



AARON C. SCHLESINGER



LAUREN RAYNER DAVIS

For More Information Please Contact

Aaron C. Schlesinger
 aschlesinger@pecklaw.com
 201.343.3434

Lauren Rayner Davis
 ldavis@pecklaw.com
 201.343.3434

New Jersey Department of Labor Issues Guidance on Employer-Mandated COVID-19 Vaccinations

In response to COVID-19 vaccines becoming more widely available to the general public, the New Jersey Department of Labor (NJDOL) issued [new guidance](#) on its website in the form of frequently asked questions (FAQ) regarding whether employers can mandate that employees obtain vaccinations as a term and condition of employment.

The newly issued FAQ largely echoes existing federal guidance related to various equal employment opportunity laws such as the Americans with Disabilities Act, the Rehabilitation Act, Title VII of the Civil Rights Act of 1964, including the Pregnancy Discrimination Act. Specifically, similar to other federal requirements, the guidance makes clear that New Jersey employers may mandate that their employees be vaccinated against COVID-19 as long as the employer engages in an interactive process with employees to determine whether they may be exempt from the requirement as a result of a disability or “a sincerely held religious belief, practice, or observance.” The NJDOL also adds a specific ground for an exemption if an employee’s “doctor has advised them not to get the vaccine while pregnant or breastfeeding.”

If an employee presents verification of their need to be exempted from vaccination, the employee may be offered a reasonable accommodation. The FAQ lists several forms of these such as “allowing the employee to continue to work remotely, or otherwise to work in a manner that would reduce or eliminate the risk of harm to other employees or to the public” or “providing the employee with personal protective equipment that sufficiently mitigates the employee’s risk of COVID-19 transmission and exposure.”

Going forward, New Jersey employers should take steps to develop or revise internal procedures and policies to incorporate this guidance by providing a procedure for dialogue with employees to determine the employee’s specific issue and explore potential reasonable accommodations that could overcome any limitation. Employers should encourage employees to suggest specific

reasonable accommodations that they believe would allow them to perform their jobs without compromising health and safety in the workplace as a result of not receiving the COVID-19 vaccination. Employers should make clear in their policies, however, that they are not required to provide any specific employee-requested accommodation and may provide an alternative modification to the extent it can be made without imposing an undue hardship on the employer. Such policies should also stress that the employer will make determinations about reasonable accommodations on a case-by-case basis considering various factors based on an individualized assessment in each situation.

The guidance further provides that “if there is no reasonable accommodation that an employer can provide that would mitigate the risk of COVID-19 transmission to its employees and customers, then an employer can enforce its policy of excluding unvaccinated employees from the physical workplace, even if the condition is



CLIENT ALERT

due to disability, pregnancy or breastfeeding, or a sincerely held religious belief and that such exclusion is deemed lawful under the New Jersey Law Against Discrimination. The NJDOL cautions, however, that such circumstances do “not mean that an employer can automatically discipline an employee if they cannot get vaccinated, as the employer may be precluded from doing so by other laws, regulations or policies.” Indeed, analysis of state and local law is vital when employers are deciding whether to require vaccinations as nearly all states and the District of Columbia have some form of presently pending or recently enacted legislation related to allowing or prohibiting employer-mandated COVID-19 vaccinations.

In sum, although a requirement that employees be vaccinated against COVID-19 may be lawful in certain circumstances, the current regulatory guidance suggests that employers institute voluntary vaccination policies rather than forcing employees to be vaccinated. Additionally, the NJDOL states that “[f]or employers with a unionized workforce,” such as those in the construction industry, “the applicable collective bargaining agreement already may vest the employer with the management right to unilaterally develop and implement a vaccine program.” As the lawfulness of employer-mandated vaccinations may implicate multiple federal, state and local laws, as well as other existing policies and agreements, employers are encouraged to consult with qualified counsel knowledgeable in this area of law before adopting a vaccination policy in the workplace.

The information provided in this Client Alert does not, nor is it intended to, constitute legal advice. Readers should not take or refrain from taking any action based on any information contained in this Client Alert without first seeking legal advice.

As always, we are pleased to share insights and updates related to legal issues of interest with clients and friends of the Firm. Our records reflect that the recipient of this message is not a European Union “Data Subject” as defined by the General Data Protection Regulation (GDPR), enacted on May 25, 2018. If you are or consider yourself to be a Data Subject under the EU’s GDPR, kindly email Jennifer Papantonio at JPapantonio@pecklaw.com right away. The GDPR requires that all European Union Data Subjects provide explicit consent in order to continue to receive our communications.

C O U N S E L T O T H E C O N S T R U C T I O N I N D U S T R Y

NEW YORK, NY • RIVER EDGE, NJ • MIAMI, FL • WASHINGTON, D.C. • LOS ANGELES, CA
OAKLAND, CA • CHICAGO, IL • AUSTIN, TX • DALLAS, TX • HOUSTON, TX

WWW.PECKLAW.COM