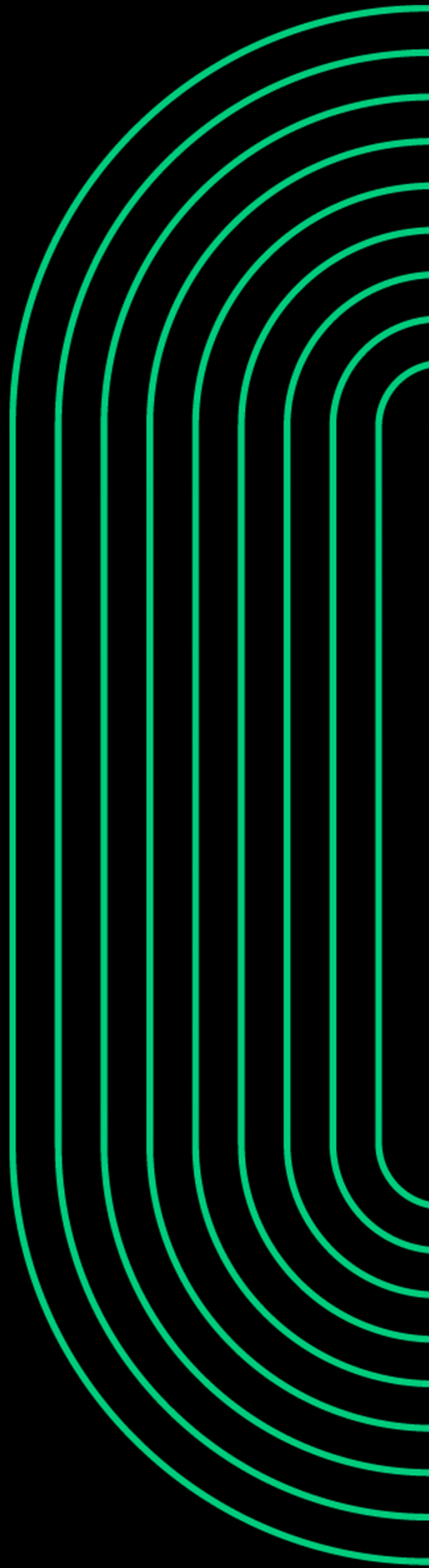


Mandatory COVID-19 Vaccines and the Automotive & Manufacturing Industries

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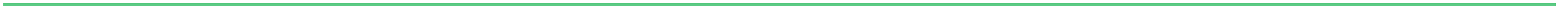


WHAT WE WILL COVER TODAY

- The current guidance and law regarding mandatory COVID-19 vaccinations in the workplace
- Restrictions on an employer's ability to mandate COVID-19 vaccinations, such as the need to provide accommodations
- Pros and cons of making the COVID-19 vaccine mandatory
- The current state of business travel, domestically and abroad, and applying for work visas



EEOC GUIDANCE



EEOC Guidance – Employers Can Mandate

- “What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws,” <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>
- “The federal EEO laws do not prevent an employer from requiring all employees physically entering the workplace to be vaccinated for COVID-19, subject to the reasonable accommodation provisions of Title VII and the ADA and other EEO considerations discussed below. These principles apply if an employee gets the vaccine in the community or from the employer.”
- “Requiring an employee to receive a COVID-19 vaccination administered by the employer or its agent would not implicate Title II of GINA unless the pre-vaccination medical screening questions include questions about the employee’s genetic information, such as asking about the employee’s family medical history.”



