



Both employers and employees are faced with uncertainties as they continue to deal with COVID-related issues. Included among those issues are whether the employer may require vaccinations for the employees. While this area of the law continues to develop, the consensus appears to be, at least for now, that federal laws do not prevent employers from requiring COVID-19 vaccines prior to the employees physically entering the workplace, so long as the employer is prepared to meet significant restrictions and limitations. Note that state laws regarding this topic may vary across the country.

If the employer chooses to require vaccinations, it should first establish a uniform policy on requiring vaccines and then apply that policy consistently. Additionally, that policy should include procedures whereby an employee can request an exemption from the vaccine requirement or request that an accommodation be made for the employee's legitimate and lawfully protected concerns. Those concerns would include, for example, objections to vaccines based on the employee's religion, objections made by pregnant employees, and objections made by employees with disabilities or other medical conditions that might militate against the employee taking the vaccination. If the employer fails to apply the policies properly and/or fails to allow for accommodations when the circumstances require them, it can face significant liability.

In some situations, employers may be able to offer incentive programs to employees to encourage the vaccinations, so long as the employer follows applicable laws and regulations and so long as the incentive program is not coercive. In that regard, an important caution to remember is that the employer must also meet the requirements of the American with Disabilities Act as it handles employees' vaccine-related information. The Americans with Disabilities Act (ADA) requires that employees' personal medical and related information be handled carefully, so if an employer begins inquiries about an employee's vaccination status or if the employer requires the vaccination, it must do so in a manner consistent with the mandates of the ADA.

Requiring a vaccine can also potentially raise workers compensation issues. For example, in the event the employer required the vaccine and in the event that an injury or illness occurred as a result of the vaccination, then the employer could potentially argue that the employee's sole remedy would be to file a workers compensation claim rather than file a lawsuit directly against the employer. The employee, on the other hand, could argue that the employer, by requiring the vaccination, had overstepped its bounds and committed some act that removed the protections afforded the employee under workers' compensation statutes.

Rather than improvise or proceed without having carefully considered all aspects of the vaccination issues, BLM&H encourages employers to consult with the firm regarding these issues.