



## **Can Employers Mandate That Employees Receive The COVID-19 Vaccine?**

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December 15, 2020 - This will be the preeminent question as we start 2021 and the vaccine has now been approved by the FDA. For years, many healthcare institutions have grappled with a similar question at the start of every flu season. Most hospitals and healthcare companies require employees to receive the flu vaccine to protect its workers and patients. There are generally two exceptions to this mandatory rule: religion and health-based accommodations under the Americans with Disabilities Act (“ADA”).

To meet the religious exemption, it must be a sincerely held religious belief that justifies not receiving the vaccine. However, if the employee refuses, then they should be required to wear a mask (PPE) during their entire shift.

The ADA exemption must be because it is more dangerous for the employee to receive the vaccine than not to. Employers in this situation should require a physicians’ note to justify the exemption. These employees must also wear PPE during their shifts as well. Presumably, both of these exemptions will also apply to the COVID-19 vaccination as well.

There are no current guidelines at the federal or state level about mandatory vaccinations for COVID-19 but hopefully, some guidance will be issues as employers face this issue. The EEOC and CDC have allowed employers to ask more in-depth health questions and take employees’ temperatures due to the threat caused by COVID-19 and its highly contagious nature.

Employers have a duty to keep the workplace safe and this year that has been more of a challenge than ever. Employers have been sanitizing, taking employees' temperatures, providing sick leave, issuing guidelines on social distancing, allowing remote work, etc. It has been a year of adapting quickly and responding to a virulent disease that has sickened and killed millions.

As it currently stands and without more guidance, the short answer is yes, employers can mandate the vaccine. This blanket policy will have two exceptions: religion and accommodations pursuant to ADA. The driving force behind this policy is to keep the workplace safe as well as customers, patients, etc. This policy will be met with resistance by those fearful of the vaccine but without a legitimate exception, it can be required for employees to stay employed.

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