

# Healthcare Employer Roundtable - Best Practices and Considerations for Employers Regarding the COVID-19 Vaccine in the Workplace

Taylor White  
Shareholder, Winstead PC  
twhite@winstead.com

# Today's Wills and Won'ts



BEST  
PRACTICE



- **We will:**
  - Discuss a common issue for employers—COVID-19 vaccines in the workplace.
  - Provide an analytical framework to address and manage potential risks and pitfalls.
  - Discuss best practices—what works and doesn't work for your business.
- **We won't:**
  - Suggest a *uniform* approach—all employees and issues are different.
  - Answer *all* questions that may arise.

# EEOC “Guidance”

EEOC Guidance ([www.eeoc.gov/coronavirus](http://www.eeoc.gov/coronavirus))



## PANDEMIC PREPAREDNESS IN THE WORKPLACE AND THE AMERICANS WITH DISABILITIES ACT

*UPDATED IN RESPONSE TO COVID-19 PANDEMIC – March 21, 2020*

What You Should Know About COVID-19 and the ADA, the  
Rehabilitation Act, and Other EEO Laws

*Technical Assistance Questions and Answers - Updated on April 23, 2020*

## The EEOC Said (or Didn't Say) What!!!???

- ***Can the Company Ask an Employee Whether the Employee Has Obtained the COVID-19 Vaccine?***
  - **Generally, yes**....the EEOC says so.
- ***Can the Company Mandate That Employees Receive the COVID-19 Vaccine?***
  - **Likely**....but the EEOC doesn't explicitly say so.

# Document the Mandatory Vaccine Decision

- ***Acknowledge the General Justification and Legal Support for the Mandate.***
  - “Direct threat” based on objective facts, not subjective fears.
  - Consider alternatives.
- ***Document the Specific Justification and Factual Support for the Mandate.***
  - Identify groups subject to the mandate.
  - Affirmative statement—unvaccinated individuals would post direct threat.
  - Summary of facts relied upon for direct threat.

# Communicate, Communicate, Communicate

- **Why?**
  - Employees are afraid.
  - News and social media peddle conflicting information.
- **What?**
  - Government fact sheets and resources.
  - Encouragement to speak with personal physicians.
  - Information about EAP.
  - Logistics about implementation and administration.
- **When?**
  - NOW!



# Can I Get a Little Accommodation, Please?

## ■ ***Covered Disabilities***

- E.g.: allergies, reactions to other medications, etc.
  - Fear of the vaccine???
- Pursuant to exemption request and doctor’s certification.
- If disabled, can be only excluded based on “direct threat” or “undue hardship.”
- Consider accommodations—remote work, paid/unpaid leave, etc.

## ■ ***Sincerely Held Religious Beliefs***

- But NOT personal opinions or preferences.
- Pursuant to exemption request and religious leader’s certification.
- If religious beliefs are sincerely held, can be only be excluded based on “undue hardship.”
- Consider accommodations—remote work, paid/unpaid leave, etc.

# OSHA IS COMING!!!!



## OSHA DIRECTION

U.S. DEPARTMENT OF LABOR

Occupational Safety and Health Administration

**DIRECTIVE NUMBER:** DIR 2021-01 (CPL-03)

**EFFECTIVE DATE:** March 12, 2021

**SUBJECT:** National Emphasis Program – Coronavirus Disease 2019 (COVID-19)

### U.S. Department of Labor

Occupational Safety and Health Administration  
Washington, D.C. 20210  
Reply to the attention of:

March 12, 2021

**MEMORANDUM FOR:** REGIONAL ADMINISTRATORS  
STATE PLAN DESIGNEES

**THROUGH** AMANDA EDENS  
Deputy Assistant Secretary

**FROM:** PATRICK J. KAPUST, Acting Director  
Directorate of Enforcement Programs

**SUBJECT:** Updated Interim Enforcement Response Plan for Coronavirus Disease 2019 (COVID-19)



# Surviving OSHA's COVID-19 Enforcement



## Plan of Action:

- Assess risk to employees.
- Educate / train employees.
- Require proper sanitation and PPE.
- Implementing proper hierarchy of controls.
- Deal with safety complaints.
- Record work-related COVID-19 illnesses.

**DOCUMENT YOUR EFFORTS!**

# Presentation

Our community and the issues it faces are changing rapidly, as the COVID-19 pandemic develops and reshapes our daily lives. Our governmental bodies are reacting to it in real-time, so statutes, guidance, laws, and ordinances are being put out regularly. That means best practices and strategies for employers are changing constantly. This presentation is not an exhaustive analysis of all statutes, laws, guidance, or ordinances, but it may be used as a reference point for employers and their lawyers to develop their own compliant procedures and protocols related to COVID-19 issues in the workplace. In all cases, employers and their lawyers alike should undergo a detailed review and analysis of all applicable statutes, guidance, laws, and ordinances when considering best practices.

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- The views expressed in this presentation do not necessarily reflect those of the firm, its lawyers, or clients.

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