

NEWS & INSIGHTS

Mishandling COVID-19 vaccine hiring requirements may run afoul of equal employment opportunity guidance

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

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Spurred by the Biden Administration's pronouncement that employers with 100 or more employees will be required to mandate vaccinations of their workforce, some employers are taking the proactive step of publicizing vaccination status as a condition of employment and seeking only vaccinated candidates. However, engaging in this practice may run afoul of EEOC guidance.

While it may seem beneficial to an employer to be able to expedite the hiring and onboarding process by clearing the “vaccination status hurdle” prior to the interview and application process, a failure to conduct an individualized inquiry with respect to this issue could lead to a discrimination charge under Federal and/or State law.

As a reminder, while employers are permitted to require the COVID-19 vaccination as a condition of employment, employers must accommodate current employees and job applicants who may require an exemption pursuant to a disability or sincerely held religious belief. Accordingly, by preemptively and uniformly excluding unvaccinated individuals from employment consideration without conducting the required individualized inquiry to determine whether an accommodation is possible, employers assume a risk of a charge of discrimination based on the failure to accommodate an applicant.

To avoid discrimination charges based on the scenario described above, employers should apply the following best practices:

1. Maintain a written vaccination policy
2. Inform candidates of any vaccine requirement in the early stages of the interview process, e.g., they must be vaccinated before commencing employment
3. Refrain from posting job announcements that include unequivocal language that only vaccinated applicants will be considered

A better approach may be to advise applicants in a job posting that the company maintains a vaccination policy, and then, during the interview process, communicate the provisions of the policy and permissible exceptions.

Seek legal advice before implementing policy mandates

Knowledgeable legal counsel can be critical for navigating today’s challenging regulatory environment for employers. Saxton & Stump’s [Labor and Employment Law](#) team, led by attorney [Richard L. Hackman](#), is available to assist and has extensive experience representing and counseling entities of all sizes and types including healthcare organizations, manufacturers, retailers, and service industry businesses.

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