

CAN EMPLOYERS REQUIRE COVID-19 VACCINATION?

Aurora Levinson, Esq.

Last December, the U.S. rolled out its first vaccines against COVID-19, marking a turning point in the pandemic. Many employers wondered whether they could or should require employees to vaccinate. Another question is whether this requirement would violate ADA and religious mandate regulations.

Background

Shortly after the vaccine rollout began, the EEOC issued guidelines on vaccinations, employment, and the ADA.ⁱ The guidelines indicate a vaccination is not a medical examination and so the ADA does not apply. However, the employer must make sure: 1) the vaccines are administered for protection of staff and clients, and 2) the employer does not request information regarding the employee's impairments or health status.

Importantly, the pre-screening questions to receive the vaccine *may be* ADA-related. If the employer or a contractor hired by it administer the vaccine, they must show the screening inquiries are job-related and consistent with business necessity. Alternatively, the employer can require employees to obtain the vaccine on their own. This way the employee would not disclose personal health information to the employer. In this case, asking for proof of vaccination is not ADA-related.

What if an employee chooses not to be vaccinated due to a disability or health condition?

Can an employer terminate the employee? The short answer is: *probably not*. The guidelines require employers to address whether the failure to vaccinate poses a significant risk of substantial harm to the health and safety of the individual or others and cannot be eliminated or reduced by reasonable accommodation.

Thus, an employer must determine if there are reasonable accommodations for employees who cannot vaccinate due to disability or health conditions. There are various alternatives for reasonable accommodations available.ⁱⁱ However, accommodations may not be possible if they pose undue hardship. Undue hardship must be based on an individualized assessment of current circumstances to show a specific reasonable accommodation would cause significant difficulty or expense.

If reasonable accommodations are not available, the guidelines recommend considering leave under the FMLA, FFCRA, and the employer's own policies. Employers should review their own state guidelines before proceeding with termination.

Can an employee choose not to be vaccinated due to a religious belief?

The guidelines are similar to disabilities and health conditions for deeply held religious beliefs. However, the employer may ask for information about said religious belief. The employer must then address whether they



ABOUT THE AUTHOR

Aurora Levinson is Senior Counsel in Tyson & Mendes' Seattle office. Her practice focuses on defending Washington businesses and individuals in general liability and personal injury litigation. Contact Aurora at a Levinson@tysonmendes.com.

can provide a reasonable accommodation. If the accommodation poses undue hardship, the employer should review state, local, and federal employment laws to ensure compliance with relevant laws before taking additional steps.

Takeaway

As vaccination efforts advance, there will be more questions about vaccinations and employment. Employers should carefully review all applicable laws and guidelines and may wish to consult with an attorney to ensure compliance on a case-by-case basis.

ⁱ EEOC, What You Should Know About Covid-19 and ADA Rehabilitation Act, <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>

ⁱⁱ See <http://www.askjan.org>, OSHA, and the EEOC website.

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