

Locke Lord QuickStudy: Vaccinations: ?Thoughts for Employers Update

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On December 15, we published a [QuickStudy](#) outlining considerations for employers to contemplate as COVID-19 vaccines become available. Among other factors, we suggested employers determine whether to require vaccinations, and we addressed the legal parameters thereof. We also raised the points that not every employee will agree to be vaccinated, the available vaccines may not prove effective for all employees, and there is no understanding yet of the length of time for which the vaccines will be effective.

On December 16, 2020, the Equal Employment Opportunity Commission (EEOC) issued its guidance with regard to employee vaccinations. Our advice and the considerations outlined in the December 15 QuickStudy align with the EEOC's guidance. This updated QuickStudy highlights key provisions in the EEOC's guidance and supplements the December 15 QuickStudy.

The [EEOC's guidance](#) confirms the following:

While not considered medical examinations, employers may require vaccinations, but they should pose pre-screening questions before administering vaccines. If vaccines are to be required, pre-screening questions should be "job-related and consistent with business necessity." If employers do not mandate vaccinations, the job-related/business necessity standard is inapplicable. However, employers may not retaliate against, intimidate, or threaten an employee for refusing to answer any pre-screening questions.

An employer may adopt a vaccine qualification standard intended to ensure "that an individual shall not pose a direct threat to the health or safety of individuals in the workplace." However, if implementation of a standard of this sort screens out, or tends to screen out, an individual with a disability, the employer must determine whether the employee poses a direct threat due to a "significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation."

If an employee is unwilling to be vaccinated due to a disability or sincerely held religious belief, practice, or observance, and there is no reasonable accommodation possible, it would generally not be unlawful to exclude the employee from the workplace. However, exclusion does not necessarily mean termination. Employers will need to determine if the employee has other rights applicable in the circumstances, including those issued by federal, state and local authorities.

Please visit our [Adapt. Adjust. Advance. Resource Center](#) often for up-to-date information on navigating these and other important legal considerations in the post-pandemic reality.?

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