

Can Employers Require COVID-19 Vaccinations?

For employers who are asking “How soon can our employees be vaccinated?” there are important issues to consider with respect to company policies that mandate vaccination. While everyone is eagerly awaiting the moment when the various workplace restrictions imposed during the pandemic will be lifted, it is important to remember that certain state and federal guidelines for employer conduct remain in place. Below are some requirements that employers must follow when requiring their employees to receive the COVID-19 vaccine.

➡ **Considerations for Mandating Vaccinations.** On December 16, 2020, the US Equal Employment Opportunity Commission (“EEOC”) determined that employers are allowed to require their employees to get COVID-19 vaccinations prior to returning to onsite work. Here are some considerations to take into account if the employee refuses to receive the vaccine:

1. Determine if the employee has a reasonable cause for refusing the vaccine, based on a disability that is recognized by the Americans with Disabilities Act (“ADA”).
2. Assess whether the employee’s refusal is sincerely based upon religious objections that would be protected under Title VII of the Civil Rights Act.
3. If an employee refuses to receive the vaccine due to current pregnancy and concerns about the still unknown ways the vaccine might affect the unborn child, their wishes must be respected by their employer

The assessment of whether or not any of these three exceptions are legitimate must be conducted on an individual and personalized basis for each affected employee.

➡ **Employers May Be Able to Override Exceptions in Certain Circumstances.** If an employee does have a valid exception for refusing to receive a COVID-19 vaccination, an employer still may be able to terminate their position if all of the following are true:

1. The unvaccinated employee poses a direct threat to others in the work place;
2. The direct threat the employee poses to the workplace cannot be reduced to an acceptable level (for instance, by having the employee work from home, remotely); and
3. No other relevant legal protection is in play (for example, a claim under the Family and Medical Leave Act).

➡ **Evolving Law in 2021 – Stay Tuned!** To protect against future liability, employers should consult with an employment law attorney prior to instituting any policies regarding mandated COVID-19 vaccinations. Diligent and good faith interpretation of the EEOC guidelines mentioned above will most likely insulate employers against much of the liability they might otherwise face.

We hope you have found this information helpful.

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