Hospital Encounters Pushback on Mandatory Vaccine Policy: 7 Issues to Consider Before Your Company Requires Vaccines

Insights
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Pushback against employer-mandated COVID-19 vaccines has stirred media attention in Texas, home to the world's largest medical complex. Specifically, a nurse working at a hospital in the Houston Methodist system has anonymously circulated a petition and spoken to the media about the employer's upcoming deadline for employees to be vaccinated unless they obtain a medical or religious exemption. She claims to speak on behalf of "everybody who is too scared to speak up" about what she characterized as threatening or bullying conduct by Methodist in its attempt to reach as close to 100% vaccination rate as possible. The controversy highlights issues that every employer should consider as you evaluate whether to require your employees to get vaccinated. The central dispute is more philosophical than legal, juxtaposing some employees' individual concerns against an employer's lawful approach to maximizing safety in a healthcare setting.

Houston, We May Have a Problem (Getting Everyone To Vaccinate)

Methodist's flagship hospital is the largest in the Texas Medical Center (TMC). TMC employs over 100,000 people and includes the world's largest cancer center, the largest children's hospital, and performs nearly 14,000 heart surgeries a year. Healthcare providers at TMC deliver a baby about once every 20 minutes and begin a surgical procedure about once every three minutes.

The still anonymous nurse at the center of this debate says she is not entirely opposed to being vaccinated but is not prepared to receive it by her employer's June 7 deadline. Methodist articulated its rationale for requiring vaccines and is giving its employees more than two months' notice before it intends to enforce the new policy in June. Like many healthcare providers, it made considerable efforts to provide information and answer employees' questions about vaccinations before announcing the mandate. Methodist officials focused on the importance of ensuring safety for its patients, employees, and others. It also made the succinct observation that as its rate of vaccinated employees went up, its rate of sick employees and those who had to miss work went down. In an environment where the Centers for Disease Control and Prevention (CDC) and many community health leaders have emphasized the importance of preserving the resources of the healthcare system, this statement was especially compelling.

Over 80% of its employees had already been vaccinated when Methodist announced that it would expect all of them to get vaccinated by the deadline, unless they obtained exemptions based on

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qualifying medical or religious reasons. Legally, all of the steps it has taken likely puts Methodist on solid legal footing. But even the fact that an employer mandate could be perfectly legal – which has been confirmed by the Equal Employment Opportunity Commission – approximately 20% of people appear to share hesitancy or downright opposition to the vaccine, many undoubtedly harboring genuine health concerns. Some, including the anonymous nurse who works in the Methodist system, have expressed objections beyond those based on their medical conditions or religious reasons. For example, the anonymous nurse referred to wanting the vaccine to be "FDA approved thoroughly," referring to the Emergency Use Authorization (EUA) process through which the U.S. Food & Drug Administration (FDA) tested and approved distribution of COVID-19 vaccines. Critically, the vaccines were indeed thoroughly tested before they were *approved* for distribution. Although a couple of lawsuits have recently been filed challenging a vaccine requirement in a public employment environment, it seems clear that an at-will employer has the legal right to require its employees to be vaccinated, subject to the above-refenced medical and religious provisos.

7 Issues To Consider Before Proceeding with Vaccine Mandate

Although the number of individuals who oppose vaccinations may be shrinking, there may still remain a determined fraction at your workplace who remain unconvinced. Regardless of whether the law is on your side, it is important to consider issues relating to this shrinking percentage before acting. Accordingly, while you can require employees to receive the vaccination in order to remain in the workplace, you should not adopt such a policy before considering seven important issues:

1. Identify known concerns among your workforce and provide information to help employees understand how vaccinations can reliably promote health and safety for themselves, co-workers and others.
2. Taking into account the unique environment at your business, figure out the best way to communicate your policy to employees, including how much notice to provide before implementing the requirement.
3. Consider related logistics, including compensation issues that may be implicated.
4. Develop a robust and clear reasonable accommodation policy to address religious and disability issues, taking special care to communicate and administer the accommodation process in a thoughtful way, with emphasis on individualized, confidential consideration of each request.
5. Spend time considering how your employees, customers, and other constituents are likely to respond to the policy, including how you will handle responses such as those described above.
6. Consider how and when workplace protocols may change as more employees become fully vaccinated, keeping in mind that the Occupational Safety and Health Administration (OSHA) may not substantially relax its recommendations for individuals who are fully vaccinated.
7. Developing a designated team for coordinating this entire process.

Conclusion

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As illustrated by the attention that a single vocal employee has generated in response to the emotionally charged issue of mandatory vaccinations, the potential for misinformation and distraction is high. In short, the decision to mandate vaccinations must be approached thoughtfully.

Managing vaccination issues is not an easy process in any event. Even where employers strongly encourage vaccinations without requiring them, the process of finding out who has been vaccinated and safeguarding that information can be complicated. No matter what choices you make, it is important to carefully evaluate the above-referenced issues in the context of your unique workplace.

We'll monitor the situation and provide updates as developments occur, so make sure you are subscribed to Fisher Phillips' Insight system to get the most up-to-date information. If you have questions about how to ensure that your vaccine policies comply with workplace and other applicable laws, visit our Vaccine Resource Center for Employers or contact your Fisher Phillips attorney or any attorney on our FP Vaccine Subcommittee.

Related People

A. Kevin Troutman
Senior Counsel
713.292.5602
Email

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