

## Workplace COVID-19 Vaccines To Mandate or Not?

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As the availability and administration rate of the COVID-19 vaccine ramps up across the Commonwealth and industry experts are predicting availability to the general public in the Spring, many employers are wondering whether they can require their employees to be vaccinated. The simple answer to that question is yes'. However, there are many other factors to consider before making that decision.

Like it or not, COVID-19 and the COVID vaccine are political issues as well as public health issues. Recent polls suggest that approximately 30 - 40% of Americans will elect not to get the vaccine. Although one's political beliefs are not a legal basis for refusal in the face of a workplace mandate, in cases where that decision is made for medical or religious reasons, it is protected by the Americans with Disabilities Act and Title VII of the Civil Rights Act of 1964, respectively, and employers may risk heavy fines and other penalties for requiring vaccination.

In addition to recognizing the legitimate reasons for an employee to refuse the COVID-19 vaccine, employers should consider how a mandate could affect workplace morale. As is evidenced by the not-insignificant resistance to mask-wearing by the general public, some employees will surely consider objectionable, for various reasons, any requirement that they have a vaccine. Accordingly, employers will want to weigh the benefits of having their employees vaccinated (with particular consideration to factors such as the degrees of public contact those employees have in performing their jobs and the possibility that their work environment could contribute to a higher risk of contagion) against the likelihood that at least a segment of their workforce will not be willingly compliant. And of course, employers in that position will face the difficult decision of what to do when employees refuse to be vaccinated.

Finally, employers need to keep in mind that as with every vaccine, the COVID-19 variant can have short-term physical side effects, causing fear, anger and the possible filing of workers' compensation claims by employees who were required to obtain the vaccine and thereafter suffer adverse reactions. In addition, side effects could lead to missed work time for employees, and employers will need to consider how that will be treated.

Even though history suggests that people will become more comfortable with the vaccine once it becomes more widely available, employers should still exercise caution in mandating that their employees get it. In most cases, the better approach is to strongly recommend that employees, particularly those in high-risk groups, be vaccinated and communicate with employees to encourage vaccination (such as by offering incentives for doing so). It is also important to have policies in place to address any absences due to side effects of the vaccine, as well as cases of COVID-19 in those who have not been vaccinated. As with most decisions involving COVID-19 and how to navigate its effects in the workplace, a cautious approach is recommended.

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