



Employers Should Resist Urge To Mandate Vaccinations

News

6.04.15

Howard Mavity was quoted in *Law360* on June 4, 2015. The article “Employers Should Resist Urge To Mandate Vaccinations” discussed how employers regularly find themselves faced with the threat of communicable diseases like SARS, the H1N1 virus, measles or even a particularly virulent flu strain, and they often wonder if they should require workers to be immunized.

It’s not only when the big outbreaks happen that management-side attorneys field calls from employers wondering if they can require immunizations. Every year, around flu season, employers also seem to remember that a particularly harsh strain could disrupt the office, said Howard.

“This comes up over and over again,” he said. “It’s literally a short-term issue ... [employers] say screw it and go back to other things.”

Regardless of the catalyst, he said, an employer that forces workers to get shots will encounter “quite a few legal pitfalls.”

Challenges to a proposed mandate under the religious protection of Title VII are more likely and easier to sustain than an ADA challenge, according to Howard. If opposition to immunization is part of an employee’s religious beliefs, a mandate is going nowhere for most employers, he said.

“The state does not want to get into determining if a religion is valid,” Howard said, adding that it’s “infinitely less burdensome” to sue over religious accommodations than it is to file a suit based on disability claims.

Employees who are allergic to the components of vaccines, such as the eggs used to create them, could have an ADA claim, according to Howard.

Howard agreed. He used to be adverse to getting a flu shot every year, so he avoided it — a law firm is one of those workplaces where a mandate would not likely be possible. But after learning of the benefits to others as well as himself, “I realized it would be responsible to get it,” he said.

For his part, Howard said, he suggested that clients have a comprehensive policy and program in place to address any sort of potential workplace hazards, and to not fall prey to putting it off for another day.

“It’s not something you can implement while learning,” he said.

Going forward, Howard predicted that there will be more of a push each year for flu and other vaccinations, calling it the “only area of individual freedom to go the other way.”

“I don’t think we’ll ever get to the point where people aren’t wary about shots,” he said. “I doubt we’ll see mandatory vaccines, beyond maybe health care.”

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