



Can Employers Mandate Vaccines?



The Equal Employment Opportunity Commission (EEOC) recently updated guidance regarding COVID-19 and clearly states that employers can require employees to receive COVID-19 vaccinations.

This is a significant development. The EEOC guidance allows employers to mandate COVID-19 vaccinations as a condition of returning to the workplace under the Americans with Disabilities Act (ADA) and the Genetic Information Nondiscrimination Act (GINA). However, the obligation to reasonably accommodate employees who have not been vaccinated because of a disability or sincerely held religious belief still stands.

Even with such clear support, instituting a mandatory vaccination policy may not be an easy choice for employers.

Employers should consider whether a mandatory policy is necessary for their business. As there is still a significant percentage of the adult population that remains unvaccinated, a business where employees can safely work remotely or socially distanced may not require this policy immediately. However, a retail business where employees deal with the public may deem it necessary or marketable to have all their employees vaccinated.

Employers must consider the logistics of implementing a mandatory vaccination policy. Though the EEOC states employers can require proof of vaccinations, "(e)mmployer questions, such as asking why an individual did not receive a

vaccination, may elicit information about a disability, and would be subject to the pertinent ADA standard that they be 'job-related and consistent with business necessity.'"

As a practical matter, employers must also consider how to handle an exemption request from an employee who does not have a disability or a legitimate religious objection. Will such employees be accommodated somehow, barred from the workplace, or have their employment terminated?

Again, employers must examine state and local requirements prior to implementing mandatory vaccination policies. Some states, such as California, have indicated that employers must maintain records of employee vaccinations as confidential medical records.

Unfortunately, another consideration for employers is the likelihood of litigation over a mandatory vaccination policy. There are currently several suits involving health care institutions' vaccine requirement for employees. Many plaintiffs argue that, since the COVID-19 vaccines have received only emergency use authorization from the FDA rather than full approval, employees should not be required to be inoculated.

In this ever-changing environment, employers must remain vigilant of federal, state and local requirements in order to maintain the practices and policies best for a healthy and safe workplace.

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