Conduct or a failure to act demonstrating carelessness or negligence in such
93 degree or recurrence as to manifest culpability, wrongful intent, or a knowing disregard of the
94 employer's interest or of the employee's duties and obligations to the employer;

95 (c) A violation of an employer's no-call, no-show policy; chronic absenteeism or
96 tardiness in violation of a known policy of the employer; or two or more unapproved absences
97 following a written reprimand or warning relating to an unapproved absence unless such
98 absences are protected by law;

99 (d) A knowing violation of a state standard or regulation by an employee of an
100 employer licensed or certified by the state, which would cause the employer to be sanctioned
101 or have its license or certification suspended or revoked; or

102 (e) A violation of an employer's rule, unless the employee can demonstrate that:

103 a. He or she did not know, and could not reasonably know, of the rule's requirements;

104 b. The rule is not lawful; or

105 c. The rule is not fairly or consistently enforced;

106 (24) "Referee", a representative of the division designated to serve on an appeals
107 tribunal;

108 (25) "State" includes, in addition to the states of the United States of America, the
109 District of Columbia, Puerto Rico, the Virgin Islands, and the Dominion of Canada;

110 (26) "Temporary employee", an employee assigned to work for the clients of a
111 temporary help firm;

112 (27) "Temporary help firm", a firm that hires its own employees and assigns them to
113 clients to support or supplement the clients' workforce in work situations such as employee
114 absences, temporary skill shortages, seasonal workloads, and special assignments and
115 projects;

116 (28) (a) An individual shall be deemed "totally unemployed" in any week during
117 which the individual performs no services and with respect to which no wages are payable to
118 such individual;

119 (b) a. An individual shall be deemed "partially unemployed" in any week of less than
120 full-time work if the wages payable to such individual for such week do not equal or exceed
121 the individual's weekly benefit amount plus twenty dollars;

122 b. Effective for calendar year 2007 and each year thereafter, an individual shall be
123 deemed "partially unemployed" in any week of less than full-time work if the wages payable
124 to such individual for such week do not equal or exceed the individual's weekly benefit
125 amount plus twenty dollars or twenty percent of his or her weekly benefit amount, whichever
126 is greater;

127 (c) An individual's "week of unemployment" shall begin the first day of the calendar
128 week in which the individual registers at an employment office except that, if for good cause
129 the individual's registration is delayed, the week of unemployment shall begin the first day of
130 the calendar week in which the individual would have otherwise registered. The requirement
131 of registration may by regulation be postponed or eliminated in respect to claims for partial
132 unemployment or may by regulation be postponed in case of a mass layoff due to a temporary
133 cessation of work;

134 (29) "Waiting week", the first week of unemployment for which a claim is allowed in
135 a benefit year or if no waiting week has occurred in a benefit year in effect on the effective
136 date of a shared work plan, the first week of participation in a shared work unemployment
137 compensation program pursuant to section 288.500.

138 2. The Missouri average annual wage shall be computed as of June thirtieth of each
139 year, and shall be applicable to the following calendar year. The Missouri average annual
140 wage shall be calculated by dividing the total wages reported as paid for insured work in the
141 preceding calendar year by the average of mid-month employment reported by employers for
142 the same calendar year. The Missouri average weekly wage shall be computed by dividing
143 the Missouri average annual wage as computed in this subsection by fifty-two.

✓