



## Eye On The Law

### **COVID-19 Vaccinations - Employer Rights, “Long” COVID, New COVID Strain, and Other COVID-19 Issues**

As of today, the only official guidance for employers on the question of whether they can require employees to be vaccinated for COVID-19 is provided by the Equal Employment Opportunity Commission (“EEOC”). While many employers would like to require that all employees be vaccinated for reasons of workplace safety, we have received reports from our clients that many of their employees are very hesitant to be vaccinated at this time. In some employment settings, the informal polling of those employees in favor and those against being vaccinated is 50/50 or just 60/40 in favor.

As a general rule, **employers may require employees to be vaccinated.** However, according to EEOC guidance, employees may be **exempt from any such requirement for disability or religious reasons.** If an employee claims an exemption for disability-related reasons, the employer should conduct an individualized assessment **to determine whether the unvaccinated individual will pose a “direct threat to the health or safety of individuals in the workplace” if he or she is not vaccinated.** To determine whether an individual poses a “direct threat”, the employer must consider several specific factors outlined by the EEOC. Simply put, the analysis is far from easy. ***Then, the EEOC guidance provides that even if a direct threat exists, an employer should consider if it can provide a reasonable accommodation for the employee’s disability that would eliminate or reduce the risk, such as allowing the employee to work remotely.*** The guidance also provides that religious belief exemptions exist for employees to assert as a reason not to be vaccinated. **Given that this guidance issued by the EEOC is complicated, we anticipate that, as the vaccination process moves forward, additional rules and requirements will be published. Ryan & Ryan will update you as these changes occur.**

Another important issue for employers to consider in deciding whether to mandate that employees receive the vaccine, is that the COVID-19 vaccines have received FDA Emergency Use Authorization at this point and the vaccines have not gone through the more thorough FDA approval or licensing process, as has been done for previous vaccines. ***Further, the vaccines have not been subject to extensive testing to determine the potential effects on pregnant or breast-feeding women.***

Besides employees' reluctance or refusal to be vaccinated because of disability or religious beliefs, a mandate that all employees receive COVID-19 vaccinations should be carefully considered for the impact it may have on employee relations within the organization. **In a unionized environment, a vaccine mandate may have to be negotiated with a union either prior to implementation or as part of impact bargaining.**

Perhaps the reason employees are hesitant about being vaccinated is that they are becoming more aware that there are many unknowns concerning the virus and the vaccine. For instance, while the new **COVID strain recently discovered in the UK, is believed to spread more easily** than earlier forms of the virus, there is little information about why this is the case. The lack of precise information about this new strain may increase employee stress levels which are already high.

In addition, a recent medical heart-related episode with a young college basketball star has placed a newly discovered COVID condition in the news. It is called "residual COVID" or "long COVID". In general, symptoms of long COVID usually occur months after a person is diagnosed with COVID. ***Most individuals with long COVID test negative for the COVID virus after having tested positive while having COVID initially.*** While its symptoms are often less acute than initial COVID symptoms, these on-going **long COVID symptoms can last up to 6 months. Symptoms often include racing heart rates, headaches, fatigue, sleeplessness, and eye and ear issues.** It is important to be aware of the potential of on-going symptoms from the perspective of the Americans With Disabilities Act as well as having an **understanding that your employees, including top performers, may be facing these medical difficulties for several months after a positive test followed by a negative test.** The CDC and Johns Hopkins web sites recognize residual COVID as an issue but have not yet published any specific information or data.

You may want to use these websites for updates and assistance:

CDC: <https://www.cdc.gov/vaccines/covid-19/index.html>

FDA:

<https://www.fda.gov/news-events/press-announcements/fda-takes-key-action-fight-against-covid-19-issuing-emergency-use-authorization-first-covid-19>

Johns Hopkins: <https://www.hopkinsmedicine.org/coronavirus/covid-19-vaccine/>

State of Connecticut: <https://portal.ct.gov/Coronavirus/COVID-19-Vaccinations>

**Note:** On December 27<sup>th</sup>, the President signed The Coronavirus Response and Relief Supplemental Applications Act. The mandatory sick leave and Family Medical Leave provisions of the CARES Act, which was signed in March 2020, ***were not extended beyond*** December 31<sup>st</sup>, the Supplemental Act allows employers to **voluntarily** provide sick leave and (depending on the circumstances) voluntarily provide Family Medical Leave benefits for COVID-related reasons through March 31, 2021.

***If you have concerns about this or any other labor or employment issue, please contact David Ryan at [david.ryan@ryan-ryan.net](mailto:david.ryan@ryan-ryan.net) or by telephone at 860.460.7139 (mobile) or 203.752.9794 (office).***

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