



Testimony

Submitted on behalf of the
Pennsylvania Chamber of Business and Industry

Public Hearing on H.B. 262

Before the:
Pennsylvania House Labor and Industry Committee

Presented by:

Alex Halper
Director, Government Affairs

February 25, 2021

417 Walnut Street
Harrisburg, PA 17101-1902
717.720.5471 phone

Chairman Cox, Chairman Mullery and members of the House Labor and Industry and Committees, my name is Alex Halper and I am Director of Government Affairs for the Pennsylvania Chamber of Business and Industry. The PA Chamber is the largest, broad-based business advocacy association in the Commonwealth. Our members include employers of all sizes, crossing all industry sectors throughout Pennsylvania. Thank you for the opportunity to testify today regarding H.B. 262, known as the “Right to Refuse Act.”

Employers in the Commonwealth are experiencing existential challenges as a result of the pandemic, economic fallout and restrictions on business. Pennsylvanians who had built successful companies operating profitably, some for decades, have suddenly drained savings and gone bankrupt. Those still operating face a grim outlook with potentially fewer customers and significant additional costs to comply with health and safety requirements. Many nonprofits find themselves in a budget crunch at a time when their services are needed now more than ever.

The PA Chamber has advocated for Pennsylvania employers throughout the pandemic, supporting critical legislation, opposing misguided policies and continually urging the administration to improve coordination and communication with the business community. We have offered free guidance and webinars to help employers navigate the seemingly constant barrage of new mandates and programs; and have

consistently promoted best practices, such as our “Why I Wear It” campaign, in which we partnered with the Hospital and Healthsystem Association and Pennsylvania Medical Society to encourage masking-wearing.

We are now encouraging employers to adopt policies that promote vaccination. Many employers are developing education and awareness programs for their employees; others are considering incentives and guaranteeing paid leave for vaccine appointments. Indeed, some are planning to mandate vaccines, consistent with federal guidelines, and their reasons are varied:

- Some, like healthcare facilities and nursing homes, work with vulnerable populations and have long required staff to obtain vaccines to protect patients;
- Similarly, some businesses are vendors who regularly send employees to the workplaces of customers who require personnel to be vaccinated and must therefore require *their* employees to adopt similar precautions;
- Employers are investing thousands, in some cases millions, of dollars on mitigation efforts to keep their employees and customers safe and comply with public health guidelines. Beyond caring for the health of their workforce, employers are also desperate to prevent cases in their workplace, which can trigger staggeringly expensive and disruptive safety protocols, including

shutting down entire operations, sanitizing whole workspaces, putting employees on extended paid leave and forcing employers to pay overtime or for temporary workers to cover shifts. Employers have reported being one positive case away from shutting down permanently and are anxious for their workforce to become vaccinated to avoid this outcome;

- Despite support from schools, childcare centers, nonprofits, municipalities, doctors, small businesses, over 80 chambers of commerce from throughout the Commonwealth, among many others, Gov. Wolf vetoed temporary liability protections legislation this past November. Accordingly, employers remain exposed to profiteering plaintiffs' attorneys who view this health calamity as a lucrative opportunity to recruit COVID-19 patients and sue businesses they visited, alleging their clients contracted the virus there and pressuring for a settlement knowing location of contraction is just as impossible to disprove, as it is to prove. Adopting a vaccine policy may offer some liability protection;
- Similarly, employers may be subject to workers' compensation claims from an employee who is not vaccinated and contracts the virus, or from others in the workplace if an employee refuses to be vaccinated and coworkers subsequently contract the virus.

H.B. 262 would prohibit employers who, for these or any other reason, adopt vaccination requirement policies. But the bill goes even further. It would prohibit an employer from requiring employees or job applicants to even get tested for COVID-19. Beyond the pandemic, it would prevent any employer from maintaining policies to require other vaccines, such as the flu vaccine, or, for good measure, prohibit employees from working while under the influence of marijuana.

Additionally, this legislation continues the theme of benefitting plaintiffs' attorneys at the expense of job creators by establishing a private right of action, providing a full three years for plaintiffs to sue their employer, as well punitive damages, treble damages, attorneys' fees and other legal costs.

Beyond objectionable provisions that are explicit in the bill, we are also concerned with less obvious aspects. For instance, there is no definition of "retaliation." Under this legislation, a hospital, for example, which the bill has prohibited from requiring flu shots, couldn't even require those forgoing a flu shot to wear a mask or take other protective action, without fear of being sued for retaliation.

In December 2020, the Equal Employment Opportunity Commission issued guidance to employers related to COVID vaccination policies and the workplace. In short, the EEOC guidance allows employers to require their workforce to be vaccinated, though

it includes extensive regulations, a number of caveats and employment protections for those who cannot be vaccinated for medical reasons or based on sincerely-held religious beliefs. Employers in these cases must engage in an interactive process to attempt a reasonable accommodation.

Employers who opt to require vaccination will have to develop policies that ensure compliance with the new EEOC guidelines, as well as the Americans with Disabilities Act and other potentially relevant laws that provide robust protection to workers. We believe the federal standard balances protections for workers and employers' efforts to safeguard their workplace.

To bring our economic crisis to an end it will be necessary to bring our health crisis to an end; and mass vaccination is how we get there. We oppose this bill for specific reasons but ultimately, we believe it sends the wrong message: hostility to employers desperate for relief; validating unfounded skepticism over vaccinations and public health measures; and a lack of commitment from lawmakers to help Pennsylvania participate in the post-pandemic economic recovery we all hope is approaching.

Again, thank you for the opportunity to testify. I am happy to answer any questions.