

Can Employers Mandate a COVID-19 Vaccination?

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Since early March, the COVID-19 pandemic has forced employers to quickly reassess established policies and develop new policies. While a vaccine is still being developed, widespread availability of a COVID-19 vaccine is expected by early next year. In anticipation, employers should begin to carefully consider whether they will require employees to get vaccinated.

Generally, employers should proceed cautiously in implementing mandatory vaccination policies. Currently, the [EEOC warns against requiring employees to get a vaccination](#) and instead advises employers to merely encourage vaccination. Employers may also face resistance from employees due to general fears of shots and doubts surrounding the safety and effectiveness of the COVID-19 vaccine. Before mandating vaccination, employers should therefore carefully balance their commitment to protect others against infectious diseases and their employees' rights and protections under the law, particularly the Americans with Disabilities Act (ADA) and Title VII of the Civil Rights Act of 1964.

Under the ADA, covered employers may be required to accommodate certain employees from mandatory vaccination policies on the basis of medical reasons. Pursuant to the ADA, qualified individuals with an ADA disability may seek an accommodation unless the accommodation is unreasonable or creates an "undue hardship" on the employer. Consequently, employers should consult with legal counsel in establishing a plan on how to deal with a possible ADA accommodation should it decide to mandate COVID-19 vaccinations.

Mandating coronavirus immunizations may also trigger Title VII protections for employees declining to get the vaccine due to their religious beliefs and practices. Similar to the ADA, Title VII requires employers to make reasonable accommodations for their employee's religious beliefs and practices, absent an undue hardship to the employer. Deciphering the sincerity of the employee's religious beliefs is a delicate and difficult task for employers.^[1] Employers seeking to require its employees to receive a COVID-19 vaccine must also prepare a plan addressing Title VII accommodations.

There are many other key factors that play a role in an employer's decision to mandate COVID-19 vaccines, such as industry requirements, considerations under applicable state laws, ease of availability, insurance coverage, and even ethical concerns. Helpful resources which employers should consider include the [CDC's vaccine recommendations](#) and the [EEOC website](#) which has been updated periodically with guidance on dealing with COVID-19.

Should you have any questions about implementing a mandatory vaccination policy, please contact a member of Saiber's Labor & Employment Law practice.

[1] See E.E.O.C. v. Unión Independiente de la Autoridad de Acueductos y Alcantarillados de Puerto Rico, 279 F.3d 49, 56-57 (1st Cir. 2002) (holding “assessing the bona fides of an employee's religious belief is a delicate business” and a “quintessential” question of fact).