
To: FCA International Contractors
From: FCA International Legal Counsel
Subject: **COVID-19 Vaccine Considerations for Signatory Contractors**
Date: November 18, 2020

Overview

To date, the FDA has not approved a COVID-19 vaccine and, even when it is approved, the vaccine is not expected to be widely available until the spring of 2020. Nevertheless, encouraging reports from clinical trials have spurred the conversation about whether employers can or should mandate that employees receive the vaccine.

Mandatory or Strongly Encouraged?

As a practical matter, you should first consider whether the policy is going to be mandatory and for whom. While it may make sense to mandate vaccination for front-line healthcare workers, the need is much less apparent for workers with little contact with others and those who work almost exclusively from home.

Likewise, by making vaccination a condition of employment, you are requiring employees to produce medical documentation (which usually must be kept in a separate, confidential HR file), which adds to your administrative burden. In addition, if an employee experiences medical complications from receiving a vaccination that is mandated by company policy, any resulting injury may be covered by your state's workers' compensation program.

Existing Legal Restrictions

At present, there are few (if any) laws preventing a private employer from imposing a mandatory vaccination requirement as a condition of employment. In fact, most state laws addressing vaccination in employment actually require certain employees (namely healthcare workers) to receive certain immunizations as a condition of employment, including Hepatitis B, Influenza, Measles and Pertussis.

Unless the federal government or states move quickly to enact legislation addressing employer policies mandating COVID-19 vaccination, employers will generally be free to consider such policies, subject to existing federal and state laws prohibiting workplace discrimination. Two federal laws are most likely to be implicated.

First, Title VII of the Civil Rights Act of 1964 prohibits "religious discrimination" and could require an employer to accommodate employees who object to a vaccination because it would conflict with an employee's sincerely held religious beliefs. Similar state law protections may be implicated too.

Second, the Americans with Disabilities Act, which prohibits discrimination on the basis of disability, may require the employer to accommodate an employee who cannot receive the vaccination because of a medical condition. Again, analogous state laws may apply too.

Union Contracts

For employees covered by a collective bargaining agreement, any vaccination requirement must not conflict with the parties' CBA. While it is unlikely that such a provision exists, the employer may need to give the union notice of the new policy and discuss its effects.

Bottom Line

There are both legal and practical concerns with implementing a mandatory vaccination policy. Employers should exercise caution and engage competent legal counsel before taking the plunge.