

COVID Vaccinations in the Workplace

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Now that the COVID-19 vaccines have begun to be distributed, employers are asking how it affects their employees and their businesses. The most prevalent question relates to whether employers can mandate that all of their employees be vaccinated.

Several federal agencies have issued guidance on this matter. The Equal Employment Opportunity Commission (“EEOC”) has recently updated its guidance resource, *What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws*, to focus on the impact of federal non-discrimination laws on an employer’s vaccine requirements. Of great importance is that the EEOC assumes that employers may mandate vaccines under certain circumstances. Employees, however, may be entitled to claim an exemption (i) under the Americans with Disabilities Act due to a medical condition or (ii) under Title VII due to a religious belief. Back in 2009, the EEOC issued guidance in the form of the *Pandemic Preparedness in the Workplace and the Americans with Disabilities Act*. The EEOC recognized that an employer is permitted to impose a vaccine mandate in the context of a pandemic, subject to religious or disability accommodations. In spite of its legal guidance, the EEOC suggests that employers should “encourage” rather than “require” employees to be vaccinated.

Ultimately, however, if an employee refuses to be vaccinated as part of a mandatory vaccination program, and no reasonable workplace accommodation is required or available, the employer may furlough the employee unless and until they comply with the mandate, or until the mandate is no longer necessary. Employers are advised, however, to consult with their employment and labor attorneys before taking this step.

The Occupational Safety and Health Administration (“OSHA”) issued a “letter of interpretation” in 2009, providing that employers may impose a vaccine mandate, with exceptions for disability or religious reasons.

The Centers for Disease Control and Prevention (“CDC”) currently “recommends”, but does not require, the vaccine for healthcare employees.

Another important question being asked is whether an employer must pay an employee for the time that the employee is receiving a vaccine. The most prudent answer depends upon whether the employer is mandating the vaccine, or just recommending the vaccine. If the employer is mandating the vaccine, the employer should pay for the time required to get vaccinated (if the vaccination is not administered during regular

working hours). If the vaccine is just recommended but not mandated, then the employer need not compensate the employee for any off-work time spent being vaccinated.

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