

CLIENT ALERT: The Latest on Mandatory COVID-19 Vaccines
August 6, 2021

You've probably read in the news that local employers like Maine Med and national employers like Google are now mandating vaccines for employees. The University of Maine originally announced that it would not mandate vaccines for students until final approval was given by FDA, but yesterday it changed course and it will mandate vaccines for returning students this semester. As many of you will know we have been discussing vaccine mandates since January and the general approach has been for employers to encourage and incentivize vaccines, but not require them. The recent activity begs the question whether the legal landscape changed. Employers are also asking us whether they should consider a mandate.

To date caselaw and government guidance supports the legality of a workplace vaccine mandate. In July the Department of Justice came out with an [opinion](#) that vaccines could be mandated even before final FDA approval. Although the COVID-19 vaccines are currently available under emergency use authorization ("EUA"), the Dept. explained that EUA regulations requiring vaccine recipients be informed they have "the option to accept or refuse administration" of the vaccine has no bearing on private or public entities, such as employers and schools.

Is this new DOJ opinion a rock solid defense for employers? Unfortunately, no. The legal opinion from the Department of Justice is just that – an opinion – not law or binding in lawsuits. Two federal cases have come down in favor of the party mandating vaccines. In June, employees of Houston Methodist Hospital lost their case challenging their employer's vaccine mandate. The Judge dismissed their arguments that the vaccine was "experimental and dangerous." Last week, a federal court in Indiana also upheld Indiana University's vaccine mandate for college students. In a very detailed opinion the judge explained how he believed that the current state of the pandemic and the science about the vaccine put the university on solid legal ground and denied an injunction for the students who are challenging the vaccine mandate.

Where does that leave Maine employers? We believe that a vaccine mandate is legal, and that employers may require all employees who enter the workplace to be vaccinated provided medical and religious exemptions are recognized. But there is no one size fits all approach for employers in Maine. It is an individual decision for employers balancing safety, business needs and legal risk. Some employers may wait for final FDA approval before adopting a mandate, others will rely on encouragement and incentives, and many employers may not want the divisiveness that may come with a mandate in a tight labor market. One thing is for sure. The pandemic is unpredictable and employers will continue to review all their options for keeping workplaces safe and open.

