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H.B. 435
(1_134_1965-3)
134th General Assembly

Fiscal Note & Local Impact Statement

[Click here for H.B. 435's Bill Analysis](#)

Version: In House Health

Primary Sponsors: Reps. Carfagna and Seitz

Local Impact Statement Procedure Required: No

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Highlights

- Public schools and institutions of higher education, or public employers may experience costs if any changes to vaccination policies are necessary. Additionally, these entities may experience costs if any mitigation measures are adopted, depending on the number of exempt individuals and the measures required. Any other impacts are uncertain.
- The bill's provisions related to workers' compensation would increase benefits paid from the State Insurance Fund or by self-insuring public employers, including self-insuring local governments. The magnitude of such increase is undetermined.
- The bill requires the Ohio Department of Health to adopt rules regarding the retesting frequency to determine COVID-19 antibody presence, which could increase costs.
- The bill's extension of qualified civil immunity provisions may create an expenditure savings effect for local trial courts by reducing the time and effort that otherwise may have been expended to adjudicate civil actions resulting from a disaster or emergency.
- The bill expands conduct constituting unlawful employment discrimination to include violations of the bill's provisions regulating employee vaccination requirements. The Ohio Civil Rights Commission could realize an increase in costs. The total costs would depend on the number of cases.
- The potential fiscal effects of the bill's mandamus action provisions on courts, as well as state agencies and political subdivisions as defendants, is uncertain.

Detailed Analysis

Vaccinations and exemptions

The bill specifies that a school, private college, or a state institution of higher education, is prohibited from requiring a student to receive a COVID-19 vaccine for which the U.S. Food and Drug Administration (FDA) has not issued a biologics license (full approval). In addition, the bill prohibits employers from requiring an employee to receive any vaccine for which the FDA has not issued a biologics license. The bill also specifies the following exemptions for required COVID-19 vaccines, which have been granted a biologics license: (1) medical contraindications, (2) natural immunity, and (3) reasons of conscience, including religious convictions. All exemptions claimed must be submitted in written form. The Ohio Department of Health (ODH) is required to adopt rules establishing the frequency with which an individual claiming a natural immunity exemption must be retested to determine whether COVID-19 antibody presence remains at least equal to or greater than those conferred by a COVID-19 vaccine that has been issued a biologics license. The bill provides that these exemptions do not apply to certain students or employees studying or working at a children's hospital or an intensive care or critical care unit. However, the bill permits an employer other than a hospital to require an employee to receive a COVID-19 vaccine for which the FDA has not issued a biologics license, if, as a regular part of its business, the employer conducts research on, develops, handles, administers, transports, or stores infectious organisms. The bill also excludes an employee who begins employment after the bill's effective date from the exemptions. The bill specifies that a student or employee who is exempt from COVID-19 vaccination is not responsible for any costs or fees associated with mitigation measures taken to prevent the spread of COVID-19, including testing for active infection and masking. However, in the case of a student or employee who is exempt from COVID-19 vaccination because of natural immunity, the student or employee is responsible for any costs or fees associated with demonstrating natural immunity to the entity requiring vaccination. The bill also prohibits a facility owned by a political subdivision or state agency from requiring an individual to show proof of COVID-19 vaccination in order to gain admission to or enter the facility.

As a result of these provisions, there may be costs to public schools or public employers if any changes to vaccination policies are necessary. In addition, if a public school or public employer adopts any mitigation measures, the entity might realize costs. These costs will depend on a number of factors, including the type and scope of measures required and the number of individuals with exemptions. ODH will realize a minimal increase in costs to adopt rules regarding the retesting frequency to determine COVID-19 antibody presence. Any other impacts will depend on a number of factors and thus, are uncertain.

