

Employment Law Corner

Monthly Report



FOLEY & FOLEY^{PC}
ATTORNEYS AT LAW

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COVID-19 Workplace Updates

The Delta variant has upended virus control and it feels like the bad old days sometimes. Do not despair—we can unpack what you need to know and do. Below is a breakdown of recent developments.

September Updates

1. [Nobody's Got Time for This: Evaluating Vaccination Exemption Requests](#)
2. [Forensics: A New Task for Employers](#)
3. [The Future of Work...](#)
4. [Biden Rolls Out the Big Guns on COVID-19](#)
5. [The White House COVID-19 Mandate, Unpacked](#)
6. [The EEOC Threads the Needle on Remote Work Accommodation](#)

Mandatory Vaccines

The push towards mandatory vaccine policies in the workplace was underway for many businesses when the White House stepped in this month and announced a national mandatory vaccine policy. Here are the highlights and here is a link to our [blog](#), which gives more detail. The mandate applies to:

- Private sector employers with 100+ employees companywide (80 million) under an Emergency Temporary Standard that OSHA will create;
- Federal employees and federal contractors (4 million);
- Healthcare workers employed in facilities that receive Medicaid or Medicare reimbursement (17 million) under a rule that the Department of Health and Human Services CMS will create;
- Fully remote workers do not have to be vaccinated unless they work with other remote employees or come to the workplace even on occasion;
- These rules do not supersede exemption requests for religious or medical reasons and the obligation to initiate the interactive process.
- Weekly testing is mandated for those exempt from the rules.

Whether the White House order will be invalidated is the question now. We recommend preparing your workplace if it falls under the guidelines until and unless the mandate is stopped.

Exemptions from Vaccinations

The internet is full of ways to get out of a vaccine, particularly in the area of religious exemptions. While only two religions are actually anti-vaccine (and they account for very small numbers), a personally held belief against inoculation is where many people are hanging their hat. For as little as \$59.00, you can buy forms and a letter from a pastor to file for a [religious exemption](#). What is an employer to do? We offer a fixed fee [Exemption Analysis](#) where we do the work. Remember: you do not have to allow every exemption request, particularly if you think it is fraudulent.

Fake Vaccine Cards

Yes, you read that correctly. It is a federal offense to buy or create documents with a federal agency seal—in this case it is the CDC seal on vaccination cards. It is tricky to detect fake cards and here are a few suggestions:

- If possible, see the actual card rather than a screen shot. It should be on thick paper and neatly, machine cut.
- Check for misspellings.
- With the 2-shot vaccines, Moderna and Pfizer, the handwriting should look different for each shot. It is highly unlikely the same person gave the shot both times.
- The dates of the shots should be 21 days for Pfizer and 28 days apart for Moderna, give or take. Anything before is a tell.

If your employee is using a fraudulent vaccination card, the what to do is easy: termination. You have no duty to call the police but if you think it is part of a larger ring, you might want to do just that.

ADA Remote Work Accommodations

As we expected, workforces that hummed along well remotely will have a hard time showing remote work is an undue hardship in the face of a reasonable accommodation request under the Americans with Disabilities Act. The [EEOC recently brought a lawsuit for the same reasons](#). To be clear, if you are bringing most employees back and the job description and actual job require in office as an essential function, you do not have to provide remote work. It is just going to be harder to show that where a workforce has hybrid or remote positions.

Questions? We have many fixed fee options to make compliance with the law in this ever-changing environment easier. Contact us at questions@foleylawpractice.com or call 508-548-4888 for a menu of our services on COVID-19 or any other employment law issues. We can help.

Contact Us

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