



DOJ Says Federal Law Does Not Bar Mandating of COVID Vaccines

The Justice Department, earlier this week, released an opinion that the Federal Food, Drug, and Cosmetic Act does **not** prevent private businesses or public agencies from mandating COVID vaccines for their employees. This opinion comes two months after the [Equal Employment Opportunity Commission released a guidance](#) establishing that U.S. employers could require their employees to get the vaccine.

The EEOC, however, did not address the fact that the COVID vaccines had only received Emergency Use Authorizations ("EUA") which could create a legal issue for employers. This question has kept some businesses from mandating the shots. This recent opinion from the Justice Department squarely addressed this issue.

Section 564 of the Food, Drug, and Cosmetic Act sets out "required conditions," for the emergency use of a vaccine/product. Section 564(e)(1)(A)(ii)(III) features the condition posing the most concerns, stating "individuals to whom the product is administered [must be] informed ... of the option to **accept or refuse** administration of the product." The Justice Department, however, concluded that this section only concerns the provision of information to potential vaccine recipients and **does not prohibit** public or private entities from imposing vaccination requirements for vaccines that are subject to EUAs.

The Justice Department notes that neither the statutory conditions, nor the Fact Sheet itself, restricts public or private entities from insisting upon vaccination in any context. The DOJ went on to cite a recent Houston Federal Court case establishing that an employer's mandatory vaccination policy was not "coercive" because an employee "can freely choose to accept or refuse a COVID-19 vaccine...if [the employee] refuses, she will simply need to work somewhere else".

For these reasons, the DOJ concluded that section 564 of the FDCA does not prohibit public or private entities from imposing vaccination requirements, even when vaccines are provided under Emergency Use Authorization. This DOJ opinion offers further support for employer mandatory vaccine policies.

For more information, please contact [Tony Stergio](#).