

PROPOSED ORDINANCE

COVID-19 VACCINATION RIGHTS FOR EMPLOYEES AND EMPLOYER OBLIGATIONS

BE IT ORDAINED, by the Cook County Board of Commissioners, that Chapter 42, HUMAN RELATIONS, ARTICLE V. COVID-19 VACCINATION RIGHTS FOR EMPLOYEES AND EMPLOYER OBLIGATIONS, Sed. 42-120 through 42-126.

Sec. 42-120. Title, purpose and scope.

(a) This Article shall be known and may be cited as the "COVID-19 Vaccination Rights for Employees and Prohibition of Retaliation by Employers" Ordinance and shall be liberally construed and applied to promote its purposes and policies.

(b) The purpose of this Article, and the policy of the county, is to protect and promote the public health, safety, and welfare of its citizens, to establish the rights of employees to be vaccinated against COVID-19 and the obligations of employers to not retaliate against employees for exercising their right to be vaccinated against COVID-19.

(c) This Article applies to, regulates, and determines rights, obligations, and remedies under applicable to employees whose employer violates this Article.

(d) The Department of Human Rights and Ethics will provide a copy of the Ordinance, Chapter 42, Article V, on its website prior to the effective date of the Ordinance.

Sec. 42-121. Definitions.

Whenever used in this Article, the following words and phrases shall have the following meanings:

Employee means any individual whether paid or unpaid, engaged in employment for an employer.

Employer means any person employing one or more employees, if the person has its principal place of business within Cook County or does business within Cook County. The term "employer" does not mean the government of the United States or a corporation wholly owned by the government of the United States, an Indian tribe or a corporation wholly owned by an Indian tribe, the government of the State or any agency or department thereof, or any unit of local government in Cook County.

Employment means the performance of services for an employer for remuneration, as a volunteer, or as a participant in a training or apprenticeship program.

Regular Rate means the definition applied to that term in 29 U.S.C. Section 207 207(e).

Shift means the consecutive hours an employer schedules an employee to work including employer-approved meal periods and rest/break periods.

Vaccine and Vaccinate, in their various forms, means a vaccine against COVID-19 or inoculation with a vaccine against COVID-19.

Sec. 42-122. Duty to allow employees to vaccinate.

(a) Where vaccination is voluntarily sought or employer-required, an employer may not require that an employee get vaccinated only during non-shift hours. An employer shall not take adverse action against any employee for taking time during a shift to get a vaccine.

(b) If an employee has paid sick leave or paid time off accrued or otherwise available and requests to use that time to get a vaccine that is not employer required, the employer shall allow the employee to use paid sick leave or paid time off accrued for the purpose of getting vaccinated.

(c) An employer that requires employees to be vaccinated shall compensate the employee(s) for the time, up to four hours per dose, that the employee takes to get vaccinated at the employee's regular rate of pay if the employee's vaccination appointment time is during a shift. An employer that requires that an employee be vaccinated shall not require the employee to use paid time off or paid sick leave to fund the hours of shift missed to get vaccinated.

(d) An employer shall not require, that an employee search for or find a replacement worker to cover the hours or shift during which the employee is absent from employment for vaccination.

Sec. 42-123. Retaliation prohibited.

It shall be unlawful for any employer to discriminate in any manner or take any adverse action against any employee in retaliation for exercising, or attempting in good faith to exercise, any right under this Article, including, but not limited to, disclosing, reporting, or testifying about any violation of this Article or regulations promulgated thereunder. For purposes of this Article, prohibited adverse actions include, but are not limited to, unjustified termination, unjustified denial of promotion, unjustified negative evaluations, punitive schedule changes, punitive decreases in the desirability of work or shift assignments, and other acts of harassment shown to be linked to such exercise of rights. An employer shall not use its absence-control policy to count time off for vaccination as an absence that triggers discipline, discharge, demotion, suspension, or any other adverse activity.

Sec. 42-124. Enforcement and penalties.

(a) *Enforcement.* The Department of Human Rights and Ethics and the Commission on Human Rights shall administer and enforce this Article.

(b) *Procedure.*

(1) *Complaint process.*

- a. Within 180 days after the date that a violation of this Article is alleged to have been committed or after the complainant learns of the violation, a written complaint may be filed with the Commission. A written complaint may be filed by a party alleging an injury ("complainant") by a violation of this Article, or a complaint may be issued by the Commission. For any continuing violation, the complaint may be filed within 180 days after the last day of the violation.
- b. The complaint shall be in such detail as to substantially apprise any party properly concerned as to the time, place, and facts surrounding the alleged violation. The Commission may reject without prejudice and without investigation any complaint that fails to set forth sufficient evidence to state a prima facie case of a violation of this Article.

- c. The Commission shall serve a copy of the complaint on the party against whom it is made ("respondent") within ten days after it is filed with the Commission. The Commission's failure to meet this or any other deadline shall not prejudice the complainant.
- d. Both the complainant or the respondent may be represented by counsel at any stage of conciliation, investigation, or hearing on the complaint.

