
UPDATED: Employer-Mandated COVID-19 Vaccines: Important Considerations

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This is an updated version of our memorandum previously published on April 22, 2021. The update incorporates, inter alia, EEOC guidance issued on May 28, 2021 and the first lawsuit filed against a private employer challenging a vaccine mandate.

As COVID-19 vaccines become increasingly available, employers may consider requiring that employees be vaccinated prior to resuming or continuing in-person work. Recent guidance from the Equal Employment Opportunity Commission (“EEOC”) states that employers may require employees to get a vaccine under equal employment opportunity (“EEO”) laws as long as employers make exceptions for employees with disabilities or religious beliefs that prevent them from receiving the vaccine. Employers may also offer incentives to employees to provide proof of vaccination, although EEOC guidance limits the value of the incentives in certain situations. However, many states such as New York (discussed herein) are contemplating more employee-protective legislation limiting employers’ ability to mandate that its employees receive the vaccine. In the midst of this legal uncertainty, companies must also grapple with the reputational and morale risks associated with requiring vaccinations. This memorandum outlines liability risks employers should consider in setting their own vaccine policies.

Attorneys

- Helene R. Banks
- Geoffrey E. Liebmann
- Lauren Perlgut