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Legal Considerations for Employers Considering Mandating COVID-19 Vaccinations

As the COVID-19 vaccine is being rolled out, many employers are considering whether to require their employees to get vaccinated. As employers weigh their options, there are several legal considerations to consider.

First, last Wednesday, the federal Equal Employment Opportunity Commission (EEOC) updated its COVID-19 guidance to address vaccinations. In short, the EEOC recognized that employers can require employees to get vaccinated subject to two exceptions:

1. Where the vaccination is contrary to an employee's sincerely held religious belief; and
2. Where an employee is unable to receive the vaccination due to a disability.

Once an employer receives notice that an employee's sincerely held religious belief or disability prevents the employee from taking the vaccine, the employer must then consider whether there are any reasonable accommodations that would permit the employee to keep working even though he or she is not vaccinated. As with most accommodation considerations, each situation is unique, and there is no one-size-fits-all solution that works for everyone. Employers must consider whether the potential accommodation would pose an "undue hardship" to the employer's business or where, even with the accommodation, the employee would pose a "direct threat" to the employer, other employees, or the general public. Notably, these accommodation considerations do not come into play if an employer elects only to encourage vaccinations rather than mandate them.

There are other potential liability considerations if an employer decides to require employees to get vaccinated. Employers may have workers' compensation liability if an employee develops an adverse reaction to the vaccine, and employers may have to navigate labor law protections if employees collectively oppose taking the vaccine or the vaccine may implicate an existing collective bargaining agreement. On the other side of the coin, employers electing not to mandate the vaccination could be faced with negligence or unsafe work environment claims under OSHA.

With the COVID-19 vaccine in its initial stages, the topic of mandatory workplace vaccinations will likely be an evolving issue. Given these new developments, businesses should closely monitor federal and state agencies for updated guidance and consult with legal counsel when implementing COVID-19 vaccination policies and when navigating the religious-based or ADA accommodation process.

If you have any questions about the legal implications arising out of COVID-19 vaccinations, please contact a member of Hill Ward Henderson's [COVID-19 Attorney Response Team](#) below:



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