

December 4, 2020 | COVID-19, Employment & Employee Benefits, Insights

## Can Employers Require COVID-19 Vaccinations?

By: Rich May, J. Allen Holland

**UPDATE:** In a publication issued on December 16, 2020, the EEOC confirmed the guidance contained in this Rich May blog. With limited exceptions, employers can require employees to get a COVID-19 vaccine and can bar them from the workplace if they refuse.

Now that several pharmaceutical companies have successfully tested coronavirus vaccines, employers and employees are contemplating a return to business as usual. However, if and when vaccines become widely available, can employers mandate that employees be vaccinated?

The short answer is: Yes, but there are complications that employers must consider.

While there is no law or regulation directly on point, it has long been recognized that employers can require their employees receive vaccinations. The flu vaccine, for instance, is commonly required in certain industries. The ongoing pandemic provides additional justification for mandating vaccinations. Federal agencies such as the Equal Employment Opportunity Commission (EEOC), Centers for Disease Control (CDC), and Center for Medicare & Medicaid Services (CMS) have all issued rules and guidance explicitly recognizing the threat that COVID-19 poses. In light of these emergency circumstances, any policy mandating vaccination is likely to be looked upon favorably.

Under any mandatory vaccination policy, employers may have to provide exemptions and/or accommodations in limited circumstances. Employees can be exempted from mandatory vaccination policies if they have a disability covered by the Americans with Disabilities Act (ADA) that prevents them from taking the vaccine, or, pursuant to Title VII of the Civil Rights Act of 1964, if the employee has a sincerely held religious belief which would be violated by receiving a vaccine. Depending on the circumstances, employers may be required to provide exempt employees with reasonable accommodations which could include measures such as additional personal protective equipment, moving the work stations, temporary reassignment, working from home, or a leave of absence. Employers will also have to consider any forthcoming federal or state guidance, as well as any other relevant materials such as collective bargaining agreements.



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Beyond established legal precedent, COVID-19 presents unique challenges for employers to consider. If and when a vaccine becomes available it will first be under the preliminary designation of “emergency use authorization” (EUA) rather than a full FDA approval. It is not clear whether the initial EUA designation will provide employees a temporary basis to refuse vaccination. Additionally, rightly or wrongly, many Americans have concerns about the safety of vaccines developed on a shortened timeline. In many instances beliefs about COVID-19 and vaccines have also become political. Before mandating a vaccination, employers should consider how they will respond if a material portion of their workforce refuses to comply.

Anyone with questions can contact Rich May, P.C. attorneys [Nathaniel Donoghue](#) or [Allen Holland](#).

*Disclaimer: This summary is provided for educational and informational purposes only and is not legal advice. Any specific questions about these topics should be directed to attorneys Nathaniel Donoghue or J. Allen Holland.*