

Electronic Alert

Volume 23, Issue 64

December 14, 2020

Can Employers Require Workers to Get a COVID-19 Vaccine?

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For most employers, the answer is yes.

In general, employers can require vaccinations that are job-related and consistent with business necessity or justified by a direct threat. However, employers must make exceptions to accommodate (1) an employee's ADA-covered disability, and (2) an employee's sincerely held religious belief under Title VII.

Exemptions Under the Americans with Disability Act (ADA):

Employers generally must provide reasonable accommodations to an employee with an ADA-covered disability that prevents them from receiving a vaccine. To trigger ADA protections, an employee must notify their employer of their ADA-covered disability and request a workplace accommodation. The ADA requires employers to provide reasonable accommodations to persons with disabilities unless doing so would impose an "undue hardship" or pose a "direct threat" to the safety of the employee or others. Employers should engage in the interactive process with an ADA-covered employee to determine whether a vaccination exemption would qualify as a reasonable accommodation under the circumstances.

Exemption for Sincerely Held Religious Beliefs Under Title VII of the Civil Rights Act of 1964 (Title VII):

Employers must also provide accommodations for an employee with a sincerely held religious belief, practice, or observance that prevents them from taking a vaccine. To trigger Title VII protections, an employee must notify their employer that a sincerely held religious belief conflicts with a job requirement, such as a mandatory vaccination. An employer may deny the accommodation request if it would impose an undue hardship on the employer. In this context, the EEOC defines undue hardship as "more than a minimal burden on [the] operation of the business."

Other Considerations:

As the legal landscape with respect to COVID-19 vaccines develops, employers should exercise caution when navigating these issues. Note, some healthcare employers in Oregon may be prohibited from requiring their employees to get vaccinated. Additionally, employers with unionized and nonunionized workforces should consider implications of the National Labor Relations Act (NLRA) on mandatory vaccination policies.

Formal, definitive guidance on COVID-19 vaccinations should be forthcoming in the next several weeks from federal agencies such as the Equal Employment Opportunity Commission.

As this area of the law develops, we encourage employers to consult with counsel when making decisions about these difficult issues.

For any questions relating to navigating COVID-19 in the workplace, contact Chris Morgan or Natalie Pattison at 503-228-0500, or at cmorgan@barran.com or npattison@barran.com.