

Employment Law Corner

Monthly Report



FOLEY & FOLEY^{PC}
ATTORNEYS AT LAW

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January Updates

1. Should you require the COVID-19 vaccine in your workplace?
2. Exemptions to Workplace Vaccine Requirements
3. Who We Are: Foley & Foley, PC

FFCRA Leave

Required FFCRA leave ended on December 31, 2020. Employers have the option to extend this leave program until March 31, 2021, and be eligible for the same IRS Tax Credit available throughout 2020 for FFCRA leave.

Should You Require the COVID-19 Vaccine in Your Workplace?

As this newsletter goes out, 21.4 million Americans have contracted COVID-19, with 361,383 deaths and climbing fast. The race to vaccinate is unprecedented (that word has never been used more). More than 5 million Americans have [received a COVID-19 vaccine](#), with millions more on the way. Most states have established a broad outline of when the general population can receive the vaccine, but those timelines may speed up as more vaccines receive approval.

How will your workplace handle vaccination? As noted below, there are a few moving parts to implement a compliant program. We have an easy to use, fixed fee solution for vaccination at your workplace: the [COVID-19 Vaccination Policy Package](#). Based on the latest EEOC guidelines, the [COVID-19 Vaccination Policy Package](#) includes a comprehensive overview for your business to implement a vaccination program, including necessary forms for employees to sign.

The EEOC has noted that the COVID-19 vaccine is not considered a medical examination under the ADA, meaning that employers are allowed to require their employees to be vaccinated. Alternatively, an employer may decide to encourage, but not require the vaccine.

If you are considering requiring the COVID-19 vaccine in your workplace, the EEOC has noted two major exceptions to your mandatory vaccination policy:

1. Individuals with Qualifying Disabilities who cannot take the vaccine; and
2. Individuals with Sincerely Held Religious Beliefs which prevent them from receiving the vaccine.

For workplaces that require flu vaccination regularly, you are aware that some people are allergic to the compounds in the shot or their religious beliefs do not allow them to receive medical vaccinations. The same may be true for the COVID-19 vaccination for some employees.

If your plan to require vaccination includes contracting with an onsite contractor, you will need to keep in mind that any pre-screening questions related to receiving the vaccine be compliant with the ADA. This means that any medical questions asked before receiving the vaccine be job-related and consistent with business necessity— due to the rampant increase in COVID-19 cases and potential threat to the health of others in contracting COVID-19, this will likely be a low barrier to requiring vaccinations on site. If you choose to allow employees to receive the vaccine at pharmacies or other facilities, this is not required.

Exemptions to Workplace Vaccine Requirements

If your employee indicates they cannot receive the vaccine due to a disability or sincerely-held religious belief, you will need to start the interactive process to determine if you can make a reasonable accommodation from the vaccination requirement. This process is the same under the ADA as any other request for a reasonable accommodation for a disability – you are allowed to request documentation regarding the employee's disability, and determine if you can accommodate the request not to be vaccinated. For religious

accommodations, employers should ordinarily assume that an employee's request for religious accommodation is based on a sincerely held religious belief, but additional supporting documentation may be requested if you have an objective basis for questioning the religious nature or sincerity of the request.

If an employee cannot get vaccinated for COVID-19 because of a disability or sincerely held religious belief, practice, or observance, and there is no reasonable accommodation possible, then it would be lawful for the employer to exclude the employee from the workplace or put in place other additional safety measures, such as requiring increased social distancing between workers.

Do yourself a favor to start 2021: make vaccination consistent and easy now to avoid problems later. [Contact us](#) to purchase the [COVID-19 Vaccination Policy Package](#) solution. And as always, if you have any employment law issues, we can help.

Who We Are

We want to [introduce ourselves](#) to those we have not met:

- We represent employers exclusively from coast to coast in all facets of employment law and litigation. Our mission is solving problems and anticipating issues so you can concentrate on your business.
- We are constantly searching for the trends and upcoming issues in the law that will impact our clients. We want our clients to be informed and ready. Our familiarity with the workplace and our approach sets us apart from other law firms, making us well equipped to handle your unique needs.
- We are not like other firms: Anyone can tell you what the law states and its limits. That's easy. We find creative solutions within those restrictions that move your business forward. We seek to minimize your risk so you can get back to business. Learn how we can help your business [here](#).

Our Services

Through our decades of representing employers in many industries and sizes, we have crafted fixed fee services to help employers through human resources issues and compliance headaches. This is just a small sampling of the services we offer:

1. [Proactive Employment Advice](#)
2. [Litigation of Employment Disputes](#)
3. [Employment Counsel On-Call](#)
4. [Training](#)
5. [Sexual Harassment Prevention Toolkit](#)

Julayne Lazar

We are excited to welcome Attorney Julayne Lazar, who has over 20 years of employment and labor law experience, to our firm. Julayne has worked at several administrative agencies she practices before, including the Massachusetts Commission Against Discrimination, the Office of the Attorney General, and the Department of Unemployment Assistance. Additionally, Julayne has over 10 years' experience as in-house employment counsel to both private and public employers. Julayne's broad background has provided her with a full-range of employment and labor skills to address issues faced by today's employers. When proactive measures are not successful, Julayne has proven to be a skilled litigator on behalf of her clients.

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