Civil immunity for health care providers

The bill extends certain timelines related to qualified civil immunity for health care and emergency services provided during a government-declared disaster or emergency and for exposure to or transmission or contraction of certain coronaviruses enacted in H.B. 606 of the 133rd General Assembly. These provisions are extended through June 30, 2023, and enacted to include hearing aid dealers and hearing aid fitters. As a result, this may create an expenditure savings effect for local trial courts by reducing the time and effort that otherwise may have been expended to adjudicate civil actions resulting from a disaster or emergency. Additionally, the bill

may decrease investigation or disciplinary costs for certain state occupational licensing boards due to the expansion of immunity from professional discipline resulting from or in response to an emergency.

Workers' compensation

The bill states that injuries under workers' compensation law includes an injury or disability caused by a COVID-19 vaccine, if the employer required the employee to receive the vaccine as a condition of employment. In addition, the bill specifies the following conditions for claims arising during the period beginning on the effective date of the bill and ending June 30, 2023: (1) no claimant is entitled to workers' compensation or benefits under Chapter 4121, 4123, 4127, or 4131 of the Revised Code for an injury caused by a COVID-19 vaccine required by an employer as a condition of employment if the claimant received compensation under the "National Childhood Vaccine Injury Act of 1986," 42 United States Code (U.S.C.) 300aa-1, *et seq.* or "The Public Readiness and Emergency Preparedness (PREP) Act," 42 U.S.C. 247d-6d, and (2) if the claimant received both (a) an award of workers' compensation or benefits for an injury caused by a COVID-19 vaccine required by an employer as a condition of employment and (b) compensation under the acts, the Bureau of Workers' Compensation Administrator or any self-insuring employer is allowed to collect the awarded amount of workers' compensation or benefits paid to or on behalf of the claimant for such injury, including any interest, attorney's fees, and costs the Administrator or the self-insuring employer incurs in collecting that payment.

The bill's provisions related to workers' compensation would increase benefits paid from the State Insurance Fund or by self-insuring public employers, including self-insuring local governments. The magnitude of such increase is undetermined. However, due to the claw back provision, for claims arising during the temporary period ending on June 30, 2023, the fiscal cost of the bill may be reduced if certain claimants simultaneously received workers' compensation or benefits under the federal acts described in the bill.

EMT COVID-19 testing

The bill also permits an emergency medical technician-basic, emergency medical technician-intermediate, and emergency medical technician-paramedic who has received proper training to administer a test for COVID-19 and collect and label test specimens. This provision has no direct fiscal effect on the state or its political subdivisions.

Employment discrimination

The bill will increase the workload of the Ohio Civil Rights Commission depending on the number of complaints alleging unlawful employment discrimination related to employee vaccination requirements. If the number of additional complaints filed is relatively small, then it is likely that the Commission can absorb the related work utilizing existing staff and appropriated resources. However, if a significant number of complaints arise, additional resources may be necessary.

The unlawful employment discrimination provision should not have a significant impact on the courts of common pleas because, like all other employment discrimination claims, the Commission is required to exhaust specific procedures before a claimant can obtain a right to sue from the Commission and then bring a civil action in the appropriate common pleas court.

Mandamus actions

Under the bill, students, as well as employees of the state or a political subdivision that have not filed an employment discrimination claim with the Civil Rights Commission, are permitted to commence a mandamus action in accordance with R.C. Chapter 2731 to obtain a judgment ordering a school, private college, or state institution of higher education, as applicable, to comply with the bill's provisions regulating vaccination requirements. Under current law, the Supreme Court of Ohio, a court of appeals, or a court of common pleas allow a writ of mandamus. The frequency writ applications, the potential fiscal effects on the courts, as well as state agencies and political subdivisions as defendants, is uncertain.

Synopsis of Fiscal Effect Changes

The As Introduced version of the bill declared the General Assembly's intent to enact legislation regarding vaccines; thus, the As Introduced version of the bill did not have any direct fiscal impacts on the state or local political subdivisions. All above-mentioned fiscal impacts are new to the substitute bill, I_134_1965-3.