Can employers mandate workers be vaccinated before returning to work?

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With COVID-19 vaccines now being administered in the U.S., planning for a post-pandemic future could soon be a reality. As employers prepare to reopen offices, they have to consider whether they are going to require employees be vaccinated, and have the processes in place to support such a mandate.

"Protection is a must, not a nice to have," says Gary Pearce, chief risk architect at Aclaimant, a workplace safety and risk management platform. "If you can't demonstrate that you're protecting your own people, you're not going to be able to keep employees."

The Pfizer vaccine has been authorized by the Food and Drug Administration and will provide 100 million doses of the vaccine by the end of March, 2021. A second vaccine from Moderna is undergoing authorization from the FDA this week. Moderna has also promised 100 million doses by March.

Sixty percent of Americans say they would "definitely" or "probably" get a coronavirus vaccine, according to the Pew Research Center. Twenty-one percent say they do not plan to get vaccinated.

Employers may be tasked with mandating employees be vaccinated before returning to work. This tactic could be challenging because of personal opinions about vaccines, as well as the timeline of the roll out.

"There's still a lot of objection about vaccinations. Part of it is concern and part of it is ignorance," Pearce says. "Given the reality, it won't be like we're flicking a switch. The vaccine will roll out over time."

While employers are eager to return to the physical workplace, ensuring the safety of their employees must be top priority, Pearce says. Employers should communicate frequently and openly with employees to ensure they feel heard and their concerns are being met. He shares how employers can navigate vaccine mandates for COVID-19 and the best way to enforce these rules before returning to work.

Can employers require employees to have the COVID-19 vaccine before returning to work?

It's pretty clearly established that yes, [individual] employers can require mandatory vaccinations, as a matter of prior health crises and common law. There'll be some industries where it's going to be a mandate, like in healthcare, for example. But private employers generally can require their employees to be vaccinated.

There are some exceptions. If somebody has a medical condition that puts them at a reasonable risk, then you have to go through the traditional Americans with Disabilities Act dialogue of determining whether a reasonable accommodation can be provided or whether having to provide such an accommodation would constitute an undue hardship. The second big issue is that if you have somebody who has a bonafide religious objection, you have to take that into consideration. You might want to make an accommodation, but that obligation is not absolute.

How can employers enforce this rule?

If you're going to have that requirement, you have to have all the administrative processes in place. How do you verify as an employer that somebody went and got it? What documentation will suffice? How will you ensure confidentiality of this medical information?

If somebody is very resistant to this mandate, they could be a workplace disrupter. If ultimately you say, 'You've had the opportunity to follow the mandate,' then what else are you willing to do to make good on that? You should be prepared to find qualified replacements.

You can't just base your program and processes around what COVID-19 regulations are, because they are almost always retroactive to real world developments. Instead, base it around what the right thing is to do for your workforce, and use your relationships with your employees as a way to shape and inform the program you establish.

What are some alternatives to an employer mandate to get employees on board with this policy?

There's a certain trust culture and an existing relationship you have with your workforce. The science and information regarding COVID is constantly changing, and there will be a lot of questions. So where will employees turn for guidance and information? One of the places they're going to turn is their employer. The employer is going to be a source of information as the vaccinations roll out, so they need to ensure they're conducting business safely to make employees confident in what they're doing. Employers need to be proactive and repetitive in terms of communication with their workers.

Employees are going to have a sixth sense for whether they trust the message from their employer. They may not like it, but at least if it's credible and they understand the reasoning and that the employer is trying to balance the needs of the public and fellow workers, people are going to get with the program. I think the best case is when it doesn't have to come down to a mandate, but rather people are persuaded by having been given the best information, this is the right thing to do to protect their family and to protect their fellow workers.