

## How employers should handle vaccination issues in relation to COVID-19 vaccination



Ryan Neumeyer | Monday, December 28, 2020

Mandatory vaccination policies are typically legal, but in many cases implementing such policies may prove challenging. In a recent Gallup Poll, only 58% of those in the U.S. said they would willingly be vaccinated. That potentially leaves a significant percent of individuals unvaccinated creating a dilemma for employers about whether to mandate vaccines for employees.

On December 16, the Equal Employment Opportunity Commission issued direct guidance on this issue that will assist employers looking for permissible parameters for a mandatory vaccine policy. First, the EEOC's guidance indicates that employers may implement mandatory vaccination policies. However, the EEOC also noted that employers are required to consider exceptions for employees who object to the vaccine due to a disability or for religious reasons.

### **Religious Accommodations**

Employees may request an accommodation for a deeply held religious belief that prevents vaccination. Employers must provide reasonable accommodation for such beliefs unless it would pose an undue hardship, which, for religious belief, is defined as "more than a de minimis cost or burden to the employer." This may require a vaccine that contains different agents or additional mitigation measures such as social distancing, mask wearing, reassignment, etc.

### **Disability Accommodations**

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Employees may also be entitled to an exemption from a mandatory vaccination requirement under the Americans with Disabilities Act based on a disability that prevents the employee from taking a vaccine. In this situation, employers must attempt to reasonably accommodate employees.

Generally, for both exceptions, an employer may require that an employee making the request, provide documentation to support the need for an accommodation. Employers should engage in the interactive process to identify whether reasonable accommodations are possible – such as remote work. The EEOC notes that if no accommodation is possible to keep the employee working, then the employer may temporarily exclude the individual from the workplace, but may not necessarily terminate the employee. The employer may actually provide some leave prior to termination, as the need for a vaccination may end during a reasonable time period.

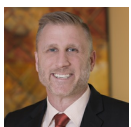
For employers considering a mandatory vaccine policy, the EEOC also made clear that an employer may request proof of vaccination from its employees. However, employers should advise employees not to provide medical or genetic information as part of the proof. Further, according to the EEOC “subsequent employer 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.’ ”

### **Practical Advice for Employers**

While employers may not face a decision on mandatory vaccines until the shots are more widely available, employers who do decide to require vaccinations should consider these items as part of a comprehensive workplace vaccination protocol:

- Bear the costs for the vaccine
- Establish a process for employees to opt out for religious or health reasons
- Train human resources to be responsible for the process
- Update job descriptions so that functions that require mandatory vaccination are included, such as travel, customer facing positions, close interaction required
- Ensure that medical records are kept separate from other personnel records
- Ensure that the company is prepared to have employees quit and ensure operations if a large number of employees do quit rather than comply with the requirement
- Review union contracts and address collective bargaining issues
- Check insurance policies to determine if there is coverage available if there are issues following a mandatory plan
- Make sure all management staff is trained on how to respond to questions and present messaging relating to the employer’s position on vaccination

Over the past year, employers have been faced with many challenges. As the year draws near to end, it appears that 2021 will continue to pose even more challenges. The labor and employment attorneys at McDonald Hopkins are here, as always, to assist and guide you through these difficult times.



**Ryan Neumeyer**