EEOC Guidance – Duty to Accommodate

- Employer's ability to mandate the COVID-19 vaccine is limited by the duty to accommodate under federal and state laws
 - Disability
 - Religious
 - Pregnancy



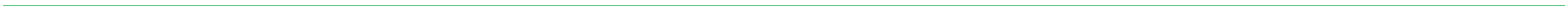
EEOC Guidance – Disability Related Accommodations

- Employees with disabilities are entitled to reasonable accommodations that allow them to perform the essential functions of their jobs
- Employers ARE permitted to require an individual with a disability to meet a standard qualification, such as a safety-related standard requiring COVID-19 vaccination
 - Safety standards must be job-related and consistent with business necessity
- However, if a disabled employee cannot meet the safety standard, employers CANNOT require compliance with the standard absent evidence of a direct threat
 - “Direct threat” = a “significant risk of substantial harm” that cannot be eliminated or reduced by reasonable accommodation
 - Requires individualized assessment based on work environment



EEOC Guidance – Disability Related Accommodations

- If direct threat is present, consider whether a reasonable accommodation is available
 - requiring the employee to wear a mask,
 - working a staggered shift,
 - making changes in the work environment (such as improving ventilation systems or limiting contact with other employees and non-employees),
 - permitting telework if feasible, or
 - reassigning the employee to a vacant position in a different workspace



EEOC Guidance – Other Disability Related Considerations

- The EEOC recommends supervisors are trained regarding accommodation requests prior to implementing a mandatory vaccine policy
- Documentation or other confirmation of COVID-19 vaccination must be maintained in a confidential manner
- Asking whether an employee is vaccinated is NOT a disability-related inquiry under the ADA
 - However, limit documentation/questions solely to vaccination status



EEOC Guidance – Religious Related Accommodations

- Where the religious beliefs are sincerely held and the accommodation poses no undue hardship on the employer
- Religion: includes all aspects of religious observance, practice, and belief
 - Covers traditional, organized religions and “religious beliefs that are new, uncommon, not part of a formal church or sect”
- Sincerely held belief: An assessment of the individual’s credibility, not the belief’s validity
- Undue Hardship: “More than a de minimis cost”
 - What proportion of employees in the workplace are already vaccinated against COVID-19
 - Amount of contact with non-employees, whose vaccination status could be unknown or who may be ineligible for the vaccine



EEOC Guidance – Religious Related Accommodations

- A request for accommodation is “reasonable” if it eliminates the conflict between religion and work without creating an undue hardship
- Accommodations may include
 - Use of face mask
 - Social distancing from coworkers or non-employees,
 - Working a modified shift,
 - Telework, or
 - Reassignment



EEOC Guidance – Pregnancy Related Accommodations

- Pregnant employees must be treated the same as other employees “similar in their ability or inability to work.”
- This means pregnant employees may be entitled to job modifications to the extent such modifications are provided to other employees who are similar in their ability or inability to work
- Potential accommodations include:
 - Telework
 - Changes to work schedules or assignments, or
 - Leave



CASE LAW



Houston Methodist Hospital

- *Bridges v. Houston Methodist Hospital* – Texas federal court case
- Plaintiffs argued:
 - EUA – “experimental and dangerous”
 - Violation of at-will employment/Public policy
 - Forced human trial
 - Violation of the Nuremberg Code
- Defendants argued:
 - Hospital's actions were consistent with public policy
 - No standing to sue under Food, Drug, and Cosmetic Act (FDCA)
 - EEOC guidance permits vaccinations
 - OSHA guidance on workplace safety is encouraging vaccinations

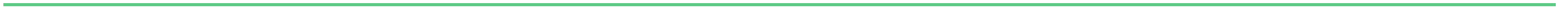


Houston Methodist Hospital, Cont'd

- The court dismissed the lawsuit
- Texas public policy does not prohibit an employer from terminating an employee who refuses to become vaccinated
- Nor does terminating an employee under these circumstances give rise to a wrongful termination claim under Texas law
- The court relied on the aforementioned guidance from the EEOC
- The court rejected the employees' argument regarding EUA status, stating that the federal law governing EUA status of drugs and vaccines "neither expands nor restricts the responsibilities of private employers; in fact, it does not apply at all to private employers like the hospital in this case. It does not confer a private opportunity to sue the government, employer, or worker."
 - Not a human trial
 - The plaintiffs were not coerced - - the hospital was doing its job saving lives



