

# COVID-19

## Mandatory Employer Vaccination Policies

Robert L. Best, Esq.

SULLOWAY & HOLLIS P.L.L.C

New Hampshire | Maine | Massachusetts | Rhode Island | Vermont

Sulloway.com | Info@Sulloway.com | 603-223-2800

# 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!*