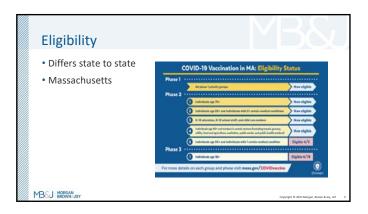


Introduction	
• COVID-19 Vaccines - Key Legal Considerations - Employer Best Practices	
 Adapting to the "New Normal" 	

MBSJ MORGAN BROWNSJOY



VR.C.	
Benefits of Vaccination	
 Keep workforce healthy by preventing employees from getting COVID-19; 	
Reduce absence due to illness;	
 Reduce time missed from work to get vaccinated (if you provide it on-site); 	
Improve productivity;	
Improve morale.	
MBSJ MOSCAN Copyright C 2021 Marga, from 8 kby, UP 4	
NDC.	
Can Employers Require Employees be Vaccinated?	
Possibly (but not clear)	
 Employers are legally required to provide certain reasonable accommodations to persons with: 	
 Disabilities; Sincerely held religious beliefs. Better practice is not to require but to encourage 	
Key considerations:	
- State and local vaccine mandates	
- Emergency Use Authorization - Reasonable Accommodations	
- Liability Concerns	
MDGJ MORGAN Group & Cappright C 2021 Morgan, Brown & Eay, LD 5	

State and Local Vaccine Mandates

- States can, under their police powers, enact reasonable regulations to protect public health, public safety, and the common good
- Certain industries may also be subject to state and local vaccine mandates, such as:
 - Health care workers
 - Schools
- If you are an employer falling within a state/local mandate, than you must follow that mandate

MB	U	MORGAN BROWN	101
	~	RKOMM	JUI

Employer	Vacc	inatio	n Man	dates
----------	------	--------	-------	-------

- In general, employers can and have implemented vaccine mandates as a condition of employment
 - E.g., influenza vaccines for healthcare workers.
- Why should employers be hesitant to do so now?

MBSJ MORGAN BROWNSJO

Complete & 2021 Manage Rosson & Inc. 110

Emergency Use Authorization (EUA)

- EUA allows for the use of unapproved medical products during public health emergencies.
- EUA status is not the same as FDA approved.
- For vaccines granted an EUA, the FDA has an obligation ensure that recipients of the vaccine under an EUA are informed:
 - That FDA has authorized the emergency use of the vaccine
 - Of the known and potential benefits and risks, and the extent to which such benefits and risks are unknown
 - That they have the option to accept or refuse the vaccine, and to be informed of the consequences, if any, of refusing, and of the alternatives available.

MBSJ MORGAN BROWNSJOY

Copyright © 2021 Morgan, Brown & Joy, LLP

Accommodations

- Employers are legally required to provide certain reasonable accommodations to persons with:
 - Disabilities
 - Sincerely held religious beliefs
- December 2020 EEOC guidance sets forth that employers may be required to make exceptions to a mandatory vaccination policy in relation to an employee's request for an accommodation based upon a disability or a sincerely held religious belief

MBSJ MORGAN BROWN SJOY

Accommodations: Disabilities

- The ADA permits employers to exclude employees that pose "a direct threat to the health or safety of individuals in the workplace."
- However, to exclude an employee who cannot be vaccinated due to a disability from
 physically entering the workplace, an employer must show that an unvaccinated
 employee would pose a direct threat due to a "significant risk of substantial harm to
 the health or safety of the individual or others that cannot be eliminated or reduced
 by reasonable accommodation."
- Employers should conduct an individualized assessment of four factors in determining whether a direct threat exists.
- If an employer determines an employee does pose a direct threat, the employer should then assess whether the employee can be provided a reasonable accommodation that would eliminate or reduce the risk, without causing an undue hardship.

	MORGAN	

.

Accommodations: Sincerely Held Religious Belief

- Once an employer is on notice that an employee's sincerely held religious belief, practice or observance prevents the employee from receiving the vaccination, the employer must provide a reasonable accommodation unless it would pose an undue hardship under Title VII of the Civil Rights Act.
- A religious practice or belief is defined as "moral or ethical beliefs as to what is right and wrong which are sincerely held."

MBSJ MORGAN BROWNSJOY

Copyright © 2021 Morgan, Brown & Joy, LLP

Additional Considerations

- Liability Concerns
 - OSHA, Negligence, Workers' Compensation claims
 - Public Policy and Civil Rights claims
- Workforce
 - Union (duty to bargain)
 - Payment for time
- Industry
 - Healthcare
 - School/Daycare
 - Eldercare
- Vaccine Availability
- Employee Buy-In

MBSJ MORGAN BROWN SJOY

Alternatives

- The legal and practical risks posed by mandating the vaccine may outweigh the potential benefits
- Consider *encouraging* rather than mandating employee vaccination by:
 - Implementing vaccination education campaigns;
 - Covering any costs associated with getting the vaccine; and/or
 - Providing incentives to employees who get vaccinated, like paid time off.

MBSJ MORGAN BROWN SJOY

Consider C 2021 Marrie Bress & Inc. 110

FAQs

- Is there any issue with an employer proactively asking employees if they intend to get a vaccine?
- Can an employer ask an employee if they have been vaccinated?
- Do I need to wear a mask and avoid close contact with others if I have been vaccinated?

MBSJ MORGAN BROWNSJOY

Copyright © 2021 Morgan, Brown & Joy, LLP

Privacy Concerns

- ADA requires employers to keep confidential any medical information they learn about an applicant or an employee.
- This information must be stored separately from the employee's personnel file, thus limiting access to this confidential information.
- This includes any employee medical information obtained in the course of a vaccination program.

MBSJ MORGAN BROWNSJOY

References and Additional Resources

- CDC Guidance:
 - https://www.cdc.gov/coronavirus/2019ncov/vaccines/recommendations/essentialworker/workplace-vaccinationprogram.html
- EEOC Guidance:
 - $\frac{https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-adarehabilitation-act-and-other-eeo-laws$
 - https://www.eeoc.gov/laws/guidance/pandemic-preparedness-workplace-and-americans-disabilities-act
- MA DPH Guidance:
 - https://www.mass.gov/info-details/covid-19-vaccine-frequently-asked-questions

MBSJ MORGAN BROWNSJOY

Consider & 2021 Marrier Brane & Inc. 110



Returning to Work Considerations

- Communication is critical
- •Flexibility encouraged if possible
- •Work with employees to develop solutions
- •Be mindful of workplace safety

MBSJ MORGAN BROWNSJOY

OSHA – New Guidance for Employers

- Updated 3/12/2021
 - National Emphasis Program
 - Updated Interim Enforcement Response Plan for Coronavirus Disease 2019 (COVID-19)
 - https://www.osha.gov/coronavirus/safework

MBSJ MORGAN BROWNSJOY

Commission C 2022 Manager Research Con 122

