MANDATORY VACCINATION IN THE WORKPLACE

FREQUENTLY ASKED QUESTIONS
BY FREEDOM KEEPERS UNITED

Last Updated on July 27th, 2021

Please note, this is a living document of collected answers to questions our chapters are consistently receiving. As these processes are developing in real-time, we will do our best to update this document regularly.

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1. CAN EMPLOYERS MANDATE COVID-19 VACCINATIONS AS A CONDITION OF EMPLOYMENT?
   Please read the statement issued by ICANN’s legal team here in response to the DOJ’s statement on July 27th.


   The Department of Justice (DOJ) has now issued a statement, (slip opinion) on July 6th and released on July 27th, 2021 --
"Section 564(e)(1)(A)(ii)(III) of the Food, Drug, and Cosmetic Act concerns only the provision of information to potential vaccine recipients and does not prohibit public or private entities from imposing vaccination requirements for a vaccine that is subject to an emergency use authorization."

**A version of this document previously stated:**

Employers CAN mandate vaccination as a condition of employment IF the vaccine is FDA approved. However, all CV-19 vaccines are currently only emergency use authorized (EUA) and therefore are NOT FDA approved.

“The statutory provisions governing the FDA’s emergency process include language that raises concerns about the potential legality of employers mandating vaccines authorized under an EUA. Specifically, the relevant provision requires that recipients of EUA products be informed, to the extent practicable, that they have “the option to accept or refuse administration of the [EUA] product...,” a requirement applicable to the EUA-authorized vaccines. (See Federal Food, Drug, and Cosmetic Act, Section 564(e)(1)(A)(ii)(III)) (Page 497-498); “Drugs and Biological Products” and approval letters and fact sheets, found here.) This is a logical requirement, given the increased level of potential risk involved in taking an EUA drug as compared to a drug approved through the formal FDA process."

In the case that the FDA does approve it in the near future, employees still have options. Under the American Disabilities Act (ADA) or Title VII, employers need to provide a reasonable accommodation to employees who cannot be vaccinated as long as it does not cause undue hardship on the employer and the employee is still able to maintain the quality of their work. Undue hardship is defined as significant difficulty or expense.

**ADA = Accommodations due to disabilities**  
**Title VII = Accommodations due to sincerely held religious belief**

### 2. **WHAT IS TITLE VII?**

Title VII refers to Title VII of the Civil Rights Act of 1964. In Section 2000e-2 (Section 703) it states -

“(a) Employer practices:

a. It shall be an unlawful employment practice for an employer -

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(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate
against any individual with respect to his compensation, terms, conditions, or privileges of
employment, because of such individual’s race, color, religion, sex, or national origin; or
b. (2) to limit, segregate, or classify his employees or applicants for employment in
any way which would deprive or tend to deprive any individual of employment
opportunities or otherwise adversely affect his status as an employee, because of
such individual’s race, color, religion, sex, or national origin."

3. **WHAT IS THE AMERICAN WITH DISABILITIES ACT?**

   **The Americans with Disabilities Act of 1990.**

   The Americans with Disabilities Act (ADA) was signed into law on July 26, 1990,
   by President George H.W. Bush. The ADA is one of America’s most
   comprehensive pieces of civil rights legislation that prohibits discrimination and
   guarantees that people with disabilities have the same opportunities as everyone
   else to participate in the mainstream of American life -- to enjoy employment
   opportunities, to purchase goods and services, and to participate in State and
   local government programs and services. Modeled after the Civil Rights Act of
   1964, which prohibits discrimination on the basis of race, color, religion, sex, or
   national origin -- and Section 504 of the Rehabilitation Act of 1973 -- the ADA is an
   “equal opportunity” law for people with disabilities.

   To be protected by the ADA, one must have a disability, which is defined by the ADA
   as a physical or mental impairment that substantially limits one or more major life
   activities, a person who has a history or record of such an impairment, or a person
   who is perceived by others as having such an impairment. The ADA does not
   specifically name all of the impairments that are covered.

4. **WHAT REASONABLE ACCOMMODATIONS CAN AN EMPLOYER PROVIDE?**

   When an employer requires vaccination and implements their policy, an employee must
disclose their need for an accommodation. The Employer must then work with the
employee to provide reasonable accommodations.

   Things employers might consider when providing accommodations:
   a. Amount of employees who have been vaccinated
   b. If the accommodation will negatively affect the quality or function of the work
   c. If the accommodation negatively impacts the individual’s mental health
   d. If the accommodation may cause the employee to reveal personal or sensitive
      information about themselves.

   Reasonable accommodations that employers can provide are:
   e. PPE, masks, working from home, secluded area to work from

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4 [https://www.ada.gov/pubs/adastatute08.htm](https://www.ada.gov/pubs/adastatute08.htm)

5. **IS REQUIRING PROOF OF VACCINATION A VIOLATION OF HIPAA?**
   No. It would only be a HIPAA violation if covered entities, who are required to comply with its privacy standards and rules, disclose the employees vaccination status without authorization.

