



Lawsuit Challenging School District's COVID-19 Vaccine Workplace Mandate May Provide Guidance to Private and Independent Schools

Insights

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Seven employees of the Los Angeles School District have filed a federal lawsuit challenging the District's right to mandate that its employees receive the COVID-19 vaccination. This appears to be the first lawsuit in the country directly challenging a school district's right to require the vaccine for its workforce, but the second lawsuit bringing such a challenge against a public employer. The plaintiffs are focusing their case on the fact that the Food and Drug Administration approved the vaccine under an Emergency Use Authorization (EUA) rather than through its usual and more time-consuming approval process, which requires that the person being administered the "unapproved" product under the EUA process be advised of their right to refuse the vaccine. What can your school learn from this litigation?

School District Requires Vaccine For Certain Employees

The plaintiffs work for the Los Angeles School District as teachers, electricians, and counselors. According to their March 17 complaint, the District is requiring that they be vaccinated or be subject to discipline. The plaintiffs also claim that District has stated that "no exceptions have been made" to this requirement. The plaintiffs are seeking a court order confirming that the District cannot require them to get the COVID-19 vaccine and declaring that, through its actions, the District violated federal laws, the U.S. Constitution, international law, and California law.

Specifically, the plaintiffs argue that, in the course of a medical crisis, the FDA permits *voluntary* access to experimental medical products but the District cannot require mandatory participation under federal law. The plaintiffs also claim that requiring them to participate in medical experimentation is a violation of the Due Process Clause of the U.S. Constitution and other international protocols and treaties adopted by the United States following World War II. Finally, the plaintiffs assert that the District violated their rights under California's medical experimentation law, which prohibits medical experimentation on individuals without their consent.

What The EEOC Says

On December 16, the Equal Employment Opportunity Commission (EEOC) issued guidance for employers regarding the COVID-19 vaccine. While the EEOC did not explicitly state that an employer could mandate an employee to be vaccinated, the guidance reportedly answered questions

could mandate an employee to be vaccinated, the guidance repeatedly answered questions discussing what actions employers can take in response to various circumstances after an employer has mandated the vaccine, including accommodation requirements for employees who cannot be vaccinated due to a disability or because of a sincerely held religious belief, practice or observance. This approach plainly indicates that subject to certain limitations, the EEOC has taken the position that private employers may require vaccine immunization of their employees.

Therefore, at least for private and independent schools where there is no applicable state law to the contrary, it appears that schools may require employees to be vaccinated, subject to the accommodation requirements of the American with Disabilities Act (ADA) and Title VII of the Civil Rights Act (Title VII).

What About The Language In The EUA?

The plaintiffs in this case believe they have the right to “refuse” the vaccine even if mandated by their employer. As noted, the FDA’s website says that the option to refuse is typically included in a “fact sheet” provided to the individual receiving the vaccine (or, alternatively, the party administering the vaccine can direct the individual to the weblink to view the fact sheet online). That fact sheet for the Pfizer/BioNTech vaccine can be found [here](#), and it explicitly says that “the recipient or their caregiver has the option to accept or refuse [the] Pfizer-BioNTech COVID-19 Vaccine.”

But this directive seems to be targeted at whether an individual can be forced to take the vaccine by a government entity ([as a New York lawmaker suggested](#) several months ago), not whether an employer can condition an individual’s continued employment on taking the vaccine. After all, in at-will employment settings, an employee can always pursue alternative employment if they do not want to get vaccinated as a condition of their current job. Note that this analysis may be different in unionized settings governed by a collective bargaining agreement. The question in this case could come down to whether the court believes a public employer has the same rights as private employers in this regard.

What Does This Mean for Private and Independent Schools?

The plaintiffs also allege that the District does not provide “exceptions” or engage in the interactive process under the ADA or Title VII for those needing an accommodation for certain medical or religious reasons, which may be inconsistent with federal law and the EEOC’s position. However, the allegations in the Complaint are merely allegations at this point, and the employer has not yet had an opportunity to offer a defense to this brand-new case. There are always two sides to every story, and the employer in this case will soon be able to provide its version of events. From your standpoint, however, this lawsuit should serve as a stark reminder that employers who choose to mandate the COVID-19 vaccine should work with their counsel to develop a system to ensure religious and disability-related accommodations are considered as warranted under federal and state law.

Although the EEOC seems to allow private employers to mandate vaccinations of employees in certain circumstances, many employers are choosing to encourage, rather than mandate,

certain circumstances, many employers are choosing to encourage, rather than mandate vaccinations due to potential risks of legal exposure, employee morale issues, and negative press. You should consult with your legal counsel regarding all of these issues before proceeding with a vaccine mandate.

Even if you choose to mandate COVID-19 vaccines pursuant to the EEOC guidance, it is important to note that legislators in several states have introduced measures that may further restrict or even eliminate your right to require workers to get the vaccine. Therefore, you should continue to monitor these developments on a state-by-state basis.

As vaccine availability increases and questions about what schools can and cannot do are resolved, it is becoming increasingly important for schools to develop their own action plan. We have developed an article on [what schools should know before setting on-campus COVID-19 vaccine clinics](#) and a [10-step action plan for employers](#) to consider as the vaccine becomes more widely available.

We will monitor the progress of this case, as it has the potential of providing additional guidance on whether schools can mandate that their employees get the COVID-19 vaccine issued pursuant to an EUA. Please make sure that you are subscribed to [Fisher Phillips' alert system](#) to get the most up-to-date information. If you have questions about developing detailed vaccination plans or how to ensure that your vaccine policies comply with workplace and other applicable laws, please visit our [Vaccine Resource Center for Employers](#) or contact your Fisher Phillips attorney.

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