

EMPLOYER MANDATED COVID 19 VACCINE?®

BY: CHRISTINA HARRIS SCHWINN, ESQ.

2020 will be remembered, most notably, for the COVID 19 pandemic (“COVID”) and the total upheaval of home and work life as we knew both before COVID. Since COVID became an unfortunate reality of life, clients call me—almost daily—asking whether it is lawful to require mandatory COVID vaccines as a condition of employment. Even though the short answer is yes, an employer may require it, it should be noted that one size does not fit all. Any employer considering implementing a mandatory COVID vaccination policy should consult with competent legal counsel first before proceeding with implementation of such a policy. The balance of this update will focus on what employers must consider before implementing such a policy. First, recognize that the federal Americans with Disabilities Act, as amended, and Title VII as amended by the Civil Rights Act of 1992 (including Florida law on these laws) afford employees’ rights under the law that covered employers must take into consideration or risk liability. These areas of the law and the exceptions are complicated. Each case has to be reviewed in context with applicable facts, e.g. bona fide religious exceptions or disabilities. A mandatory COVID vaccine policy that does not contain exceptions is likely fraught with employer liability. Stay tuned..... Presently, employment lawyers are seeing a significant rise in cases against employers alleging some form of liability as a result of COVID with most of the cases focusing primarily on the denial of workers’ compensation benefits or a denial of paid leave under the Families First Coronavirus Response Act (“FFCRA”) and subsequent amendments. While certain requirements under the FFCRA expired at the end of 2020, amendments (not mandatory) at the end of 2020 granted employers an option to extend paid leave benefits in exchange for a tax credit.

There are many federal agencies that regulate employers. Some of those agencies are better known than others. One agency that is known by some, but not others, is the Occupational Safety and Health Administration (“OSHA”). OSHA regulates most employers (public sector excluded) in Florida. Under the Occupational and Safety Act of 1970 (cite omitted) (“ACT”), the ACT requires employers to abate a recognized hazard in the work place. This provision of the ACT is known as the “general duty” clause. OSHA relies on this provision when it does not have a published standard. It is a catch all that allows OSHA to promulgate policy and guidance. Many employers are required to maintain injury and illness

logs that have to be reported annually to OSHA. OSHA has announced that employers that require **mandatory** COVID vaccines will be required to report adverse reactions to the vaccine to OSHA.¹

This article is provided to raise awareness to encourage employers to proceed with caution before adopting a mandatory COVID vaccine policy. Caution is the best advice for any employer considering a mandatory COVID vaccine policy. Before implementing such a policy, consult with competent employment law counsel. It is worth it.

¹ Note the emphasis on mandatory.

A note to the reader: This article is intended to provide general information and is not intended to be a substitute for competent legal advice. Competent legal counsel should be consulted if you have questions regarding compliance with the law.

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