

## **THE EEOC INDICATES EMPLOYERS MAY MANDATE EMPLOYEE COVID-19 VACCINATION – SUBJECT TO SOME RESTRICTIONS**

This week the EEOC updated its published guidance regarding its interpretations of federal non-discrimination laws as they relate to the COVID-19 pandemic. The guidelines do not offer clear cut answers, but do provide employers with much needed clarification of rights and responsibilities. We summarize several key points below.

- The guidelines do not specifically state that an employer may mandate vaccinations. However, the guidelines grant implicit approval by discussing actions an employer can take *after* an employer has mandated vaccination.
- An employer may mandate an employee receive a vaccination if the employee poses a “direct threat” the safety and health of others by physical presence in the workplace or through the performance of job duties. The EEOC considers the danger of COVID-19 infection through workplace exposure a “direct threat.”
- The guidelines indicate that if an employee is capable of fully performing the essential functions of his or her position remotely, the employee does not pose a direct threat.
- An employer may not mandate vaccination if it is inadvisable due to a disability, for example, severe allergies. This determination is medical in nature and employers should follow the determination of medical professionals with respect to this issue.
- In cases of disability, an employer must consider possible reasonable accommodations. Considerations include:
  - The number of employees in the workplace and the ability to maintain social distancing and other preventative measures.
  - The number of employees in the workplace who have received the vaccine.
  - The amount of involvement / contact with customers or vendors.
  - The rate of vaccinations in the community.
  - The number of active COVID-19 cases in the community.

- An employer cannot mandate an employee receive the vaccine if it violates an employee’s religious beliefs, unless the refusal imposes an undue hardship on the employer.
  - There is no set list of undue hardships and the legal evaluation is fact specific.
  - We suggest you consult your employment attorney if faced with a refusal based on religious belief.
- An employer may require an employee to present proof of vaccination. (It is at this stage that an employee is likely to assert a disability or religious belief, thereby triggering the reasonable accommodation assessment.)
- An employee may believe that he or she has the right to refuse vaccination for any reason. *Absent a required accommodation, an employee may not refuse an employer’s vaccination mandate and continue to work.*
- An employer must keep ALL information regarding employee vaccinations confidential.

The “best practice” is for an employer to strongly encourage, but not mandate, employee vaccinations. Voluntary vaccination eliminates much of the risk of liability presented by federal employment statutes. An employer may inquire if an employee has received the vaccine, but must keep such information confidential.

Regardless of vaccination policy, we encourage employers to continue to monitor and follow public health orders and CDC guidelines. The EEOC’s guidance states that federal discrimination laws and the EEOC guidelines “do not interfere with or prevent an employer from following guidelines and suggestions made by the CDC or state or local public health authorities.” Look to the CDC first and the EEOC guidelines second.

David B. Walston  
 Christian & Small LLP  
 (205) 250-6636      [dbwalston@csattorneys.com](mailto:dbwalston@csattorneys.com)

**About Christian & Small LLP**

[Christian & Small LLP](#) represents a diverse clientele throughout Alabama, the Southeast and the nation with clients ranging from individuals and closely held businesses to Fortune 500 corporations. By matching [highly experienced lawyers](#) with specific client needs, Christian & Small develops innovative, effective and efficient solutions for clients. Christian & Small focuses on the [areas of litigation and business](#) and is a member of the [International Society of Primerus Law Firms](#) and the only Alabama member firm in the [Leadership Council on Legal Diversity](#). Please visit [www.csattorneys.com](http://www.csattorneys.com) for more information, or contact David ([dbwalston@csattorneys.com](mailto:dbwalston@csattorneys.com)) or Jonathan ([jwmacklem@csattorneys.com](mailto:jwmacklem@csattorneys.com)) directly via email.

