

COVID-19

Mandatory Employer Vaccination Policies

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Can an employer require all of its employees to get vaccinated for COVID-19?

As I see it,
Yes!

Better not
tell you now.

Ask Again
Later!

Concentrate
and Ask Again!

Don't Count
on It!

Cannot predict
now!

*It is Decidedly
so!*

*It is
Certain!*

Wouldn't it be great to have
a clear, definitive Answer?

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Brief Background & History

- The authority to mandate vaccines has been litigated for over a century.
- The Supreme Court has held that a State Government can mandate vaccinations for the general population
- The Supreme Court has held that states can require vaccines for school children
- The Healthcare Industry has been widely utilizing influenza vaccine mandates for a long time

What about an Employers Mandate?

- Is Vaccination job related and a business necessity?
 - Direct patient care
 - Contact with the public
 - Contact with other workers
 - Heightened risk of exposure
 - Inability to socially distance
- What about vaccinations in order to avoid employee absenteeism?
- What about vaccination mandates and collective bargaining agreements?
- What does the Emergency Use Authorization have to do with it?

If the Vaccine is job related and a business necessity....

- Can an employee decline for personal reasons?
- Can an employee decline for sincerely held religious objections?
- Can an employee decline for medical reasons?
- Can an employee decline due to pregnancy?
- Can an employer ask about the employee's medical reasons, pregnancy, sincerely held religious objections, etc.?

What can an employer do about an employee who is not vaccinated?

- Fire them?
- Banish them from the premises?
- Make them work remotely?
- Remove them from patient care or customer facing areas?
- Implement a reasonable accommodation?

Caution: Does the vaccine help prevent one person from transmitting the virus to another person?

A clear answer:

- An employer can impose a vaccination mandate if:
 - *The need for vaccination is job related and a business necessity*
 - *There are exceptions to the mandate for Medical & Religious Objection*
 - *The employer institutes reasonable accommodations wherever possible*
 - *The employer does not apply its policy (both pre and post vaccination) in a manner that discriminates against employees based on religion or disability*
- *There may be other, better options for encouraging vaccinations!*