

COVID-19 - HB 702 Guidance

House Bill (HB) 702, passed during Montana's 67th Legislative Session, adds discrimination on the basis of vaccination status to the Montana Human Rights Act, which prohibits certain types of discrimination (see Title 49, Chapter 2, Part 3 of the Montana Code Annotated). This document provides general information on HB 702 as it relates to measures taken by local governments and schools to curtail the spread of COVID-19. The information contained in this document does not, and is not intended to, constitute legal advice. Readers of this document are strongly encouraged to consult with their attorney to obtain advice with respect to whether a particular policy, practice, or procedure is compliant with HB 702, or whether such action may constitute a prohibited act of discrimination.

HB 702 makes it an unlawful discriminatory practice for a person or governmental entity to deny a person any local or state services, goods, facilities, advantages, privileges, licensing, educational opportunities, health care access, or employment opportunities, based on the person's vaccination status or whether the person has an immunity passport.

Considerations for Local Government

With respect to any mandatory quarantine or isolation measure, a local government should consider whether the measure it seeks to implement ties the decision to require quarantine or isolation to an individual's vaccination status and whether the measure has the effect of treating unvaccinated individuals differently and less favorably than vaccinated individuals.

The Department encourages all individuals to follow current Centers for Disease Control and Prevention recommendations on quarantine and isolation when not in conflict with state law. Additionally, depending on the circumstances, unvaccinated individuals who do not quarantine or isolate despite having knowledge of having come into close contact with an infected person or being infected could potentially be subject to claims of legal liability from individuals they infect within the community.

In protecting public health and taking into account the requirements of HB 702, examples of quarantine and isolation measures local governments may want to consider include:

- Quarantine and isolation measures that apply regardless of an individual's vaccination status. For example, ordering isolation of unvaccinated infected individuals, as long as vaccinated individuals who are infected with breakthrough cases are also subject to such orders.
- Strongly recommending, but not ordering, quarantine of unvaccinated close contact individuals and isolation of unvaccinated infected individuals. Recommendations could also include voluntary masking and other COVID-19 precautionary measures, such as social distancing, regardless of vaccination status.

- Advising individuals of current CDC guidance and how it applies to their situation (i.e., close contact) and recommending they follow it as it relates to their vaccination status, but not mandating or requiring compliance with such guidance. This could be paired with advising individuals that noncompliance with CDC guidance that results in the infection of others could result in personal liability.

Considerations for Schools (K-12)

HB 702 does not apply to school vaccination requirements for students set forth under Title 20, Chapter 5, Part 4 of the Montana Code Annotated. However, COVID-19 is not a communicable disease for which vaccination is required under the statutes. *See* section 20-5-403, MCA. Schools should therefore consider the requirements of HB 702 when enacting measures related to the control of COVID-19. The same considerations discussed above for local governments apply to schools with respect to COVID-19.

Considerations for Schools (Postsecondary)

Postsecondary schools may impose immunization requirements as a condition of attendance that are more stringent than those required under Title 20, Chapter 5, Part 4 of the Montana Code Annotated. However, immunization requirements imposed by a postsecondary school must allow for religious and medical exemptions under section 20-5-405, MCA.

With respect to quarantine and isolation measures, the same considerations discussed above for local governments apply to postsecondary schools.