

COVID-19 Vaccines Are Here: Now What?

With the news that COVID-19 vaccines will soon be available in Wisconsin, employers are beginning to question whether they can—or should—require employees to be vaccinated against COVID-19. Although employers can mandate the COVID-19 vaccination as a condition of employment, as discussed below, this may not be the best choice for most employers.

When determining whether to implement a mandatory vaccination, employers should assess the exposure risk inherent in the workplace. For example, is it a high risk workplace, such as a hospital or nursing home? Second, employers should consider the effect of a mandatory vaccination program on workplace morale. Recent polls show that a substantial portion of Americans are concerned about the safety of the COVID-19 vaccine and may be unwilling to be vaccinated.

Forcing employees to choose between receiving a vaccine they consider unsafe and their jobs may have serious consequences for the employer, including loss of valued employees and damaging relationship with other employees. A better route for employers, particularly those not in high-risk industries, is to strongly encourage, but not mandate, the vaccine.

If an employer chooses to mandate the vaccine as a condition of employment, they must be conscious of vaccination exemptions under Title VII of the Civil Rights Act (Title VII) and the Americans with Disabilities Act (ADA). The failure to properly address requests for exemptions or accommodations under Title VII and the ADA could lead to discrimination and/or failure to accommodate claims.

Under Title VII, an employee with a "sincerely held religious belief" against vaccines may be legally exempt from being vaccinated. An employer does not have to honor an employee's religious accommodation requests if the accommodation would pose an undue hardship to the employer. In the religious accommodation context, an accommodation constitutes an undue hardship when it imposes more than *de minimis* cost on the employer's business operations. This can include an accommodation that would pose a health or safety risk in the workplace.

Similarly, employees may be exempt from being vaccinated if they qualify for an accommodation under the ADA. Like Title VII, employers may not have to honor disability accommodation requests if the accommodation would pose an undue hardship to the employer. However, employers should note that the undue

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hardship standard under the ADA is harder to demonstrate than the standard under Title VII. Under the ADA, an accommodation constitutes an undue hardship if it causes a significant financial burden, is unduly extensive, substantial or disruptive, or would fundamentally alter the nature or operation of the business.

Once a COVID-19 vaccine is approved and distributed, it is likely that both federal and state authorities will issue further guidance or regulations governing vaccinations in the workplace. For example, in Wisconsin, Republican lawmakers have introduced legislation that, if passed, would prohibit employers from requiring a COVID-19 vaccine as a condition of employment.

There is also the potential that, under the new Biden administration, there could be conflicting guidance regarding mandatory vaccination programs at the state and federal level. There could also be conflict within the federal government over the legality of such programs. For instance, the Equal Employment Opportunity Commission (EEOC) has typically been wary of mandatory vaccination programs in the workplace. In contrast, the Occupational Safety and Health Administration (OSHA) is more likely to support employer-mandated vaccination programs as they promote health and safety in the workplace. We will provide updates on any such guidance or regulations that may impact vaccinations in the workplace.

If you have questions about vaccination programs in the workplace, please contact Shannon Toole, Britany Lopez Naleid or an attorney in Reinhart's Labor and Employment Practice.

Please visit Reinhart's [Coronavirus Resource Center](#) for additional up-to-date information.

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