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EEOC Says Employers Can Mandate Vaccines - with Exceptions, *Healthcare Risk Management, ft. Henry Norwood*

Henry Norwood, KD attorney in Orlando, Florida, was quoted in a Healthcare Risk Managment article published on January 25, 2021.

Under certain circumstances, employers are permitted to mandate their employees to receive a COVID-19 vaccination as a condition of their employment, says Henry Norwood, JD, attorney with Kaufman Dolowich Voluck in Orlando.

That position was outlined by the Equal Employment Opportunity Commission (EEOC) in guidance published in December 2020. However, this guidance is not without its limits.

Title VII Requirements

Employers are limited by certain provisions of Title VII of the Civil Rights Act of 1964 and the Americans with Disabilities Act (ADA), Norwood says. Even a blanket requirement that all employees receive the vaccine must include exceptions.

Title VII requires employers to provide exemptions from any vaccine requirement to employees with sincerely held religious beliefs preventing them from receiving the vaccine, Norwood explains. Further, the ADA requires employers to provide exemptions from any vaccine requirement to employees with a disability that prevents them from receiving the vaccine. Employees with either a religious belief or disability exemption still can be required to receive the vaccine or be "excluded" from the workplace if their presence is a direct threat and no reasonable accommodation could reasonably mitigate the threat.

Four Elements to Consider

Norwood explains the EEOC put forth four elements to consider in determining the existence of a direct threat: the duration of time the risk will exist, the potential harm posed by the risk, the probability that any potential harm will occur, and the imminent nature of the potential harm.

"An accommodation is not reasonable if it would pose an undue burden on the employer. The EEOC delineates between 'excluding' employees and 'terminating' employees," Norwood explains. "While terminated employees will no longer be employed by the employer, 'excluded' employees may still be entitled to an accommodation that allows them to work away from the workplace if such an accommodation would be reasonable."

Other reasonable accommodations might include requiring additional use of personal protective equipment, isolated/relocated workstations, or removing employees from positions of public exposure, he says.

The EEOC guidelines are consistent with its prior guidance regarding mandatory vaccination requirements in the wake of widespread health crises, such as previous EEOC guidance in response to the H1N1 epidemic, Norwood says.

"It also should be noted that, in the healthcare context specifically, several state statutes currently require healthcare workers in certain settings to receive various vaccinations including, for example, influenza and pneumococcal vaccinations," he explains. "Employers seeking to implement mandatory vaccination requirements in their workplaces should provide their employees with clear procedures, providing them the option to claim either the religious or disability-based exemptions, while also conducting a threat analysis to determine whether certain employees may or may not be reasonably accommodated based on their position."

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