

COVID-19 VACCINES IN THE WORKPLACE



Insurance Implications

As COVID-19 vaccines become more widely available, many employers will be faced with difficult decisions on how to address vaccination in the workplace. On December 16, 2020, the Equal Employment Opportunity Commission (EEOC) issued [guidance](#) indicating that employers can require their workers to get a COVID-19 vaccine within the legal confines of the Americans with Disabilities Act (ADA) and Title VII of the Civil Rights Act, even while under the Emergency Use Authorization.

There are many advantages to having a vaccinated workforce, including reduced employee illness and being able to reassure customers that every possible measure is being taken to assure their safety. At the same time, a mandatory vaccination program is ripe with potential pitfalls, and the decision to implement such a program should not be taken lightly. Here are just a few things to keep in mind, particularly when it comes to insurance:

- Employers that require the COVID-19 vaccine must consider reasonable accommodations for employees with disabilities or religious objections. The employer must engage in the interactive process and try to find a reasonable accommodation without presenting a significant risk to other employees. If the interactive process fails to produce an outcome that is agreeable to all parties or is conducted in an inconsistent manner, the employer may be subject to claims alleging **discrimination and/or retaliation**.
- Although the EEOC does not consider the act of administering vaccination a “medical exam,” employers should be aware that the vaccination pre-screening questions may implicate the ADA’s provisions on disability related inquiries. Failure to ensure that these questions are “job-related and consistent with business necessity” may lead to claims alleging **invasion of privacy**, or illegally eliciting information protected under the Genetic Information Nondiscrimination Act (GINA).
- Failure to appropriately compensate employees for their time or cover costs associated with an employer-mandated vaccine could potentially lead to **wage and hour** claims. Employers may also need to evaluate paid time for post-vaccination symptoms.
- Any employee injuries (e.g. adverse reaction) due to taking an employer-mandated vaccine would likely be covered by **workers compensation**. Coverage could be triggered by a variety of scenarios, including requiring vaccination for continued employment or as a condition for physically returning to work, providing vaccinations to employees directly, or even by simply facilitating employees’ vaccinations (e.g. paying for vaccinations, setting appointments, providing on-site vaccinations).
- If vaccination is required and an employee refuses to comply, the employer may ultimately have to terminate the employee, which could result in a **wrongful termination** claim.

Employers will need to determine whether to mandate, encourage, or remain neutral. Regardless, every situation is unique, and employers must weigh the risks and benefits of workplace safety, while balancing business needs, employee morale, and legal exposure.

Any new employment policy or practice needs to be **reviewed with counsel** to be sure all potential avenues of legal exposure are identified and managed. Counsel will also be able to address the legality of alternatives strategies, such as vaccine incentives.

Employers should continue to monitor the EEOC for any updates as well as California’s [Department of Fair Employment and Housing](#) for state specific vaccine mandate guidance. Employers should also monitor all federal, state, and local workplace safety guidance and standards for vaccination updates to assure compliance.

The material contained in this document is intended for informational purposes only and is not to be construed as legal advice.

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