(2) *Investigation process.*

- a. The Commission shall investigate each complaint to determine whether there is substantial evidence that a violation of this Article has occurred. The investigation shall be completed within 180 days after the filing or issuance of the complaint, unless it is impractical to do so within that time. If the Commission determines that there is not substantial evidence, written notification of the determination shall be served on the complainant and the respondent. The complainant shall have 30 days from receipt of this notice to file with the Commission a request for reconsideration of the Commission's determination.
- b. Notwithstanding the above-referenced 180-day time period, the Commission may defer investigation of a timely filed complaint when the same complaint, or a substantially similar complaint, has been filed by the complainant with another administrative agency. The Commission shall adopt rules specifying under what circumstances investigation of a complaint may be deferred.
- c. The Commission may attempt to settle or adjust any complaint by conciliation at any time that the complaint is pending.
- d. The Commission shall issue subpoenas for the appearance of witnesses, the production of evidence, or both, in the course of investigations and hearings. Subpoenas shall be issued where necessary for a full and complete investigation. A subpoena shall be served in the same manner as subpoenas issued under the Rules of the Illinois Supreme Court to compel the appearance of a deponent and shall be subject to the same witness and mileage fees fixed by law for such subpoenas. The Commission shall adopt rules for determining objections to any subpoenas and prescribing any other requirements for subpoenas.
- e. If the Commission concludes at any time following the filing or issuance of a complaint that in order to carry out the purposes of this Article a civil action to preserve the status quo or to prevent irreparable harm is advisable, then the Commission may pursue a civil action for appropriate temporary or preliminary relief pending final disposition of the complaint.
- f. If any person refuses to comply with a Commission subpoena, order, or decision, the Commission may seek judicial enforcement.
- g. The Commission shall adopt liberal rules for discovery so that the complainant and the respondent may each obtain documents and other relevant information in the other's possession.
- h. The Commission shall not disclose, other than to the parties or at the hearing, on the complainant, any evidence obtained in the course of the investigation or conciliation unless otherwise required by law.
- i. The Commission may dismiss a complaint or may enter an order of default against a party for failure to cooperate with the Commission.

(3) *Hearings.*

- a. For any complaint where it is determined that there is substantial evidence that a violation has occurred, a hearing shall be conducted by a hearing officer on the complaint. A hearing shall be commenced within 90 days after the determination of substantial evidence that a violation has occurred. All testimony shall be under oath and shall be either recorded or transcribed. The complainant and the respondent shall be allowed to testify, present evidence, and cross-examine witnesses at the hearing.
- b. The Commission, at the request of any party and upon good cause shown, may at any time consider a request for expedited proceedings. If the Commission determines that any party has an imminent health risk during the proceedings, it may order the proceedings expedited. When an order for expedited proceedings is issued, the processing of the complaint shall take precedence over all matters except other matters of the same expedited character. When such an order is issued, the Commission or any hearing officer shall be authorized to shorten any time period set by this Article or by rule other than the 180-day period for filing complaints.

(4) *Decisions.*

- a. The hearing officer hearing the case shall make findings of fact based on the evidence admitted at the hearing and shall also recommend such relief as is appropriate to make a complainant whole. The findings and recommendations shall be served on all parties. Each party shall be given an opportunity to file with the Commission a brief on exceptions to the hearing officer's findings of fact and recommendations.
- b. Subsequent to the filing and consideration by the hearing officer of any briefs on exceptions the Commission shall adopt the findings of fact of the hearing officer if the recommended findings are not contrary to the evidence presented at the hearing. The Commission may adopt, reject, or modify the recommendations of the hearing officer, in whole or in part, or may remand for additional hearing on some or all of the issues presented.
- c. Decisions of the Commission shall be in writing and must be approved by a majority of those Commissioners who vote at a meeting with a quorum. Decisions of the Commission are final orders and shall be served upon the parties. Either party may file with the Commission a request for reconsideration within 30 days of receipt of the Commission's decision.
- d. Any party may seek a writ of certiorari from the Chancery Division of the Circuit Court of Cook County according to applicable law, appealing any final order or decision of the Commission.

(c) *Remedies.*

(1) Relief may include, but is not limited to, an order to:

- a. Cease the illegal conduct complained of and to take steps to alleviate the effect of the illegal conduct complained of;
- b. Pay actual damages, as reasonably determined by the Commission, for injury or loss suffered;
- c. Hire, reinstate, or upgrade the complainant, with or without back pay, or to provide such fringe benefits as the complainant may have been denied;

- d. Extend to the complainant the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of the respondent;
- e. Pay the complainant all or a portion of the costs, including reasonable attorney's fees, expert witness fees, witness fees, and duplicating costs, incurred in pursuing the complaint before the Commission or at any stage of judicial review;
- f. Take such action as may be necessary to make the complainant whole, including, but not limited to, awards of interest on the actual damages and back pay from the date of the violation;
- g. File with the Commission a report as to the manner of compliance;
- h. Post in a conspicuous place notices which the Commission may publish or cause to be published setting forth requirements for compliance with this Article or other relevant information which the Commission determines necessary to explain this Article; and
- i. Pay a fine of not less than \$100.00 and not more than \$500.00 for each offense. Every day that a violation shall continue shall constitute a separate and distinct offense.

