



COVID-19 Vaccine Mandates

SARAH J. HORNER, BRIAN P. GOODMAN | 08.30.21

On August 23, 2021, the [Food and Drug Administration \(FDA\)](#) fully approved the Pfizer COVID-19 vaccine for prevention of the disease in individuals 16 years of age and older. This means that the Pfizer COVID-19 vaccine meets high standards for safety and effectiveness. It also means that Wisconsin employers can implement a vaccine mandate with less legal risk, provided they consider reasonable accommodations for employees who cannot get the vaccine due to disability or sincerely held religious beliefs.

Wrongful Discharge Claim Risk Diminished

Wisconsin employers that now decide to mandate the COVID-19 vaccine will likely no longer face a risk of wrongful discharge claims if they terminate employees for failing to get the vaccine. The previous risk of liability for wrongful discharge derived from the vaccine being only approved for emergency use by the FDA, which may have given individuals a right to refuse the vaccine on the grounds that they were objecting to getting a vaccine that was not fully authorized by the FDA. Forcing employees to get the vaccine under these circumstances could violate public policy because FDA emergency use authorization allowed individuals to refuse the vaccine. Now, the FDA has fully approved the Pfizer vaccine. Any employee subject to an employer's COVID-19 vaccine mandate can no longer realistically object to receiving the vaccine on that basis. Therefore, terminating an employee for refusing to get a COVID-19 vaccine that has been fully authorized by the FDA is unlikely to result in a viable claim for wrongful discharge.

Disability and Religious Accommodations Still Required

Mandating the COVID-19 vaccine, however, still implicates legal issues related to disability and religious discrimination under the Wisconsin Fair Employment Act, the Americans with Disabilities Act (ADA), and Title VII of the Civil Rights Act of 1964.

Despite full FDA approval, employees may still claim they cannot get vaccinated due to a disability or sincerely held religious belief. The law imposes constraints on the questions employers can ask employees and what documentation employers can request. Therefore, employers should consult with legal counsel if an employee asks for an exemption to the vaccine mandate based on a disability or sincerely held religious beliefs.

If an employee informs an employer that they are unable to receive the COVID-19 vaccine due to a disability or sincerely held religious belief, the employer generally cannot terminate the employee without first engaging in the interactive process with them as to whether a reasonable accommodation is available that does not pose an undue hardship on the employer. Because the legal standards for undue hardship are different depending on whether the employee is requesting an accommodation due to disability or religious belief, employers should consult with legal counsel when assessing the accommodation.

Conclusion

Full FDA approval of the Pfizer COVID-19 vaccine means that employers are now on stronger legal footing to require employees to be vaccinated. However, to avoid potentially viable discrimination claims, employers must still consider reasonable accommodations for employees who cannot be vaccinated due to a disability or sincerely held religious belief. If individual questions arise, please reach out to a member of the [Boardman Clark Labor and Employment Practice Group](#) for assistance identifying a reasonable accommodation request, conducting an individualized direct threat analysis when appropriate, assessing undue hardship under the appropriate legal standards, and deciding on the best way to proceed in a given situation.

Disclaimer: This information is not intended to be legal advice. Rather, it seeks to make recipients aware of certain legal developments that affect human resource issues. Recipients who want legal advice concerning a particular matter should consult with an attorney who is given a full understanding of the relevant facts pertaining to the particular matter.

Authors

Sarah J. Horner
(608) 286-7179

Brian P. Goodman
(608) 283-1722