

COVID-19 Vaccine Eligibility is Expanding after New Jersey Issues Employer Guidance Regarding Mandatory Vaccination

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Governor Murphy announced last week that all individuals who are 16 and older will be eligible to receive a COVID-19 vaccination starting on April 19, 2021. With this announcement, more employers are hoping to return to “normal” business operations. While recent guidance states that employers *may* require New Jersey employees to get vaccinated against COVID-19, there are caveats with doing so that should be considered before implementing such a program.

Under [New Jersey’s guidance](#) issued last month, which is similar to the guidance issued by the Equal Employment Opportunity Commission (EEOC) [in December 2020](#), New Jersey discusses three circumstances under the New Jersey Law Against Discrimination (“LAD”) which may enable an employee to seek an exemption from a workplace mandatory vaccine policy: (1) the employee cannot be vaccinated due to a disability; (2) the employee’s physician has advised them against getting the vaccination while pregnant or breastfeeding; or (3) because of the employee’s sincerely held religious belief, practice, or observance.

The New Jersey Division of Civil Rights enforces the LAD and [provides additional guidance](#) with respect to employees who seek such exemptions. In particular, employers may ask for medical documentation from New Jersey employees who seek exemption under the first two categories to confirm their alleged disability or their doctor’s recommendation to not get vaccinated, but employers must ensure they take steps to maintain the confidentiality of such information in accordance with applicable laws. Employers should also have such information entrusted to a designated individual. Doing so protects the employee’s medical information and can shield the employer from liability by limiting those with knowledge of the employee’s medical conditions. As for employees claiming exemption on religious grounds, New Jersey makes it clear that employers may not question the employee’s sincerity of their claimed religious beliefs, practices, or observances unless the employer has an objective basis for questioning the sincerity of those beliefs, practices or observances. Even then, employers may only make a limited inquiry into the facts and circumstances surrounding the employee’s request for exemption based on their religious beliefs.

If an employee falls within any of the three categories, employers are required to reasonably accommodate the employee unless doing so would impose “an undue burden on their operations.” In evaluating the reasonableness of a potential accommodation, employers may consider a number of factors, including but not limited to the safety of other employees, clients, and customers. Consideration of such safety-related factors must be based on objective scientific evidence as reflected in policies and guidance from federal, state, and local authorities and not on unfounded assumptions or stereotypes. Some examples of reasonable accommodations

employers may be required to provide include permitting the employee to continue working remotely or providing the employee with personal protective equipment so as to mitigate the risk of COVID-19 transmission and exposure.

Both the EEOC and NJ guidance make clear that disciplining an employee for not getting vaccinated may violate other applicable laws, regulations, or policies. Therefore employers should seek counsel before mandating vaccines and/or enforcing such policies by disciplining, terminating or excluding an unvaccinated employee from the workplace.

As the situation continues to evolve, this information may be subject to change.