Local Government Mandate Statement Kentucky Legislative Research Commission 2022 Regular Session

Part I: Measure Information

Bill Request #: 353			
Bill #: HB 54			
Document ID #: 778			
Bill Subject/Title: AN ACT relating to workers' compensation and declaring an emergency.			
Sponsor: Representative Felicia Rabourn			
Unit of Government:XCityXCountyXUrban-CountyXCharter CountyXConsolidated LocalXGovernment			
Office(s) Impacted: All governmental employers.			
Requirement: <u>X</u> Mandatory Optional			
Effect on Powers & Duties: X Modifies Existing Adds New Eliminates Existing			

Part II: Bill Provisions and the Estimated Fiscal Impact Relating to Local Government

HB 54 amends KRS 342.0011 to define "COVID-19" and creates a new section of KRS Chapter 342 to establish workers' compensation liability if an employee develops an adverse reaction in relation to a COVID-19 immunization after an employer requires, as a condition of employment, or offers incentives for COVID-19 immunizations. The legislation has an emergency clause and is retroactive to December 14, 2020.

The measure is anticipated to have nil to significant impact, due to increased workers' compensation insurance premiums, on local governments. Kentucky Employers' Mutual Insurance, whose covered entities include 150 cities and a few counties, and the Kentucky League of Cities, whose 382 covered entities include 222 cities, already categorize adverse reactions to employer required vaccinations as covered claims under their workers' compensation self-insurance programs. KLC considers the adverse reactions an injury under KRS 342.0011(1), stating that prior administrative law judge rulings have held them to be covered by workers compensation. Although the legislation obligates the employer

to prove that something else caused the adverse effects, KLC believes that the legislation mimics workers' compensation coverage already provided for employer required vaccinations.

However, with incentivized vaccines, KEMI does not currently categorize adverse reactions as a covered injury under KRS 342.0011(1) and anticipates increased premiums due to that additional liability. KLC has not established a position as to whether incentivized vaccines are covered under its self-insurance program.

In addition to private employers; state and local-government employers in Kentucky, as it has an Occupational Safety and Health Administration-approved state plan, with one hundred or more employees would have needed a mandatory COVID-19 vaccination policy; however, the Supreme Court blocked the requirement. *If* mandated vaccines already would have been covered by workers' compensation (may not have been for some localities); then this legislation would add liability to those localities, as well as smaller localities, incentivizing vaccines.

Frankfort, Lexington, Louisville, and Owensboro have their own workers' compensation self-insurance programs. Louisville Metro recently approved utilizing American Rescue Plan funds for premium pay (bonuses), with essential employees receiving the second half of their \$5,000 or \$1,500 payment after showing proof of full vaccination or a waiver. The remaining employees would receive \$500 after showing proof of full vaccination or a waiver. Louisville Metro anticipates increased financial exposure and premiums with this legislation.

The Centers for Disease Control and Prevention's *Selected Adverse Events Reported after COVID-19 Vaccination* website shows very low percentages of those self-reporting serious adverse reactions.

Part III: Differences to Local Government Mandate Statement from Prior Versions

Part II refers to the bill as introduced, there are no previous versions.

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Data Sourc	ce(s): LRC Staff, Kentucky Employers' Mutual Inst	LRC Staff, Kentucky Employers' Mutual Insurance, Kentucky League of		
	Cities, Louisville Metro Government, Occu	Cities, Louisville Metro Government, Occupational Safety and Health		
	Administration COVID-19 Vaccination and Testing Emergency			
	Temporary Standard fact sheet, Centers for Disease Control and			
	Prevention's Selected Adverse Events Reported after COVID-19			
Vaccination website				
Preparer:	Katherine L. Halloran Reviewer: KHC	Date: 1/19/22		