PRACTICAL CONSIDERATIONS



Arguments for Mandate

- Safety in workplace
- Creating herd immunity
- Reduce number of COVID-related absences
- Return to business “as usual”
- Full FDA approval of vaccine is anticipated in the coming months

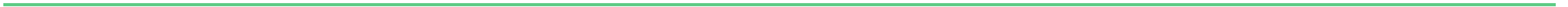


Arguments against Mandate

- Emergency Use Authorization (EUA) status
- Concerns about effectivity and long-term effects
- Can run afoul of need to provide accommodations
- Employee relations issue
- Litigation
- State laws may differ
 - Montana recently enacted a law recognizing an individual's vaccination status as a protected category
 - Montana law also prohibits employers from requiring employees to disclose their immunization status and bars employers from requiring employees to receive vaccines that are in EUA status
 - Similar laws have been introduced in other states



TRAVEL RESTRICTIONS



US Persons Going Abroad

Outbound:

- Every country has different rules, and they keep changing
- US Department of State (DOS) guidance - <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories.html/>
- Decent tips country by country - <https://travelvitals.amexgbt.com/>
- Vaccinations can help

Inbound

- Vaccinations do not matter – no date on when this could change
- COVID-19 test needed within 3 days of flight to the US and masks needed on planes - <https://www.cdc.gov/coronavirus/2019-ncov/travelers/faqs.html#:~:text=All%20air%20passengers%20coming%20to,in%20the%20United%20States.>
- DOS rules - <https://travel.state.gov/content/travel/en/international-travel.html>



PP 10143

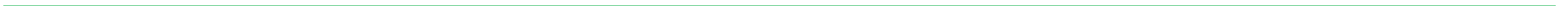
- Referred to as the “COVID travel ban”
- Applies to foreign nationals (not US citizens, green card holders or immediate family members of green card holders) who have travelled to these countries:
 - Schengen countries (Western Europe) plus the UK and Ireland, China, Brazil, South Africa, India and Iran
- If you someone is subject, they need to wait 14 days in a 3rd country that doesn't have a COVID travel ban, and then they can come to the US
- Can impact employees, staffing company employees and/or suppliers
- No scheduled end date - <https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/covid-19-travel-restrictions-and-exceptions.html>
- US Secretary of State Blinken said on June 25th – “We are anxious to be able to restore travel as fully and quickly as possible. I can't put a date on it, we have to be guided by the science, by medical expertise.”



PP 10143 – Cont'd

Who is exempt?

- U.S. citizens, lawful permanent residents (green card holders)
- Spouses and minor children of U.S. citizens or lawful permanent residents
- Parents or legal guardians of a U.S. citizen or lawful permanent resident unmarried minor child
- Siblings of a U.S. citizen or lawful permanent resident child, provided both are unmarried and under the age of 21
- Air and sea crewmembers, and certain medical professionals
- Diplomats
- U.S. Armed Forces and spouse or child; certain U.S. Government invitees for the purpose of the containment or mitigation of COVID-19; and; certain travelers whose entry would be in the national interest.
- Certain F and J visa students



PP 10143 – Cont'd

More exemptions/problems

- Many US Embassies/Consulates are closed, so visa renewals are delayed/stopped
- Most folks are having to wait 14 days in a 3rd country – slow and expensive
- Can apply for a National Interest Exemption (NIE) with the US Embassy/Consulate where living:
 - Travelers providing executive direction or vital support for critical infrastructure sectors, or directly linked supply chains, as outlined at <https://www.cisa.gov/critical-infrastructure-sectors>; and
 - Travelers providing vital support or executive direction for significant economic activity in the United States
 - Just having a work visa isn't enough
 - Need an NIE to secure most work visas abroad



Questions?



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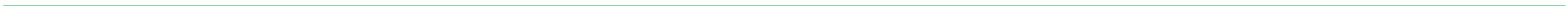
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THANK YOU

Legal Disclaimer

This document is not intended to give legal advice. It is comprised of general information. Employers facing specific issues should seek the assistance of an attorney.