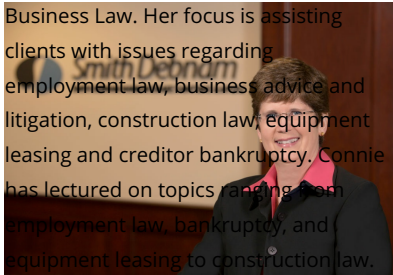


What We Know

ARTICLES & INSIGHTS

ABOUT THE AUTHOR

[Connie Elder Carrigan](#) is a partner in the firm, with a practice concentration in Business Law. Her focus is assisting clients with issues regarding employment law, business advice and litigation, construction law, equipment leasing and creditor bankruptcy. Connie has lectured on topics ranging from employment law, bankruptcy, and equipment leasing to construction law.



EEOC Guidance to Employers: COVID-19 Vaccinations Can Be Required – But Should They Be?

December 17, 2020 | by

An issue of key concern to employers now that vaccines are being made available to inoculate against COVID-19 is whether they should require employees to be vaccinated. On Wednesday, December 16, the federal Equal Employment Opportunity Commission (“EEOC”) updated its Technical Assistance Questions and Answers to guide the application of various laws to COVID-19 vaccination requirements. While this EEOC guidance provides welcome clarification to employers, determination of the appropriate path forward requires employers to perform a multi-layer analysis.

The EEOC guidance indicates that employers can require their workers to get a COVID-19 vaccine without violating key federal anti-discrimination laws so long as they can demonstrate that employees would create “significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation.” Thus, if an employee can fully perform his or her current job duties remotely without the potential spread of the virus to coworkers or work-related third parties, the guidance would appear to indicate that the employer cannot require that the employee get vaccinated.

The guidance reflects that employers that require the COVID-19 vaccine must consider reasonable accommodations for employees with disabilities. If an employee advises that they cannot be vaccinated because of a disability, the employer must determine whether it can provide a reasonable accommodation to that employee, without undue hardship, that would eliminate or reduce the safety risk. This process involves engaging in an interactive process with any such employee to identify options that do not result in significant difficulty or expense to the employer. In making this determination, employers should consider the number of employees who have already received the vaccination, the requesting employee’s interaction with coworkers and clients, the rate of vaccination in the community, and the requesting employee’s amount of contact with others whose vaccination status is unknown, keeping in mind that it is unlawful to disclose that an employee is receiving a reasonable accommodation.

The guidance further reflects that employers must consider providing reasonable

accommodations for employees who state that their sincerely held religious belief, practice, or observance prevents them from getting vaccinated and must provide such an accommodation unless it would pose an undue hardship to the employer. Because the legal definition of religion in this context is broad and protects beliefs, practices, and observances with which an employer may be unfamiliar, the EEOC guidance provides that an employer should ordinarily assume that an employee's request for religious accommodation is based on a sincerely held religious belief although it may request additional supporting information if it has an objective basis for doing so.

If an employee cannot get vaccinated for COVID-19 because of a disability or a sincerely held religious belief, practice, or observance, and no reasonable accommodation is possible, the EEOC advises that it would be lawful for the employer to exclude the employee from the workplace.

The EEOC indicates that employers may lawfully require employees to prove they have received the COVID-19 vaccine without running afoul of any federal laws, with the proviso that employers need to remember that follow-up questions, such as asking why an employee has not received the vaccination, must meet the ADA standard of being "job-related and consistent with business necessity." Employers may lawfully administer the vaccine to employees [typically by contracting with a third-party medical provider] and ask pre-screening vaccination questions to employees participating in such practice voluntarily as such a practice is not considered to be a medical examination prohibited by the ADA.

Whether an employer determines that it is appropriate to mandate or to simply encourage its employees to receive a COVID-19 vaccine, the EEOC guidance helps determine appropriate parameters. Employers are encouraged to be prepared to implement a policy and a communications plan as the vaccine becomes more widely available.

If you have questions about this EEOC guidance or any other employment-related matter, please call [Connie Carrigan](mailto:ccarrigan@smithdebnamlaw.com) at (919) 250-2119 or e-mail her at ccarrigan@smithdebnamlaw.com.

CONTACT US

919.250.2000
mail@smithdebnamlaw.com

RALEIGH OFFICE

The Landmark Center
4601 Six Forks Road, Suite 400
Raleigh, NC 27609

Phone: 919.250.2000
Fax: 919.250.2100

CHARLESTON OFFICE

171 Church Street
Suite 120C
Charleston, SC 29401

Phone: 843.714.2530
Fax: 843.714.2541