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Question of the Day: Mandatory COVID Vaccinations

Legal Update

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Question

Once there is a COVID-19 vaccine, can an employer mandate that its employees be vaccinated?

Answer

In most cases, yes, if the employer allows for religious and disability exemptions, but even then it should proceed cautiously.

As the world continues to wait for a COVID-19 vaccine, many businesses are considering what a vaccine would mean for their workplace. While a vaccinated workforce could benefit businesses and employees, employers must be mindful of their obligations under the Americans with Disabilities Act (ADA) and Title VII of the Civil Rights Act of 1964 (Title VII), and similar state and local laws.

For covered employers, these statutes require the employer to grant an exemption from becoming vaccinated based on an employee's disability or sincerely held religious belief, unless the exemption would cause the employer undue hardship. What constitutes an undue hardship depends on the facts and circumstances. The test for what constitutes an undue hardship based on religious belief is fairly low, namely, would the accommodation impose more than a minimal burden on operation of the business. On the other hand, the test is higher in the case of disability and focuses on whether the requested accommodation involves significant difficulty or expense in light of the particular employer's resources and circumstances.

There may be other legal and practical limitations as well. For example, a unionized employer might not be able to unilaterally require vaccinations under the terms of the collective bargaining agreement. As a practical matter, mandating vaccines may provoke an employee backlash and morale problems, including legitimate unease about the safety and effectiveness of fast-tracked vaccines. Finally, mandating vaccines inevitably raises tricky questions about how the employer will deal with employees who refuse vaccination for reasons other than legally-protected grounds such as disability or religion.

Employers should begin planning now for a vaccine and thinking about whether COVID-19 vaccination will be mandatory or encouraged. The EEOC recommends the latter, advising that “ADA-covered employers should consider simply encouraging employees to get the influenza vaccine rather than requiring them to take it.” As the agency that enforces Title VII and the ADA, the EEOC’s recommendation should be considered during an employer’s decision-making process. Employers also should watch for possible future guidance from agencies, including the EEOC, the Centers for Disease Control and Prevention (CDC), the Occupational Safety and Health Administration (OSHA), and the employer’s state department of health.

If an employer eventually decides to mandate a COVID-19 vaccine, it should have a process in place to respond to employee requests for exemptions. The process may include a policy, up-to-date forms for seeking exemption, and designating a human resources professional to handle exemption requests. Employers also should consult with legal counsel about exemptions and responding to employee refusals.

Takeaways

Even during a pandemic, an employer may not require its employees to become vaccinated without regard to their medical conditions or sincerely held religious belief. Employers should consider carefully whether they will require or simply encourage employees to become vaccinated. If the employer requires vaccination, it should consult with legal counsel and prepare early for responding to employee questions and requests for exemptions.

If you have questions, contact your Fredrikson Employment attorney.

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