

Practice Update

Florida Governor DeSantis Bans Vaccine Passports in Florida

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On April 2, Florida Governor DeSantis issued Executive Order Number 21-81 prohibiting businesses “from requiring patrons or customers to provide any documentation certifying COVID-19 vaccination or post-transmission recovery to gain access to, entry upon, or service from the business.” (Executive Order No. 21-81, Section 2.) The order also prohibits any state government entity from permitting vaccine passports to certify vaccine status or otherwise share any individual’s vaccination record or similar health information (*Id.*, Section 1.) This order follows a series of orders issued earlier this year relating to various phases of vaccine administration. (*Id.* at 1.)

Governor DeSantis stated Florida has been effectively distributing vaccines, prioritizing the elderly and vulnerable populations in the state, but acknowledged “many Floridians have not yet had the opportunity to obtain a COVID-19 vaccination” because “some have infection-acquired immunity, and others may be unable to obtain a COVID-19 vaccination due to health, religious, or other reasons.” (*Id.* at 1.) In issuing the prohibition on vaccine passports, the governor stated “it is necessary to protect the fundamental rights and privacies of Floridians and the free flow of commerce within the state.” (*Id.* at 2.) The order explains the vaccine is not required by law,

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individual vaccination records are private health information, and vaccine passports would reduce “individual freedom and harm patient privacy.” (*Id.* at 1.)

However, this order preserves businesses’ right to institute COVID-19 screening protocols for employees in accordance with state and federal law to protect public health. (*Id.*, Section 5.)

The order instructs executive agencies to enforce compliance from businesses and suspends any provision of state statutes “to the extent it restricts a Florida agency from requiring compliance with this order as a condition for a license, permit or other state authorization necessary for conducting business in Florida.” (*Id.*, Section 3.) The order also conditions eligibility for grants or contracts funded through state revenue on compliance. (*Id.*, Section 4.)

Looking forward, the order poses questions as to potential issues concerning conflicting requirements from the private sector. For example, just a few days after the order was issued, Norwegian Cruise Line Holdings, Ltd., which operates cruises out of Miami, Orlando & Tampa, announced “all guests and crew must be fully vaccinated, at least 2 weeks prior to embarkation, in order to board.” The consequences of this potential conflict have not yet materialized, but we can expect other conflicts with national companies operating in Florida imposing similar requirements. We will continue to provide updates on the implications of the executive order and potential conflicts as they develop.

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