

# COVID-19 in 2022: The New Normal

Britany Lopez Naleid

Shareholder in Reinhart's Labor & Employment Practice

[bnaleid@reinhartlaw.com](mailto:bnaleid@reinhartlaw.com)

# Mandating Vaccinations in the Workplace

- According to the EEOC, employers can make vaccinations a condition of employment.
- Mandatory vaccination programs do not mean all employees will be vaccinated. Employers must still consider requests for accommodations under the Americans with Disabilities Act (ADA) and Title VII of the Civil Rights Act (Title VII).

# President Biden's COVID-19 Action Plan

- Multiple vaccine initiatives under President Biden's COVID-19 Action Plan announced on September 9, 2021.
  - Private employers with 100+ employees must ensure employees are **either** vaccinated or tested weekly.
  - Must also provide paid time off for employees who receive vaccine or are recovering from side effects.
- OSHA tasked with promulgating an emergency temporary standard (ETS) that will reflect this plan.
- Lots of open questions until the ETS is published.

# President Biden's COVID-19 Action Plan

- Federal contractors and many healthcare employers are subject to vaccination mandate.
  - On September 24, 2021, the Biden administration announced that all federal contractors must ensure that all employees covered by the government contract are fully vaccinated no later than December 8, 2021.
  - The Biden administration has also instructed the Centers for Medicare & Medicaid Services (CMS) to create rules requiring vaccinations in most health care facilities as a condition of Medicare and Medicaid funding.

# 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.

# Accommodations for COVID-19

- Long-term COVID symptoms may qualify as a disability under the ADA if it substantially limits one or more of an employee's major life activities.
- While not always a disability, each case will need to be assessed individually.

# Incentive Programs

- Employers may offer employees incentives to either receive the COVID-19 vaccine or verify their vaccination status.
- Be aware of distinction between incentives offered for third-party vaccinations and vaccinations administered by the employer.

# Accommodations for Remote Workers

- The Americans with Disabilities Act, the Wisconsin Fair Employment Act and other anti-discrimination laws still apply to remote workers.
- For employers with more than 15 employees, under the ADA, employers may be obligated to accommodate an employee's disability even if the employee is working remotely.
- Remote work may also be a feasible accommodation based on investments by an employer during the pandemic.



# Wage & Hour and Other Legal Issues

- Employer should consider potential legal implications before allowing employees to work remotely from different states.
- Out-of-state remote workers may have different rights under other state or local laws than employees who live near the office.
- Potential issues include:
  - Minimum wage or overtime laws
  - Wage classification issues
  - Discrimination laws
  - Leave laws