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WILL THEY OR WON'T THEY? CALIFORNIA LAWMAKERS CONTEMPLATE WORKPLACE COVID-19 VACCINE MANDATE

Insights
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The end of the legislative session in California is always a time of high drama as last-minute deals come together and many unexpected legislative proposals sneak out. This year is shaping up to be no different as [multiple sources](#) have reported that California lawmakers are contemplating a proposal that would, among other things, require all employers in California to mandate COVID-19 vaccines or weekly testing of employees while requiring many businesses to require their guests to be vaccinated. A lot of questions (both political and procedural) remain about whether this will come to fruition by the September 10 deadline to pass bills. However, if enacted, the bill would be the most significant development in the nation when it comes to workplace vaccine mandates. What do California employers need to know?

What's Rumored to Be in the Proposal?

While legislative language is not yet in print, draft proposed language has been leaked to the media and other stakeholders. The language is intended to be inserted by Assemblymember Buffy Wicks into AB 455, a bill currently dealing with transportation issues.

According to those reports, the bill would do the following:

- Require anyone entering a bar, restaurant, gym, hotel, event center, or sports arena to show proof of being fully vaccinated to enter (similar to local ordinances that have popped up in recent weeks).

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- Require all employers to require employees, job applicants, and independent contractors to be vaccinated or take weekly COVID-19 tests.
- Provide for 24 hours of COVID-19 supplemental paid sick leave for obtaining or recovering from a vaccine.
- Contain an urgency clause making the bill effective immediately upon signature by the governor.

However, this is an ongoing area of discussion. As noted in a recent [Los Angeles Times article](#), legislative leadership has reportedly stated that such a proposal will move forward only after sign-off from labor and the business community, as well as a showing that the required votes of 2/3 of the members of the legislature are ensured.

That will be a tough hill to climb, so it remains to be seen whether this proposal will actually see the light of day or be approved by the legislature. Further complicating matters is the pending gubernatorial recall election of Governor Newsom, scheduled for September 14. Whether such a bill would be approved by the legislature just days before the vote on the recall election is an unknown at this point. Lawmakers would certainly want to take into account who the governor will be if and when such a proposal is passed and sits waiting to be acted upon.

There are also reports that the author may be considering further changes to the proposal to (1) delete the consumer vaccination requirement, and (2) ensure that employers do not bear any of the cost for testing employees who are required to be tested because they are not fully vaccinated.

Again, this is a very fluid situation and a lot could change between now and September 10. If it happens at all.

Alternative Proposal Lurking in the Background?

Prior to these recent developments, business groups had been pursuing a separate COVID-19 vaccine proposal of their own. Unlike a mandate, that proposal would codify existing DFEH/EEOC guidance stating that employers *may* require vaccines without running afoul of employment discrimination laws.

Although that language is also not yet in print, discussions had been under way to insert that language into AB 1102 by Assemblymember Evan Low.

However, in light of the mandate discussion surrounding the proposed AB 455, it remains to be seen whether the alternative discretionary vaccine mandate proposal will gain any traction. Or this alternative could be a compromise should the formal vaccine mandate prove unlikely to pass.

Next Steps

Suffice it to say that the next two weeks will be dramatic, and the California legislature could significantly raise the stakes in the vaccine discussion by affirmatively requiring employers to mandate COVID-19 vaccines. Such a mandate would send shockwaves across the employer community and lead to many compliance questions and challenges.

With so many changes – and likely more on the horizon – California employers should follow updates closely to ensure compliance. Make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information. For further information, contact your Fisher Phillips attorney, the author of this Insight, or any attorney [in our California offices](#).