

# The Question Everyone Is Asking: Can We Require Our Employees to Receive the COVID-19 Vaccine?

By **Julie Levinson Werner**

At long last, in a very challenging year, some good news is finally here: the FDA has granted emergency authorization for the use of a COVID-19 vaccine, and the process is now underway to distribute the vaccine to millions of Americans. A second vaccine may receive emergency authorization very soon. Many employers eager to get their workforce back onsite are now asking the obvious question: Can we require that our employees get vaccinated? In typical lawyer fashion, the answer is... it depends.

The U.S. Equal Employment Opportunity Commission ("EEOC") issued guidance this week acknowledging that, in most instances, employers can require employees be vaccinated before returning to work onsite. Under the Americans with Disabilities Act ("ADA"), employers have the right to require that an employee not pose a direct threat to the health or safety of individuals in the workplace. This section of the ADA allows an employer to require that employees get vaccinated before they can physically return to work, since an unvaccinated employee could pose a direct threat due to a "significant risk of substantial harm to the health or safety of the individual or otherwise that cannot be eliminated or reduced by reasonable accommodation."

In other words, because COVID-19 is a highly communicable disease that the EEOC already has declared poses a threat to the health and safety of others, an employer can exclude unvaccinated employees from physically entering the workplace. However, this does not mean the employer may automatically terminate unvaccinated employees. Instead, employers

must then determine whether they can reasonably accommodate employees who are disabled or who have a sincerely held religious belief that prevents them from receiving the vaccine or if providing the accommodation would pose an undue hardship on the employer. In most cases, the likely accommodation would be for the employer to permit the employee to work from home, so long as the employee could still perform the essential functions of the job.

Although an employer can legally require its employees to be vaccinated before returning onsite, an employer also should consider whether it wants to issue such a mandate. Depending on the nature of the employer's operations, the ability of the employees to successfully operate remotely over the last 10 months, company culture, and the mindset of the employees (just to name a few considerations), an employer may prefer encouragement or persuasion over mandating vaccination.

Yesterday's guidance from the EEOC is welcome news, but it is unlikely to be the final word. We expect that further guidance will be issued at the federal, state, and local levels. We also anticipate that businesses will come out differently on vaccine mandates. We will continue to monitor these developments closely and keep you updated.

***To see our prior alerts and other material related to the pandemic, please visit the [Coronavirus/COVID-19: Facts, Insights & Resources](#) page of our website by clicking [here](#).***

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