

# Vaccination Vacillation?

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The good news is that the COVID vaccine is being administered this week! At the end of a very long year, this vaccine represents hope.

Although the vaccine is not yet widely available, now is the time for employers to consider whether they will require employees to be vaccinated against COVID and, if so, develop a legally-compliant policy.

Private sector employers likely have the right to require that employees, especially at-will employees, receive the COVID vaccination as a condition of continued employment. Different considerations may apply for employees with formal employment agreements or who belong to a union.

Employers who decide to adopt a mandatory employee vaccination policy must comply with the Americans with Disabilities Act (ADA), Title VII of the Civil Rights Act, the Genetic Information Nondiscrimination Act (GINA) and other federal and state laws that may apply. Among other requirements, these laws obligate an employer to consider in good faith exceptions for employees unable to be vaccinated due to an underlying disability or based on their religious beliefs.

Just this week, the Equal Employment Opportunity Commission (EEOC) updated its COVID-related guidance to address employer vaccination programs. Click [here](#) to read the full guidance in Q & A format (at section K, "Vaccinations").

Key highlights of the guidance include:

- Employers may require employees to provide documentation that they received the COVID vaccine.
- Employers who administer the vaccine themselves, or through a third party they contract with to do so, are restricted as to the screening questions they can legally ask employees. On this point, EEOC's guidance seems to suggest that employers may, as an alternative, prefer to send employees to their health care provider or pharmacy to get the vaccine and then supply proof of vaccination to the employer.
- Employers must engage in an individualized, case-by-case inquiry with employees who

object to vaccination based on a disability or religious belief in a good faith effort to find a workable accommodation that doesn't create an undue hardship on the business. On this point, the guidance provides: "If an employee cannot get vaccinated for COVID-19 because of a disability or sincerely held religious belief, practice, or observance, and there is no reasonable accommodation possible, then it would be lawful for the employer to exclude the employee from the workplace. This does not mean the employer may automatically terminate the worker. Employers will need to determine if any other rights apply under the EEO laws or other federal, state, and local authorities."

Employers considering a mandatory employee vaccination policy should consult with legal counsel in making that determination and in developing a legally-compliant policy. Now is no time to vacillate!