

NEWS & INSIGHTS

COVID-19 immunizations and employee relations considerations

BY: [RICHARD L. HACKMAN](#) | [INSIGHTS](#) | [LEGAL UPDATE](#)

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The below information is current as of the publication date listed. Because COVID-19 response measures on all fronts are continually evolving, clients should stay alert to new developments and consult with counsel on any critical questions.

With the imminent possibility of a COVID-19 vaccine, employers must be prepared for questions and concerns related to immunization for the virus. A [recent Gallup survey](#) indicated that approximately 42% of Americans would decline an approved COVID-19 vaccination. The same concerns voiced by the general populace most certainly will arise with employees, which will require employers to engage in a balancing act between employee relations

between those who have concerns about the vaccine and the employer's obligation to protect its employees, customers and clients from exposure to the COVID-19 virus.

May employers impose a vaccination requirement?

Employers may generally impose a vaccination requirement for employees, but certain considerations and exemptions exist. The U.S. Equal Employment Opportunity Commission (EEOC) and the Occupational Safety and Health Administration (OSHA) have previously deemed mandatory flu vaccinations as permissible, subject to exemptions for sincerely held religious beliefs or medical/disability reasons. However, to date, no federal or state agency has addressed whether an employer-imposed COVID-19 vaccine requirement is permissible. At this time, employers can only look to past guidance from these agencies as a potential prelude for future direction.

Practical steps to consider when implementing a COVID-19 vaccination policy

Choose the policy that is right for your workforce. For many employers, a mandatory vaccination policy may be necessary (e.g., healthcare) for all employees and could be considered a term and condition of employment. However, for other employers, mandating only certain employees be vaccinated may be more appropriate and less "heavy-handed." However, even if an employer requires only a limited number of employees to be immunized, there is still the risk that the virus will spread throughout the workplace.

Provisions to include in an immunization policy. If an employer does not currently have an immunization policy, or, in light of an imminent COVID-19 vaccine, seeks to revise its policy, there are a number of provisions that should be included such as: a defined basis for the policy, procedures for vaccinations, who pays for the immunization and consequences for non-compliance.

Handling requests for exemptions. When establishing a mandatory vaccination policy, employers should have a process in place to address requests for exemptions. The procedure should take into consideration employee requests for exemptions based on medical reasons or the ADA, or religious beliefs under Title VII and possible reasonable accommodations.

Garnering support for a mandatory COVID-19 vaccination policy. Employers should consider offering educational programs and informative documentation to employees to gain voluntary support and "buy in" for vaccinations. A "point person" should be designated for employee questions related to the vaccination's efficacy and the process for receiving the vaccination. Management who lead by example and willingly and immediately become vaccinated will certainly contribute positive reinforcement that becoming vaccinated for COVID-19 is vitally important to overall health and well-being.

Seek further guidance

Employers should carefully consider the process and procedures for implementing a mandatory COVID-19 vaccine

policy and remain vigilant for further guidance from the EEOC and OSHA, which will hopefully clarify an employer's rights and responsibilities with respect to mandating a COVID-19 vaccination.

Saxton & Stump attorneys [Rick Hackman](#) and [Steve Fleury](#) are available to discuss your questions related to the COVID-19 vaccine and how our [Employment](#) group can help you devise an appropriate plan to navigate this complex issue.

Read More: [EEOC issues COVID-19 vaccination guidance – December 21, 2020](#)

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