

COVID-19 Update: What Employers Need to Know for 2021

Britany Lopez-Naleid

Shareholder in Reinhart's Labor & Employment Practice

Shannon Toole

Attorney in Reinhart's Labor & Employment Practice

COVID-19 Update: What Employers Need to Know for 2021

- Considerations for navigating vaccinations in the workplace
- Trends in employer liability related to the COVID-19 pandemic
- Other COVID-related workplace considerations such as the potential for emergency temporary standards from OSHA and federal paid sick leave

Navigating Vaccinations in the Workplace

- Mandatory vaccine program considerations:
 - Is a mandatory vaccination program legal?
 - According to the EEOC, generally mandating the vaccine is legal
 - Does this mean that all my employees will be vaccinated?
 - No, must consider requests for accommodations under the Americans with Disabilities Act (ADA) and Title VII of the Civil Rights Act (Title VII)

Requests for Accommodations

- ADA
 - Employee may request an accommodation where they have a medical condition that would prevent them from getting the vaccine.
 - Employers should go through the interactive process to assess whether there is a reasonable accommodation
- Title VII
 - An employee with a “sincerely held religious belief” against vaccines may be legally exempt from being vaccinated.
 - Consider reasonable accommodations but note that the undue hardship standard is more favorable to employers under this statute.

Other Risks with a Mandatory Program

- While getting a vaccine may not be a medical examination, the pre-exam questionnaire likely discloses confidential medical information
 - Ensure this information is maintained confidentially pursuant to the ADA
 - Consider use of third parties to administer the vaccine to address this issue.
- OSHA concerns
- NLRB issues (both unionized and non-unionized workforces)
- FDA emergency use authorization

Impact of Mandatory Program on Morale

- The ability to mandate the vaccine does not mean you should.
- Assess your specific workplace risks and how your employees will respond.
- If you have a mandatory program and a percentage of employees refuse to get the vaccine, can you afford to exclude them from the workplace?
- Plan in advance and communicate your plans.

Voluntary Vaccination Program Considerations

- Communication and transparency are important
- Education: what information should we provide to increase vaccination?
- Incentives
 - What laws may impact incentives?
 - What are some options for incentives and what are the risks involved with the options?
- Address post-vaccination protocols

Trends in Employer Liability Related to the COVID-19 Pandemic

- Whistleblower complaints
- Litigation trends
 - COVID-19 related litigation is focused in 5 areas
 - Different sized employers are taking disproportionate shares of COVID-19 related litigation
 - Small employers hit the hardest
- Workplace liability waivers

OSHA and COVID-19

- OSHA enforcement in 2020
 - What was the focus and primary reasons for citations?
- What we are anticipating in 2021
 - President Biden's executive order to OSHA
 - OSHA's recently issued guidance on COVID-19 in the workplace and the key takeaways for employers
 - What might come next

Other COVID-19 Related Workplace Considerations

- Families First Coronavirus Response Act (FFCRA) voluntary leave
- Potential paid leave law
- FMLA eligibility

Takeaways and Best Practices

Questions?

Thank You!

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