   Employers cannot disclose that an employee is receiving reasonable accommodations or retaliate against an employee. ADA also requires employers to keep any information obtained during the vaccination program confidential. Asking or requiring an employee to show proof of a covid-19 vaccination is NOT an inquiry restricted by the ADA and does not violate ADA because it is unlikely that asking for proof of receipt will not elicit information about the disability, making this inquiry not disability related. Employers, however, cannot ask questions beyond the proof such as why or why not an employee didn’t get vaccinated. For more questions regarding HIPAA, visit this [FAQ’s section of HIPAA journal](https://www.hipaajournal.com/is-it-a-hipaa-violation-to-ask-for-proof-of-vaccine-status/).

6. **CAN AN EMPLOYEE BE TERMINATED FOR REFUSING THE COVID-19 VACCINE?**
   “Being terminated for not having the vaccine is a possibility in some states, but employees could potentially take legal action against their employer for wrongful termination.

   The EUA requires a drug or vaccine to be accompanied with information for individuals about their right to refuse and to be told about the consequences of such a refusal. The wording of the EUA in this case could be interpreted in different ways, and wrongful termination lawsuits based on the refusal to be vaccinated are a possibility although yet to be tested in the courts.

   There is also an issue that could arise if a substantial portion of the workforce refuses the vaccine. An employer would then have to decide whether to terminate all of those employees or none at all. If only certain employees were to be terminated for refusing the vaccine on non-medical or non-religious grounds, there could well be valid claims that individuals have been discriminated against.”

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6. [https://www.hipaajournal.com/is-it-a-hipaa-violation-to-ask-for-proof-of-vaccine-status/](https://www.hipaajournal.com/is-it-a-hipaa-violation-to-ask-for-proof-of-vaccine-status/)

7. **CAN MY EMPLOYER REQUIRE PROOF OF MY SINCERELY HELD RELIGIOUS BELIEF?**

Guidance from the Equal Employment Opportunity Commission (EEOC) indicates that --

"[b]ecause the definition of religion is broad and protects beliefs and practices with which the employer may be unfamiliar, the employer should ordinarily assume that an employee’s request for religious accommodation is based on a sincerely-held religious belief. If, however, an employee requests religious accommodation, and an employer has an objective basis for questioning either the religious nature or the sincerity of a particular belief or practice, the employer would be justified in seeking additional supporting information."

Read more on this here:

**AND HERE:**
Employee Rights - Covid — THE HEALTHY AMERICAN™

8. **WHAT DOES THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION SAY?**

Ironically enough, OSHA has made changes to their guidance so as to not “discourage” or “disincentivize” employers from encouraging the vaccine for employees. Instead, OSHA has stated that they support the efforts to vaccinate and will waive the 300-A requirement for employers to record any work related injuries that arise from the vaccine.

However, an employee may file for workers compensation if the vaccine is required as a condition of employment and if refusing to vaccinate comes with ANY repercussions.

If an employer wants to avoid workers compensation claims, the vaccine must clearly remain voluntary.


https://www.osha.gov/coronavirus/faqs#employer

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8 https://www.eeoc.gov/laws/guidance/section-12-religious-discrimination#_Toc203359488
10 https://www.thehealthyamerican.org/employee-rights
12 https://www.osha.gov/coronavirus/faqs#employer
WHERE CAN I FIND A LETTER TEMPLATE TO MY EMPLOYER?
This is a template letter for requesting a reasonable accommodation from your employer
https://docs.google.com/document/d/1PSXm-tNhHdW9LA0KF6LEMDQMRNI8828I7JiU76NNWXU/edit

This is a template letter responding to a rejected accommodation request
https://docs.google.com/document/d/1-saSCjv9ccOZg4FpnkWe2KhY8Nc07RTQkwOeJp7X_XU/edit

ADDITIONAL TEMPLATES:
Right+to+Refuse+General+Letter-PDF+2.pdf (squarespace.com)

WHERE CAN I RECEIVE A RELIGIOUS EXEMPTION?
https://forunitedsolutions.org/religious-exemptions

IF MY EMPLOYER IS REQUIRING TESTING, WHO PAYS FOR IT?
Per California’s website, “As provided by federal law[5], health plans and issuers must cover the cost of COVID-19 diagnostic tests without imposing any cost-sharing requirements (including deductibles, copayments, and coinsurance), prior authorization, or other medical management when the purpose of the testing is for individualized diagnosis or treatment of COVID-19. Further, health plans and issuers cannot require the presence of symptoms or a recent known or suspected exposure, or otherwise impose medical screening criteria on coverage of tests.”

References:
https://static1.squarespace.com/static/5d49e2b300d396000117f616/t/6066ada74915769264f3905d2/1617341812970/Right+to+Refuse+General+Letter-PDF+2.pdf
https://forunitedsolutions.org/religious-exemptions