

Are Employer-Mandated COVID-19 Vaccinations Worth a Shot?



When Minnesota's first stay-at-home order took effect, many employers believed office closures would be short-term. But as the pandemic progressed, it became apparent that remote work would continue for an extended period of time. Now, with multiple COVID-19 vaccines becoming available, employers may be tempted to mandate vaccinations for their employees to accelerate returning to the office. Before doing so, employers should pause to consider the legal implications as well as possible alternatives to a mandated vaccination policy.

Federal Guidance

On December 16, 2020, the Equal Employment Opportunity Commission ("EEOC") issued revised guidance on whether employer-mandated COVID-19 vaccinations are allowed under federal law. While federal law generally permits employers to develop policies that mandate the COVID-19 vaccine, employers must still comply with pertinent anti-discrimination laws.

Americans with Disabilities Act

The Americans with Disabilities Act ("ADA") allows employers to create safety-based qualification standards for employees. A COVID-19 vaccination requirement may be considered a safety-based qualification standard, but legal issues may arise if a disability prevents an employee from receiving the COVID-19 vaccine. In that situation, the employer must engage in an individualized analysis:

- **Determine if the unvaccinated employee poses a direct threat to the worksite.**
- **If a direct threat exists, consider available reasonable accommodations to eliminate or reduce the threat (e.g., mask wearing, social distancing, schedule changes, and isolation to a particular work area). Only if there is no way for the employer to provide reasonable accommodations can the unvaccinated employee be excluded from the workplace.**

Under the ADA, employers must also be mindful when requesting proof of vaccination. Although the vaccine itself is not a medical examination and asking for proof of the vaccination is not a disability-related inquiry, subsequent questions regarding why

the employee did not receive a vaccination may elicit information about a disability. The ADA requires that disability-related inquiries be job related and consistent with a business necessity.

Title VII of the Civil Rights Act

COVID-19 vaccination policies may also implicate Title VII of the Civil Rights Act, which prohibits discrimination on the basis of religion. If an employee opts out of the COVID-19 vaccine due to a sincerely held religious belief, the employer should be prepared to provide reasonable accommodations.

The EEOC recommends that employers assume an employee's request for religious accommodation is based on a sincerely held belief. However, additional supporting information may be necessary in some situations.

Alternatives to a Vaccination Mandate

For some employers, a COVID-19 vaccination mandate may prove difficult to establish or enforce. There are numerous alternatives to a mandate, including incentivizing employees to obtain the vaccine. For example, employers may wish to consider offering paid leave to obtain the vaccine or providing a small bonus or other benefit upon vaccination.

Conclusion

This is an emerging area of law, and new issues may arise as employers implement COVID-19 vaccination policies. To better understand the options available to your workplace, please contact your attorney at Moss & Barnett.



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