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September 28, 2021

**VIA EMAIL**

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Dear Business Leaders,

We are in receipt of your letter sent to our Office last month, in which you describe how California businesses have been working hard to help vaccinate employees and customers in response to COVID-19. We applaud these efforts as we share the common goal of increasing vaccination rates. You note the increasing number of businesses that have implemented vaccine requirements, and you desire more clarity with respect to protections for businesses who implement vaccine requirements. Some recent developments and public resources provide additional helpful information.

The U.S. Food and Drug Administration (FDA) decision to approve the first COVID-19 vaccine should instill greater public confidence that the vaccine meets high standards for safety and effectiveness. Vaccines have been available under the FDA's emergency use authorization (EUA) and it should be noted that the U.S. Department of Justice, Office of Legal Counsel previously stated that vaccine approval status under a EUA did not prohibit employers from imposing vaccination requirements.<sup>1</sup>

In crafting vaccination policies, we suggest that employers should consult the following public resources.

First, the U.S. Equal Employment Opportunity Commission (EEOC) issued technical assistance FAQs, entitled *What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws*.<sup>2</sup> This document includes a section on vaccine mandates and provides that federal EEO laws do not prevent an employer from requiring all employees physically entering the workplace to be vaccinated for COVID-19, subject to the reasonable accommodation provisions of Title VII and the ADA and other considerations.

Second, California's Department of Fair Employment and Housing (DFEH) issued similar guidance regarding vaccinations. It provides, in part, that employers may require employees to receive an FDA-approved vaccination against COVID-19 infection so long as the employer: (1) does not discriminate against or harass employees or job applicants on the basis of a protected characteristic, (2) provides reasonable accommodations related to disability or sincerely held religious beliefs or practices, and (3) does not retaliate against anyone for engaging in protected activity.<sup>3</sup>

Third, the California Labor Commissioner's Office published a set of "COVID-19 Testing and Vaccine FAQs," which identifies some employer obligations with respect to mandatory vaccines and testing.<sup>4</sup>

It is of course unacceptable to harass or assault business owners or employees who are merely attempting to promote reasonable health and safety policies such as enforcing mask mandates. The

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<sup>1</sup> <https://www.justice.gov/olc/opinion/whether-section-564-food-drug-and-cosmetic-act-prohibits-entities-requiring-use-vaccine>

<sup>2</sup> <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws#K>

<sup>3</sup> [https://www.dfeh.ca.gov/wp-content/uploads/sites/32/2020/03/DFEH-Employment-Information-on-COVID-19-FAQ\\_ENG.pdf](https://www.dfeh.ca.gov/wp-content/uploads/sites/32/2020/03/DFEH-Employment-Information-on-COVID-19-FAQ_ENG.pdf)

<sup>4</sup> <https://www.dir.ca.gov/dlse/COVID19resources/FAQs-Testing-Vaccine.html>

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Attorney General supports taking all appropriate action, including prosecution, to deter and punish such actions.

We commend your leadership on behalf of California businesses and applaud your efforts to make California safer for everyone by increasing vaccination rates. The Attorney General's office will continue to evaluate additional steps we may be able to take to advance our shared goal of promoting healthy and safe workplaces.

Please feel free to contact me directly if you have any questions or if I can be of any assistance.

Sincerely,

A handwritten signature in blue ink that reads "James M. Toma". The signature is fluid and cursive, with the first letters of each word being capitalized and prominent.

JAMES TOMA  
Special Assistant to the Attorney General

For ROB BONTA  
Attorney General