

# Mandatory COVID-19 Vaccines and the Automotive & Manufacturing Industries

## Top Ten Takeaways

### **1. EEOC says employers can mandate the vaccine.**

For in-person work environments, the EEOC guidance provides that federal EEO laws do not prevent employers from requiring physically present employees to receive the COVID-19 vaccine.

### **2. The duty to reasonably accommodate still applies.**

While guidance provides that employers may mandate the vaccine, there are exceptions. In some situations, such as disability, religion, and pregnancy, employers may still be required to accommodate employees under state and federal law.

### **3. Disability accommodations and the COVID-19 vaccine.**

Employees may need to be accommodated, but employers are allowed to require an individual with a disability to meet a standard qualification. This may include a safety-related standard that is job-related and consistent with business necessity. As with all disability-related inquiries, there are several factors that may need to be considered in determining whether an accommodation is reasonable.

### **4. "Direct threat" under the ADA.**

Employees who do not receive the vaccine before entering the workplace may pose a "direct threat" to others, meaning "a significant risk of substantial harm." This will be an individualized assessment, but a direct threat may not always be eliminated or reduced by reasonable accommodation.

### **5. Confidentiality is key.**

Proof or confirmation of the COVID-19 vaccination must be kept confidential. While asking if an employee is vaccinated is not a disability-related inquiry, employers should limit what they request to vaccination status only and must keep this information confidential.

### **6. Religious accommodations under Title VII.**

Some employees may hold religious beliefs that conflict with or prohibit them from receiving the vaccine. Employers are required to accommodate so long as the belief is sincerely held, and the accommodation does not cause undue hardship.

### **7. Pregnancy-related accommodations.**

Pregnant employees must be treated as other employees "similar in their ability or inability to work." Employees who are pregnant may be entitled to job modifications to the same extent as other employees are offered modifications.

### **8. Houston Methodist Hospital.**

Relying on EEOC guidance, a Texas federal court dismissed a lawsuit by employees who claimed they should not be forced to receive the vaccine or be terminated from employment. The court explained the hospital was doing its job to save lives and rejected the employees' argument that Emergency Use Authorization for the COVID-19 vaccine does not provide a private opportunity to sue.

## 9. Arguments for and against mandate.

In considering whether to implement a mandate, employers should consider arguments for and against mandating. Employers can weigh the arguments for mandating the vaccine: safety; herd immunity; reduce COVID-19 related absences; return to business "as usual"; and full FDA-approval in the coming months. Employers may also look to the arguments against mandating the vaccine: Emergency Use Authorization status; concerns of effectivity and long-term effects; accommodations; employee relations; litigation; and differences among state laws.

## 10. Know the travel restrictions.

For those traveling outside the U.S., countries are changing their rules, but vaccinations may help for some travel. For those coming into the U.S., vaccinations are not required, but prior to boarding, a COVID-19 test result no more than three days prior to travel is required, or documentation of recovery within the last three months. Certain foreign nationals traveling to specified countries are under a travel ban.

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