

COVID-19 Update



SPECIAL EDITION

Monday, May 17th 2021

EPSTEIN
BECKER
GREEN

COVID-19 Vaccine: Workplace Issues

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Workplace COVID-19 Vaccine mandates

EEOC permits mandatory vaccination policies, *subject to*:

- Reasonable accommodations for disability or sincerely held religious belief
- Unionized workforce: Review CBA/bargaining history
- State or local laws

To mandate or not?

- Business/safety reason(s)
- Scope: Condition of employment or something less (e.g. to enter the office)?
- Your employee population: Enthusiastically Vaccinated or Hesitant?
 - Anonymous survey
 - How to handle those who object?
 - Protected reasons
 - Other reasons

Workplace COVID-19 Vaccine Mandates - Continued

1

Is time spent obtaining vaccine compensable?

2

What kind of proof?

3

Vendors/clients/visitors?

4

Adverse reactions/OSHA 300 workplace illness logs

Reasonable Accommodations (Federal Law)

1 Disability-Related Reason or Pregnancy

- Direct threat? If yes, attempt to provide accommodation
- May exclude unvaccinated employee from worksite, but may not automatically terminate
- Interactive process, confidentiality, no retaliation
- Pregnant Employees

2 Sincerely-Held Religious Belief, Practice or Observance

- Reasonable accommodation, unless it is an undue hardship
- Assume request is based on sincerely held religious belief
- Objective basis for questioning the religious nature or sincerity of belief

3 Philosophical or Other Non-Protected Reason

- Under federal law, no legal requirement to excuse
- Practical issues – what if a large percentage of employees fall into this category?
- If employer opts to accommodate, do so in a non-discriminatory manner

Options Other Than Mandating

1

Incentives

- ERISA/ACA and ADA wellness program rules
- EEOC *de minimis* standard – withdrawn but additional guidance is expected

2

Education campaign

- Written materials
- Presentation by trusted medical professional

Miscellaneous



Confidentiality



How to treat vaccinated and unvaccinated employees in the workplace

- New CDC guidance



Onsite clinics



Booster shots



Questionnaires for entry onsite (continue to ask about symptoms)





Questions

Upcoming NEBGH virtual events:

- **May 24:** Monday COVID-19 Update
- **Jun. 2:** Hate Crimes and Mental Health: Strategies and Resources for Employers
- **Jun. 10/17:** Where Do We Go From Here? Employee Health & Wellbeing for a New Era