

# THE JOURNAL RECORD

## Gavel to Gavel: COVID-19 Vaccinations – What Employers Need to Know

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On Dec. 16, 2020, the Equal Employment Opportunity Commission issued guidance to help employers determine if, when, and how to administer or mandate vaccines in the workplace. Despite this guidance, many employers still wonder what to do and if hidden risks of a lawsuit exist. There are numerous legal options for employers to consider, such as: administering the vaccines to employees; mandating employee vaccination; recommending or

incentivizing vaccination; informing employees about vaccines; or staying silent on vaccines altogether.

Each option carries its own set of risks and benefits. Among the risks for employers are potential violations of the Americans with Disabilities Act, as amended (the ADA), the Genetic Information Nondiscrimination Act (GINA), breaching employee privacy laws, and infringing on an employee's religious freedom. Because of the risks, employers should evaluate the advantages of a vaccine program in their particular workplace and for their particular workforce.

If you are only considering vaccination as a means to stop current health and safety practices, think again. Current guidance from the CDC is that vaccinated workers must continue to follow protective measures, like physical distancing and wearing face coverings. If your ultimate goal is to return everyone to work, no matter what, you will still have a legal duty to accommodate certain individuals even if you do implement a mandatory vaccination program. If you are considering a mandatory program or recommending vaccination to your employees, you will have to keep an eye on Oklahoma Senate Bill 765, which was introduced in January of this year. If this bill becomes law, employers will be prohibited from requiring vaccination, and those who recommend vaccination have to meet certain requirements to avoid penalties.

Employers should engage legal counsel to help evaluate the pros and cons of any vaccination program and should continue to monitor all federal and state agency guidelines to slow the spread of COVID-19 in the workplace. Oklahoma law protects employers that implement safety measures in accordance with applicable guidelines, so be sure to document what you are doing and on what guidance you are relying to protect the health and safety of your employees.

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