Employee Vaccination – Mandatory or Permissive?

• FDA: Every person has a right to refuse EUA vaccination under the Food, Drug & Cosmetics Act
  • City of San Francisco’s policy mandating vaccines for City employees – 10 weeks after final FDA approval
• EEOC and DFEH: Individuals also have a right to refuse vaccination for religious and disability reasons
• CDC Guidance: Currently focuses on voluntary compliance
Lawsuits

• Texas hospital employees (challenge to hospital’s mandatory vaccine policy)
  - Wrongful termination claim; employees “coerced” to have unauthorized (not FDA approved) vaccine
  - Claim dismissed on 6/12/21
  - Appeal?
• New Mexico detention center officer (challenge to mandatory vaccine directive)
  – “Unapproved” medical product (FDCA emergency use authorization)
  – Retaliatory discharge under NM law and due process rights
• Los Angeles School District employees (challenge to District’s right to require vaccine for workforce)
  – Cannot require experimental medical products and due process Rights
Cal/OSHA Emergency Temporary Standards (ETS)

- Issued on 6/17/21
- New guidance on masks, social distancing, vaccinations
- Allow/require employers to differentiate between unvaccinated employees and “fully vaccinated” employees
- “Fully vaccinated” = received second dose or first dose of one-dose vaccine at least 14 days prior
- ETS do not require or authorize mandatory vaccination policy
Cal/OSHA Emergency Temporary Standards (ETS)

- Masks not required for “fully vaccinated” employees
- Exception for indoor settings where California Department for Public Health requires masks
- Unvaccinated employees must continue to wear masks, and employer may have to provide N95 respirators
- Employers no longer required to implement physical distancing and barriers
Cal/OSHA Emergency Temporary Standards (ETS)

• Employees can decline to state vaccination status
• Employer must maintain:
  • Copy of employee’s proof of vaccination; or
  • Record of employees who presented proof; or
  • Record of employees who self-attest to vaccination status.
• Privacy issues (CCPA, HIPAA)
Questions later?

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