



RETURNING TO THE OFFICE: EMPLOYER COVID-19 VACCINATION PROGRAMS AND CAL/OSHA EMERGENCY TEMPORARY STANDARDS

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Disclaimer: Procopio is providing generalized information; not individual legal advice.

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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