



What to Consider Before Implementing a Mandatory Vaccine Policy

The first COVID-19 vaccines have been released, with more to come in the near future. This landmark development raises important questions – can employers require their employees to get the COVID-19 vaccine as a term and condition of continued employment when it becomes available to them? And if an employer implements such a mandate, would it be lawful?

Are mandatory vaccine policies lawful?

The Equal Employment Opportunity Commission (“EEOC”) spoke on December 16, 2020 on the COVID-19 vaccine. See [What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws](#) (the “Guidance”). Section K of the Guidance was newly added on December 16, and specifically discusses vaccine-related issues. The Guidance addressed concerns around vaccines related to several federal employment laws that the EEOC is tasked with enforcing, including the Americans with Disabilities Act (“ADA”), Title VII of the Civil Rights Act of 1964 (“Title VII”), and the Genetic Information Nondiscrimination Act (“GINA”).

This Guidance discusses the potential legal issues that are likely to develop, but does not offer an opinion as to the ultimate legality of a mandatory vaccine policy. Such a policy is likely lawful, so long as an employer provides reasonable accommodations to those who need them for health or religious reasons and does not collect any health or genetic information in administering the vaccine.

But it is important to note that the EEOC is only responsible for enforcing a small subset of laws that are applicable to employees and that mandatory COVID-19 vaccination policies could be subject to other types of legal challenges. Employers

should carefully monitor this issue.

What should employers take into consideration when deciding whether to implement a mandatory vaccine policy?

When deciding whether to implement a mandatory vaccination policy, employers should carefully consider the consequences, including whether requiring the vaccine is necessary for the normal functioning of the workplace. For example, a health care provider that treats COVID-19 patients might feel it necessary to implement a mandatory vaccine policy, whereas an office that has been working remotely and can continue to do so may not need such a policy.

If an employer feels the workplace necessitates a mandatory vaccine policy, there are further questions to ask. Who will be required to get the vaccine? What will the procedure be for administering the vaccine? Will the employer pay for the vaccine? What will the consequences be for employees who refuse to be vaccinated (without a legitimate reason)? When will the policy go into effect? Employers will need to carefully consider these issues before implementing the policy.

The Guidance provides some suggestion as to overall legal risk for employers who would like their employees to be vaccinated. It is much less risky for employers to encourage their employees to get the vaccine, rather than mandate it. If a vaccine mandate is necessary for the work environment, it is also less risky to require employees to produce proof that they have been vaccinated for COVID-19, rather than to provide the vaccinations themselves.

Most importantly, it would be prudent for an employer to consult with a competent labor and employment attorney that will help them think through all of the issues raised above and advise it on the best way to implement such a policy for its particular workforce.

Key Takeaways

1. The EEOC has issued new guidance on the COVID-19 vaccine and potential legal implications under the employment laws it enforces. While it does not offer a final opinion, it does suggest that a mandatory vaccine policy is likely lawful so long as the employer provides reasonable accommodations for health and religious

reasons and does not collect health or genetic information.

2. Employers should carefully analyze whether it makes sense for them to implement a mandatory COVID-19 vaccination policy. Depending on the work environment, it may not make sense to implement one.
3. Employers who wish to implement a mandatory COVID-19 vaccination policy should seek the advice of a competent labor and employment attorney before attempting to implement it.

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