

Can Employers Mandate COVID-19 Vaccinations for Employees?

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The arrival of COVID-19 vaccines has raised questions about whether employers can require their employees to be vaccinated. The OSHA General Duties clause requires that employers protect their workers from recognized hazards in the workplace. COVID-19 is a recognized hazard and may be a direct threat to employees. The [Equal Employment Opportunity Commission \(EEOC\) recently provided guidance](#) about vaccinations for employees, allowing for mandatory vaccination with some exceptions.

I strongly recommend that employers do not administer the vaccinations in the facility. Instead, I recommend employees get vaccinated with their medical provider or public health agency and that proof of vaccination from these institutions be provided to the employer.

Employers can require the vaccines as long as they recognize exceptions for certain people on the basis of the following:

- If the employer requires proof of vaccination, it must recognize that certain people have exceptions to being vaccinated. Specifically:
 - The Americans with Disabilities Act provides an exception to vaccination for those with a medical condition that prevents them from safely being vaccinated. Allowing for this exception is considered a reasonable accommodation unless there is undue hardship to the employer.
 - The EEOC recognizes exceptions to vaccinations for people who object based on religious beliefs. This exception is required unless there is more than a *de minimis* burden to the employer.
- If an employee does not receive the vaccine, the employer must determine whether the unvaccinated person presents a direct threat to the health and safety of their coworkers. The EEOC provides four factors to analyze when determining if the unvaccinated employee presents a “direct threat” in the workplace:
 - The duration of the risk
 - The nature and severity of the potential harm
 - The likelihood that the potential harm will occur
 - The imminence of the potential harm
- If a direct threat exists, then the employer must provide a reasonable accommodation to the employee unless such accommodation poses an undue burden for the employer. For instance, if the unvaccinated person works in an area with a lot of other people, perhaps a place could be found where they would not be in contact with as many coworkers. This is a very fact-specific scenario and considerations about essential duties will be important. UPDATE JOB DESCRIPTIONS now in anticipation of these potential analyses.
- If there is no available reasonable accommodation, then the employer can remove the employee from the workplace. **Do not** terminate that person’s employment without a consultation with an employment attorney, who will be able to determine all strategies and make sure no laws are being broken.

If the vaccines are administered in the workplace, here are a couple things to know:

- Administering a vaccination is **not** considered a medical examination.
- Screening questions asked prior to receiving the vaccine must be “job-related and consistent with business necessity” to comply with the ADA prohibition about disability inquiries.
- These screening questions are medical information and must be privacy protected under [HIPAA](#).

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