

# What Should Employers Do About the COVID-19 Vaccine?

Presented by:

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## Background

- The coronavirus disease (COVID-19) has been declared a pandemic.
- The U.S. Department of Health and Human Services (HHS), Centers for Disease Control and Prevention (CDC), and the World Health Organization (WHO) are the definitive sources of information about pandemics.
- The WHO decides when to declare a pandemic.
- According to HHS, CDC, and WHO; COVID-19 presents a significant risk of substantial harm. It is considered a direct threat!
- The vaccine is *currently* approved for emergency use only

## The Legal Landscape



- Americans with Disabilities Act
  - Privacy
  - Medical Testing
  - Accommodation Issues
- Title VII
  - Religious Beliefs
- GINA
  - Genetic Information
- State and Local Laws
- Regulatory/credentialing requirements

## Guidance

- EEOC offers important considerations . . . but does not resolve all issues.
- According to EEOC, you can force employees in the pandemic environment so long as you accommodate religious and disability reasons for saying no.
- Outside a pandemic, vaccines typically can only be required in health care settings where the population is susceptible to bad outcomes from common viruses.
- Administering COVID-19 vaccine yourself requires asking questions implicating GINA.



## Mandatory Policy and Accommodation

- Required for business or industry needs
- Outsource the work of vaccinating employees
- Publish your written policy
- Publish your willingness to accommodate employees with disability or religious reasons for not getting the vaccine



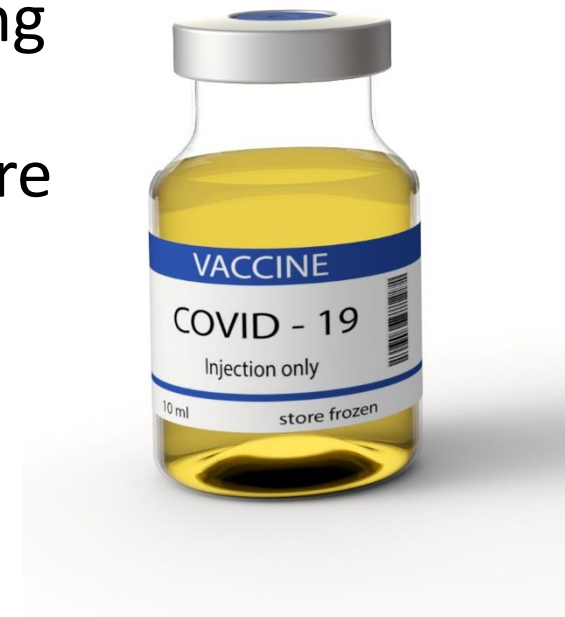
## Mandatory Policy and Accommodation CONTINUED

- Prepare accommodation forms
- Safety concerns for not getting the vaccine is not a required exception
- Enforce your policy uniformly
- Discharge employees who refuse?
- Monitor pandemic conditions and adjust policy as needed



## Policy Recommending Vaccine

- Written policy with recommendation
- No need to accommodate because you are not mandating anything
- You are not putting yourself in the chain of liability if there is an adverse vaccine outcome
- You do not have to discipline an employee who might be against vaccines for personal reasons
- You can set it and forget it. No need to adjust policy as pandemic conditions abate
- *But can you be liable for not mandating it?*



## New Normal

- Continue masking, social distancing, regular handwashing, and other recommended safety practices until told otherwise by CDC and local health officials
- Enhanced cleaning
- Air filtration systems
- Increased airflow
- Continue flexibility with telework as your business allows





## Insurance

- Do you have coverage if you mandate the vaccine and are sued for a bad vaccine outcome?
- Do you have coverage if you are sued for negligence in not mandating the vaccine?



## Takeaways

- Review local, state and other regulatory/credentialing requirements
- Continue to monitor guidance from the CDC, WHO, HHS and state and local authorities on vaccine related issues
- Educate staff on vaccine issues (i.e., safety, effectiveness, etc.) through professional trainers and recognized resource materials
- Consider adopting a vaccine policy
- Train managers on vaccine related issues as they relate to work

## Takeaways CONTINUED

- Ensure that employee questions regarding vaccines are funneled to a knowledgeable member(s) of management (i.e., the Human Resources Manager, Chief Operating Officer)
- Update return to work policy to address legal and regulatory developments
- Review insurance coverages associated with vaccines
- Consider retaining an expert consultant to evaluate vaccine policy issues
- If vaccination is required/encouraged, will organization pay for the cost of the vaccine

# Thank you!

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