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ALABAMA DOL ISSUES EMERGENCY RULE TO IMPLEMENT VACCINE EXEMPTION MANDATE

On November 5, 2021, Governor Kay Ivey signed Alabama Act 2021-561 (Alabama Senate Bill 9) into law. The Act requires any employer who implemented a vaccine mandate to provide employees with the opportunity to apply for medical or religious exemptions, and dictated a form that employers had to use for that application. If an employee's request was rejected, he/she can appeal first to the Alabama Department of Labor (ADOL) and then to the county Circuit Court of his/her residence. The Act gave ADOL until November 26 to issue rules to implement the appeals process, and those administrative rules were recently released. (You can find further discussion of the Alabama Act generally in our recent complimentary webinar: [COVID Confusion Continues](#)).

ADOL's regulation (available in full [here](#)) did little more than parrot the law, dashing the faint hopes of any employer that ADOL would exclude employers with *bona fide* federal law/regulation/guidance conflicts with the Alabama Act from the scope of appeal. ADOL was clear that its close repetition of the law was no accident, as the regulation instructs ALJs reviewing employee appeals to essentially do nothing else other than ensure that the employee form was completed correctly. This is disturbing as all but one of the medical reasons an employee can offer as justification for his/her vaccine exemption request are self-certifying (i.e., no health practitioner can be required to verify claimed conditions like a prior severe allergic reaction to vaccination or being immunocompromised). ALJs are given no particular guidance on rejecting employee exemption requests even where the employer offers evidence of fabrication. The few other items from the ADOL emergency rule that aren't expressly in the Alabama Act are that the ADOL appeals process is internal to the agency, with no live hearing, and that employers have 3 days to respond to an employee appeal. ADOL has a live [vaccine exemption website](#) with a portal for employees to upload appeals. The website includes a model form (which appends an employer response area with a "required" employer email address field, even though no such response area is discussed in the Alabama Act) as well as a poster (which isn't required by the Alabama Act, but should be reviewed and consulted as a model for advising employees of appeal rights).

If you have any questions, please contact [Whitney Brown](#).

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