(2) All remedies shall be cumulative.

(d) *Individual right of action.*

- (1) Any individual injured by a violation of this Article shall have cause of action against the violator. It is expressly the intention of this Article to confer an individual rights of action which may be redressed in the courts in accordance with paragraphs (2), (3), (4), and (5) of this Subsection (d).
- (2) Subsequent to a complaint being timely filed with the Commission, where such complaint alleges a violation(s) under Sections 42-122 and 42-123 this Article, and prior to an evidence finding a complainant may request of the Commission to have the claims asserted in that complaint decided in a civil action in a court of general jurisdiction. The Commission in its discretion may approve the request and shall issue a written authorization to the complainant to proceed before such a court. Upon receipt of the written authorization the complainant shall give notice of his or her decision to proceed to court to the Commission and to all other complainants and respondents to whom the complaint relates. Under this paragraph a complainant has 90 days from the date the written authorization is received within which to bring suit. The Commission shall adopt rules specifying what the Commission may consider in determining whether to grant or deny a request to proceed to court.
- (3) Subsequent to a complaint being timely filed with the Commission, where such complaint alleges violation(s) under Section 42-122 and 42-123 of this Article, and subsequent to a finding of substantial evidence a complainant may elect to have the claims asserted in the complaint decided in a civil action in a court of general jurisdiction. This election must be made not later than 20 days after all parties are notified of the Commission's finding of substantial evidence. If the election is not made within the specified time period the Commission shall retain jurisdiction of the complaint. The complainant shall give notice of election to the Commission and to all other complainants and respondents to whom the complaint relates. The Commission shall issue a written authorization to the complainant to proceed before such a court. A complainant who chooses to proceed to court has 90 days from the date the written authorization is received within which to bring suit.

- (4) The filing by a complainant or respondent of a complaint in any court based on some or all of the same issues as are raised in a complaint before the Commission shall automatically terminate the jurisdiction of the Commission over the complaint. In such a case, the Commission shall dismiss the complaint either on its own motion or on the motion of either party.
- (5) Final disposition of a complaint by the Commission shall bar a suit in the courts on this Article over the same issues, except a suit to review judicially the decision of the Commission.
- (6) The Commission may seek to intervene in any civil action filed by a complainant or respondent pursuant to paragraphs (2) and (3) of this Subsection (d).

(e) *Additional duties.* The Commission shall have such additional duties as reasonably flow from its responsibilities, including, but not limited to:

- (1) Issuing such other rules and regulations as may be necessary to implement its powers, including rules of evidence and procedure for hearings.
- (2) Conducting research, public forums, and educational programs on tensions between various groups within society, or practices of unlawful discrimination; conducting public hearings to ascertain the status and treatment of various racial, ethnic, religious, cultural, and social groups within society, means of alleviating discrimination and bias, and means of improving human relations within the County; and issuing such publications as may assist in the performance of its function.
- (3) The Commission shall file a quarterly written report with the Cook County Board of Commissioners. The reports shall be filed with the Human Relations Committee during the third week of January, April, July, and October and shall include the following information for complaints filed or resolved during the preceding quarter:
 - a. A list, including the file number and nature, of each complaint filed with the Human Rights Commission of Cook County under this Article.
 - b. A list, including the file number and outcome, of each complaint resolved by the Commission, indicating whether each complaint was resolved in favor of the complainant or respondent.

Sec. 42-125. - Applicability.

(a) As provided in Article VII, Section 6(c), of the State of Illinois Constitution of 1970, if this Article conflicts with an ordinance of a municipality, the municipal ordinance shall prevail within its jurisdiction.

(b) If a municipal ordinance regulates conduct, which is prohibited under this Article and provides remedies, this Article shall not apply within that municipal jurisdiction with respect to such conduct. In all other circumstances, this Article shall be enforceable within the municipal jurisdiction to the extent permitted under the Illinois Constitution.

(c) Unless otherwise provided by ordinance, this Article shall be repealed of its own accord, without further action County Board, when the Director of the Cook County Public Health Department makes a written determination that the threat to public health posed by COVID-19 has diminished to the point that this Article can safely be repealed.

Sec. 42-126. - Effect of invalidity; severability.

If any section, subdivision, paragraph, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this local law, which remaining portions shall continue in full force and effect.

Effective date: This ordinance shall be in effect on July 1, 2021.