



Boulder Area Human Resource Association

BAHRA Legal Minute September 2021

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Pfizer COVID vaccine receives approval

- » On August 23, 2021, US Food and Drug Administration (FDA) gave full approval for Pfizer-BioNTech COVID-19 vaccine for use by individuals over 16 years of age
 - » Moderna and Johnson & Johnson vaccines remain under Emergency Use Authorization
- » FDA approval will likely encourage more employers to mandate vaccine

Federal vaccine mandates affect 100M!

- » On 9/9/21, President Biden announced strong measures to combat the COVID-19 pandemic:
 - » Ordered OSHA **Emergency Temporary Standard** requiring private employers with 100± employees to mandate that their workers be vaccinated (or undergo weekly testing), with paid time off for vaccination, or be fined \$14,000 per violation. Expect rulemaking – and many lawsuits – in coming weeks.
 - » Executive order mandating all federal employees/contractors be vaccinated against COVID-19, removing option for regular testing, but maintaining exemptions for religion/disability.
 - » Executive order mandating that healthcare workers for providers receiving Medicare/Medicaid reimbursement be vaccinated.

Employers add pressure to be vaccinated

- » United Airlines announced that employees who are granted religious and medical exemptions to its vaccine mandate may be placed on **temporary unpaid leave** to reduce risk of COVID-19.
- » More employers are considering imposing a **premium surcharge** – akin to tobacco users -- on employees participating in the company's health plan who are not vaccinated for COVID-19. Starting 11/1/21, Delta Air Lines is imposing a \$200 surcharge on unvaccinated employees' company health care premiums. Bottom line: Get legal advice on your wellness efforts.
- » Some employers are **ending additional paid leave** for unvaccinated employees who contract or are exposed to COVID-19 [must still comply with any available paid leave under state law].

Navigate religious objections carefully

- » Requests for religious exemption that state only, “I refuse to get the COVID-19 vaccine due to my religion” or “I assert my religious freedom to avoid the vaccine” are generally insufficient and may require additional inquiry by an employer to determine whether the accommodation request is based upon an employee’s sincerely-held religious belief.
- » Employers may request the following:
 - » Statements and explanations from the employee that address (i) the religion upon which the employee is basing a religious accommodation request; (ii) the length of time the employee has practiced the religion; and (iii) the specific tenets of the religion which require the religious accommodation.
 - » Written statements or other documents from third parties such as the employee’s religious leader, practitioners, or other with whom the employee has discussed his or her beliefs or who has observed the employee’s past religious adherence.

EEO-1 reporting deadline extended again

- » EEOC announced that it has, again, extended the deadline for filing EEO-1 Reports this year— to October 25, 2021.
- » EEOC claims this is the final deadline and no extensions will be available.

Thanks!

Questions?

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