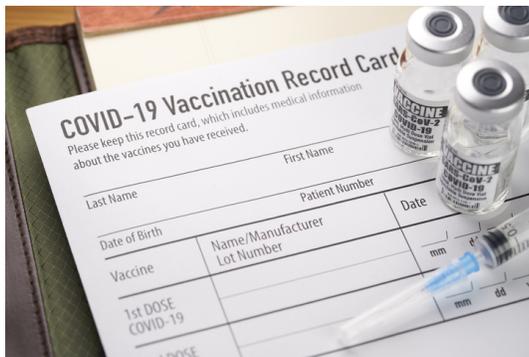


When Push Comes to Shove: Should Employers Require Their Employees to Get the COVID-19 Vaccine?

Working Together

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As the COVID-19 vaccine becomes more widely available, employers are increasingly struggling to determine whether they should implement a vaccine policy and, if so, whether they will require or strongly recommend that their employees receive it. In two of our recent blog posts, we addressed the ability of an employer to mandate the COVID-19 vaccine for its staff and the U.S. Equal Employment Opportunity Commission’s (EEOC) “technical assistance” guidance for employers considering the idea. While some clarity on the issue was a welcomed reprieve, it has also shifted the focus of the conversation from “can we” mandate the vaccine to

“should we.”

Unfortunately, the answer to this question isn’t a simple yes or no. While requiring (or not requiring) the vaccine might be appropriate for one organization, the inherent differences between workplaces, industries, business need and employee populations might make the same policy a poor fit for another. As such, employers should carefully evaluate a number of factors when considering whether a vaccine policy is desirable for their particular workplace, and if so, what type of policy is appropriate. Even employers who elect to take a more “hands off” approach would be wise to issue some type of policy or memorandum communicating the organization’s expectations for employees on vaccine-related issues such as taking time off for work to be vaccinated, post-vaccine infection control protocols in the workplace (such as mask wearing and social distancing), returning employees to the workplace, leaves of absence, and remote work. It is also important to keep in mind that communicating the organization’s decision *not* to implement a mandatory vaccine policy may be just as important, as it is likely to alleviate undue stress for employees who may be unable or unwilling to get vaccinated or may otherwise be “on the fence” about it. Employers should also consider distributing information about the vaccine, the benefits of the vaccine, and how and when employees are eligible and/or required to obtain it. This will assist in educating employees about the vaccine, expectations and the process, which will undoubtedly allay concerns and minimize uncertainty.

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The types of considerations to keep in mind when weighing the pros and cons of a vaccine policy include things like the operational and staffing needs of the business, the physical set-up of the workplace, the type of work being performed, the viability of continued or permanent remote work arrangements, the number of employees who are at increased risk for developing complications from the virus, the number of employees who regularly come in contact with members of the public who could have the virus, and employees' opinions or concerns with respect to the vaccine. For example, a manufacturer with a heavily concentrated population of older employees who must work closely with one another on an assembly line might be more inclined to require vaccinations than an office-based workplace with a greater number of younger employees.

Although many employees will opt to receive the vaccine voluntarily, employers may have employees who are more hesitant to obtain it because of fear of side effects, short periods of testing, and differences in opinion over the risk posed by COVID-19. Implementing a mandatory vaccine policy in an environment where the majority of employees share these concerns could have negative effects on engagement, morale and talent retention. On the other hand, if business operations also rely on employees being physically present at work and absences caused by COVID-19 have been disruptive, the business's need to return employees to the workplace as quickly as possible may weigh in favor of a vaccination mandate.

If an employer decides to implement a vaccine policy, the next question becomes what type of policy is appropriate. Generally, the two most common policies are those mandating vaccination and those encouraging them. If mandatory, the policy should include such information as how and when employees are expected to obtain the vaccine as it becomes available, what documentation must be provided evidencing the completion of the vaccination process, and the potential disciplinary consequences for non-compliance. It should also address the legally required disability and religious exemptions which are discussed at length in one of our earlier blog posts. If encouraged rather than mandated, the policy should include information directed to employees who opt not to get vaccinated, in addition to what the organization might be doing to further encourage, assist, or incentivize employees to get vaccinated.

Our Labor and Employment attorneys have been working closely with employers to explore and evaluate these types of issues and can assist your organization in determining what type of policy is the best fit for your workplace. We have also developed model vaccine policy templates which we can easily conform to address the unique needs of your organization. Please contact any of Pullman & Comley's Labor and Employment attorneys for assistance.

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