

Can your employer require you to get a COVID-19 vaccine? Legal experts weigh in

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Posted: Dec 8, 2020 / 08:11 PM EST / Updated: Dec 9, 2020 / 08:09 AM EST

INDIANAPOLIS — With promising news that COVID-19 vaccines could soon be more widely available, some employers are considering whether they will require a vaccination as a condition of employment.

But can they do that? According to legal experts, the answer is yes. That also means an employee could be fired for refusing to receive the vaccination.

“If they instituted a uniformly enforced rule: if you want to work here, you’re vaccinated, and you refuse, there’s going to be a reaction,” said John Haskin, founding partner of the Employment Law Office of John H. Haskin & Associates, LLC in Indianapolis. “Whether or not that reaction is sustainable in court is something we have to see.”

However, Haskin and other legal experts say there are exceptions. Under the Americans with Disabilities Act (ADA) and Title VII of the Civil Rights Act of 1964, an employee could be entitled to an exemption from a mandatory vaccine.

“If the employee has a serious medical condition that would relate to a vaccination — you have to remember these vaccinations have been approved on an emergency basis not FDA full approval,” said Haskin.

In March, the Equal Employment Opportunity Commission (EEOC) [issued COVID-19 guidance](#) that addressed whether employers can force all employees to take a vaccine. However, in this case, the influenza vaccine was used as an example because there were no COVID-19 vaccines developed.

In the guidance, the EEOC said an employee could be entitled to the exemption based on an ADA disability that prevents them from taking the vaccine.

Under Title VII of the Civil Rights Act of 1964, once an employer receives notice that an employee's religious beliefs, practice or observance prevents them from taking the influenza vaccine, the employer must provide reasonable accommodation, such as working remotely, unless it would pose an undue hardship to the operation of the employer's business.

"That's where the majority of the employees that really have concerns health-wise they will be exempted and if they're not, and terminated, they would have a very justiciable claim under the Americans with Disabilities Act," said Haskin.

Since the March guidance, there have been no new guidelines issued by the EEOC addressing a COVID-19 vaccine, and whether employers can compel their employees to take it.

"That does not mean they're not going to. I feel that there will be guidelines issued when this is breaking out for full vaccination," Haskin added.

If an employer decides to mandate a vaccination among employees, Haskin said, "the employer has to ensure that it is uniformly applied to all of their employees and if anybody is given a bye without a recognized accommodation under the ADA or Title VII, the employer's opened themselves up to just straight discrimination — it could be race, sex, age, national origin — and discrimination in terms of employment."

Haskin said for a person to request a reasonable accommodation under the Americans with Disabilities Act or Civil Rights Act of 1964, they would need to make it known to their employer why they are requesting an exemption.

"If the employer is not aware of the basis for asking to be excluded from this mandate it's hard to hold the employer accountable or responsible or accountable for something they didn't know about," Haskin said. "The employee has to verbalize and contact HR as to why they do not wish to take the mandated vaccination."

He said they have had many similar conversations with clients regarding flu vaccination issues and why employees were unable to receive the vaccination. "There is a reason. That reason needs to be communicated. That communication could be considered a request for an accommodation."

"Those that didn't request an accommodation or give a reason — they are certainly most at risk for obviously losing the position and not getting the

accommodation and risking their unemployment compensation as well,” Haskin said.

“There are things the employer can do to protect his workforce and also protect the employee who cannot legitimately be vaccinated,” said Haskin. “It’s gonna be a real interesting situation. Believe me.”

“Right now, with the teachers unions this is something that they really are balancing with all of the school districts and trying to negotiate something that works for both,” said Haskin.

We have reached out to the Indiana State Teachers Association to learn more about their plans and requests for staff across the state.

Haskin said he believes places like hospitals and the healthcare system will be able to provide reasonable accommodations to those who cannot receive the vaccination. “The problem’s gonna be at the manufacturing plants and things like that where there may be a sizable percentage that are very concerned about taking the vaccination.”

We reached out to the United Food and Commercial Workers International union, which represents about 13,000 workers in Indiana. They recently called to prioritize essential workers for early vaccine access.

“Protecting our country’s food workers is essential to keeping our communities safe and stopping future outbreaks in these high-exposure workplaces,” said President Marc Perrone.

We also asked the United Auto Workers union whether there would be a push for mandatory vaccinations. At this time, a spokesperson for the company said those discussions are taking place, but it is still early.

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