



What We Will Cover

- Applicable Laws & Administrative Guidance
- Vaccination Policies (and related concerns)
- EEOC and OSHA Guidance
- Wage and Hour Considerations
- Common Questions From Employers
- Protecting Your Business From Liability

Applicable Laws & Administrative Guidance

Laws	Guidance
Americans with Disabilities Act	Equal Employment Opportunity Commission
Family Medical Leave Act	Centers for Disease Control and Prevention
Title VII of the Civil Rights Act of 1964	Occupational Safety and Health Administration
Occupational Safety & Health Act	Department of Labor
Genetic Information Non-Discrimination Act (GINA)	State Health Departments and Related State Agencies

Mandatory Vaccination Policies

- Can employers require COVID-19 vaccines?
- Mandatory Policy Considerations:
 - Is vaccination Job Related and consistent with business necessity?
 - Is policy adequately detailed?
- Employee requests for exemption

Employee Exemptions From Mandatory Vaccination Policies

- Sincerely held religious belief, practice, or observance
- Disability
- Pregnancy
- Distrust of Vaccine????

Reasonable Accommodations

- What reasonable accommodations are available to exempted employees?
- What if a job can only be performed at the workplace?
- How does an employee request an accommodation?
- What if a **fully vaccinated** employee requests accommodation for an underlying disability due to concern about future infection?

GINA Implications

- Is **Title II of GINA** implicated if an employer:
 - Requires an employee to receive a COVID-19 vaccine administered by the employer or its agent?
 - Requires employees to provide documentation or other confirmation that they received a vaccination

Employee Vaccination Status

- What verification methods are available to employers?
 - Honor system
 - Submission of vaccination cards
 - Special badges or stickers
 - Auditing

EEOC Guidance

- Recently updated on October 13, 2021 to address vaccines
 - Stresses that the ADA required employers to maintain confidentiality of information related to an employee's COVID-19 vaccination information
 - Confirms employer's can request vaccination documentation or confirmation without violating the ADA or GINA

EEOC Guidance

- Acknowledges CDC recommendations for vaccinating pregnant women, but reminds employers of the need to accommodate pregnant women
- Addresses incentives for vaccinations
 - If administrator is a third party – no limit to the incentive
 - If administrator is the employer or its agent – the value may not be so substantial as to be coercive

Biden Mandate and OSHA ETS

- September 2021 – President Biden instructs OSHA to prepare an Emergency Temporary Standard (ETS) requiring employers with 100 + employees to require workers to get vaccinated or test them regularly
- October 12, 2021 – OSHA submitted proposed EST to the Office of Management and Budget
- What now?

Mandatory Vaccination Policies- Revisited

- What if the Governor of your state prohibits vaccine mandates? (Montana, Texas)
- Conflict with OSHA ETS?
 - Regular testing is still allowed
- Federal contractors

Wage-Hour Considerations

- Paid time off for vaccinations
- On-site testing
- State and local paid sick leave laws
- Employee vaccination incentives
- Employer Federal Tax Credits



Common Workplace Questions

Screening Questions about Family

- Can employers ask employees whether they have family members who have COVID-19 or symptoms associated with COVID-19?

Employee “Call-Offs”

- How much information can an employer request from an employee who calls in sick, in order to protect the rest of its workforce during the COVID-19 pandemic?

Sex Discrimination

- If an employer provides telework, modified schedules, or other benefits to employees with school-age children due to school closures or distance learning during the pandemic, are there sex discrimination considerations?

Testing

- Can an employer administer a COVID-19 test when evaluating an employee's initial or continued presence in the workplace?

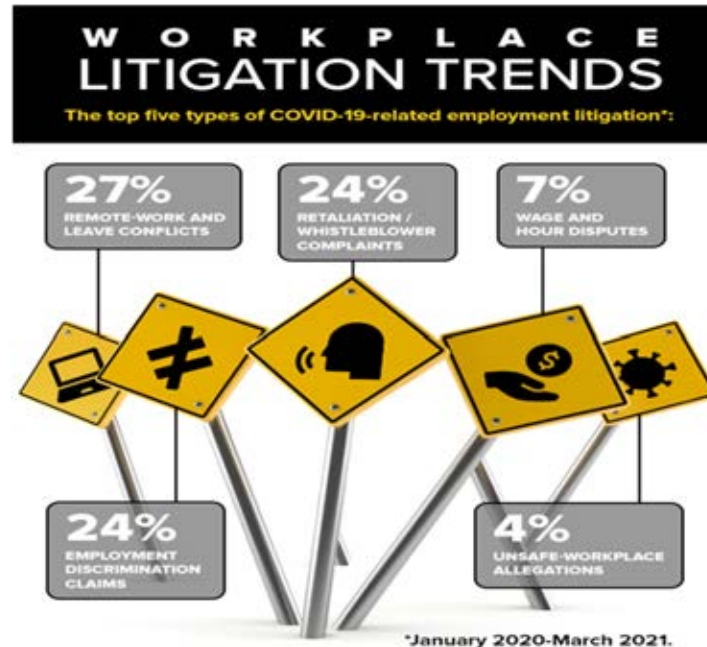
COVID-19 Related Medical Information

- Can an employer disclose the name of an employee to a public health agency when it learns that the employee has COVID-19?
- Can a temporary staffing agency or a contractor that places an employee in an employer's workplace notify the employer if it learns the employee has COVID-19?
- Are employers required to create a new medical file system solely for COVID-19 related information?

Hiring and Onboarding

- May an employer postpone the start date or withdraw a job offer because the individual is 65 years old or pregnant, both of which place them at higher risk from COVID-19

Protecting Your Business Against COVID-19 Lawsuits



Protecting Your Business Against COVID-19 Lawsuits

- State laws that limit COVID-19-related claims do not prevent federal lawsuits.
- Comply with all laws and protocols set by local and federal governments.
- Stay aware of specific laws and regulations pertaining to business operations during COVID-19.

Protecting Your Business Against COVID-19 Lawsuits

- Maintain all documentation of COVID-19 exposure at workplace.
- Post signs listing symptoms of COVID-19 and ask those with symptoms or exposure not to enter.
- Document regular cleaning activities, especially any deep cleaning and sanitizing procedures.
- Promptly notify staff members of any known infections.

Agency Resources

- CDC Guidance for COVID in the Workplace: <https://www.cdc.gov/coronavirus/2019-ncov/community/index.html>
- CDC Guidance Regarding Vaccinated People: <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated-guidance.html>
- EEOC Guidance: <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>
- OSHA Guidance: <https://www.osha.gov/coronavirus/safework>

QUESTIONS?

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