

### The COVID-19 Vaccine: What Employers Need to Know Today

By: Rebecca Seguin-Skrabucha, Senior Associate, Alexander J. Burrige, Associate, Workplace Law Group

The Equal Employment Opportunity Commission has released and updated guidance over the past several months, confirming that employers are generally permitted to require the COVID-19 vaccine so long as reasonable accommodations are provided to employees who are protected under the Americans with Disabilities Act and Title VII of the Civil Rights Act.

As the Delta variant prompts rising COVID-19 cases across the country, an increasing number of national and local employers are announcing vaccine mandates, including Google, Disney, Beaumont Health, and eight Michigan universities, including the University of Michigan, Michigan State University, and Wayne State University. Governmental employers like New York City and the State of California are presenting public employees with two options: provide proof of vaccination or participate in routine testing. New York City also declared that it will require proof of vaccination for indoor dining, fitness, and entertainment and performances.

In a Fact Sheet, published July 29, 2021, President Biden briefly outlined the vaccine policy for federal contractors: “[E]very federal government employee and onsite contractor will be asked to attest to their vaccination status. Anyone who does not attest to being fully vaccinated will be required to wear a mask on the job no matter their geographic location, physically distance from all other employees and visitors, comply with a weekly or twice weekly screening testing requirement, and be subject to restrictions on official travel.” The Fact Sheet anticipates that “similar standards” will be released with regard to “all federal contractors,” as opposed to the current proclamation’s application to “onsite” contractors.

The Fact Sheet provides minimal details as to the timing, scope, and enforcement of the policy. Nonetheless, employers with employees who perform “onsite” work in accordance with federal contracts must immediately adopt vaccination, masking, distancing, and screening policies that comply with the Fact Sheet, and all federal contractors, regardless of the location of their work, should likewise prepare such policies for implementation.

The federal government is bolstering vaccine mandates with two recent findings: (1) Section 564 of the Food, Drug, and Cosmetic Act, which includes the “option to accept or refuse” a “product” granted “emergency use authorization,” “does not prohibit public or private entities from imposing vaccination requirements for a vaccine that is subject to an emergency use authorization”; and (2) like the Families First Coronavirus Response Act tax credits extended under the American Rescue Plan Act, small- and medium-sized employers will be reimbursed for paid leave offered to employees who are unable to work because they are seeking vaccination for their family members, including their children. In short, federal guidance continues to endorse an employer’s right to mandate vaccination and recommends payment to employees who are acquiring and recovering from vaccination.

Michigan employers may be encouraged by these recent high-profile announcements that vaccine mandates are a viable option. Employers should understand that they are permitted to mandate vaccines in a manner compliant with state and federal law with appropriate accommodation procedures, including the evaluation of reasonable accommodations for individuals with disabilities and religious objections.

Whether encouraging vaccination or effectuating mandates with varying levels of flexibility, employers should contact any member of **Bodman’s Workplace Law Group** to discuss the pros, cons, and parameters of a vaccination program. Bodman cannot respond to your questions or receive information from you without first clearing potential conflicts with other clients. Thank you for your patience and understanding.

<b>WORKPLACE LAW PRACTICE GROUP</b>	<b>AARON D. GRAVES   Chair</b> 313.392.1075 <a href="mailto:agraves@bodmanlaw.com">agraves@bodmanlaw.com</a>	<b>JOHN T. BELOW</b> 248-743-6035 <a href="mailto:jbelow@bodmanlaw.com">jbelow@bodmanlaw.com</a>	<b>JOHN C. CASHEN</b> 248.743.6077 <a href="mailto:icashen@bodmanlaw.com">icashen@bodmanlaw.com</a>
	<b>GARY S. FEALK</b> 248-743-6060 <a href="mailto:gfealk@bodmanlaw.com">gfealk@bodmanlaw.com</a>	<b>JOHN DAVID GARDINER</b> 616.205.3123 <a href="mailto:jgardiner@bodmanlaw.com">jgardiner@bodmanlaw.com</a>	<b>MELISSA M. TETREAU</b> 248.743.6078 <a href="mailto:mtetreau@bodmanlaw.com">mtetreau@bodmanlaw.com</a>
	<b>REBECCA C. SEGUIN-SKRABUCHA</b> 313.393.7594 <a href="mailto:rseguin-skrabucha@bodmanlaw.com">rseguin-skrabucha@bodmanlaw.com</a>	<b>MICHELLE L. KOLKMEYER</b> 248.743.6031 <a href="mailto:mkolkmeyer@bodmanlaw.com">mkolkmeyer@bodmanlaw.com</a>	<b>ALEXANDER J. BURRIDGE</b> 313.393.7560 <a href="mailto:aburridge@bodmanlaw.com">aburridge@bodmanlaw.com</a>
	<b>DAVID B. WALTERS</b> 248.743.6052 <a href="mailto:dwalters@bodmanlaw.com">dwalters@bodmanlaw.com</a>	<b>KAREN L. PIPER   Of Counsel</b> 248.743.6025 <a href="mailto:kpiper@bodmanlaw.com">kpiper@bodmanlaw.com</a>	