

Mandatory Vaccinations in the Workplace: An Overview for Maine Employers
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Lately we have been fielding questions from employers about the legality of mandating influenza and COVID-19 vaccines for employees. While there is a fair amount of information out there regarding flu vaccines, we expect in the coming months that federal and state agencies will provide guidance on mandatory COVID vaccines. Until then, the guidance pertaining to flu vaccines is a helpful point of reference.

Flu Vaccines in the Workplace

Guidance on mandatory flu vaccines in the workplace comes from the Occupational Safety and Health Administration (“OSHA”) and the Equal Employment Opportunity Commission (“EEOC”). In a 2009 interpretation letter OSHA stated that employers may require employees to take the flu vaccine so long as employees are “properly informed of the benefits of the vaccinations.” OSHA went on to state that employees must be able to obtain medical exemptions, if necessary. Similarly, in guidance issued during the H1N1 epidemic and updated this past March, the EEOC recognized that employers may require flu vaccines in the workplace, but must provide disability *and* religious exemptions. However, the EEOC suggested employers “simply encourage employees to get the influenza vaccine rather than requiring them to take it.”

Under Maine law, certain employers in the healthcare field, or “designated healthcare facilities,” must ensure their employees are vaccinated for measles, mumps, rubella (German measles) varicella (chicken pox), hepatitis B, and influenza. Designated healthcare facilities include licensed nursing facilities, residential care facilities, multi-level health care facilities, hospitals, home health agencies, and intermediate care facilities for the mentally disabled. These employers cannot permit an employee to work “without a certificate of immunization for each disease,” including seasonal influenza. Additionally, these employers must provide annual flu vaccines to each staff member providing direct care to residents of the facility.

Current Maine regulations state that employees of designated healthcare facilities may be granted medical, religious, or philosophical exemptions from vaccinations. However, some may recall the contentious hearings in March of 2019 involving LD 798, a bill aimed at tightening vaccine exemptions in public schools. LD 798, since signed into law, also narrows vaccine exemptions for employees of designated healthcare facilities. Therefore, as of September 1, 2021, many healthcare employees may lose their right under state law to claim religious or philosophical exclusions from vaccinations. Regulations will be forthcoming to provide more detail. Of course, LD 798 is only applicable to schools and employers in the healthcare field; employers in other industries should follow guidance from the EEOC and OSHA.

Reasonable Accommodations

If an employee requests a religious or disability based exemption from an employer's vaccine mandate, the employer should engage in interactive dialogue and thoroughly document their efforts to provide an accommodation. Reasonable accommodations may include allowing the employee to telework, providing extra PPE, moving their workstation, temporary reassignment, or as a last resort, a leave of absence. Employers are not required to provide accommodations that would present an undue hardship to the organization or that would result in a direct threat to others. In the case of a religious exemption, the employer should evaluate whether the request is based on a sincerely held religious belief, and in the case of a disability exemption, employers may require certification from the employee's healthcare provider. Simply objecting to a vaccine because one disagrees from a medical or philosophical perspective is insufficient to warrant an exception.

Looking ahead to COVID-19 Vaccines

According to information released on September 22, 2020, the CDC envisions COVID-19 vaccinations will be distributed in phases, prioritizing health care personnel, essential workers, and individuals in high risk categories. It is important to remember that the vaccine will probably not provide a reprieve from the other applicable workplace safety and health regulations – employers must still ensure they comply with local, state, and federal guidance. Additionally, if employers do require employees to be vaccinated, employees who suffer adverse medical reactions may be eligible for benefits under the employer's Workers Compensation policy.

The question remains – even if you can require vaccinations, should you? Aside from the complexities discussed above, employers should consider the impact a workplace vaccine mandate may have on morale and organizational culture. If we have learned anything from state and local face covering mandates, we know that these issues can be controversial. When we receive more federal and state guidance we will update this article.