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COVID-19 VACCINATIONS FOR PUBLIC EMPLOYEES FREQUENTLY ASKED QUESTIONS

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With the early distribution of the COVID-19 vaccination, counties likely have numerous questions regarding the vaccination. Perhaps the most common question for counties is whether they may require employees to get the COVID-19 vaccination as a condition of employment. The following is a list of frequently asked questions based on what currently is known and best practices.

Vaccinations are controversial and new information regarding the effectiveness and side-effects of the vaccinations are seemingly learned daily. It is also a quickly changing issue. As a result, counties need to be flexible on their approach to this issue as the science and law concerning this issue evolves. Counties must also consider the specific facts in each case. As always, employers should consult with legal counsel on these matters.

1. Can a county require its employees to receive the COVID-19 vaccination as a condition of continued employment?

Yes. In general, there are no legal prohibitions that prevent a county from requiring its employees to get the COVID-19 vaccination once it is available. Because employees with COVID-19 can present a direct threat to others in the workplace, counties have more leeway to impose such a requirement. Both the CDC and EEOC guidance support the direct threat standard. Counties can require employees to provide verification they have received the two doses required for the vaccination to be effective. Counties should make sure the vaccine is widely available before imposing this requirement.

Additionally, if requiring employees to be vaccinated, because there are multiple vaccines available, counties should be flexible with respect to which vaccine is required.

2. Are there any health-related issues to be concerned with?

Yes. As with other work requirements, accommodations could be made under the Americans with Disabilities Act (ADA). Specifically, it is possible an employee may have an underlying health condition that prevents them from receiving the COVID-19 vaccination. If an employee raises this issue, the county should treat it the same as any other ADA issue. First, the county is entitled to documentation supporting the physical or mental impairment that prevents the employee from taking the vaccine. Second, the county should engage in the interactive process to determine if there are any reasonable accommodations. Do not presume there are no accommodations available. Depending on the situation, additional social distancing, teleworking or leave could be accommodations. Each case needs to be determined based on the specific facts. Keep in mind the employee is not entitled to the best accommodation; only a reasonable one. An accommodation is not reasonable if it creates an undue hardship on the employer. It is possible some employees will be entitled to forego receiving the vaccine as a reasonable accommodation. Third, document all steps taken in this process.

3. What if an employee has a religious objection to receiving the vaccine?

Religious objections to receiving the COVID-19 vaccination should be treated in a similar manner to ADA issues. Specifically, a county may be required to exempt an employee from getting the vaccination if they have a bona fide religious objection to this type of medical care. The employer is entitled to evidence that the employee has a sincerely held religious belief about the vaccine. As with the ADA, an employer can deny a religious exemption only if it creates an undue hardship. Employers do not have to accommodate employees with certain medical beliefs about vaccinations outside of the sincerely held religious context.

4. Can counties require new employees to receive the COVID-19 vaccination as a condition of employment?

Yes. For counties who desire to impose this requirement, the applicants should be informed of this requirement as early in the process as possible. The successful applicant should be required to provide proof they received the vaccination after a conditional offer of employment has been made. Alternatively, if a new employee cannot get the vaccine prior to starting employment, a county can require new hires to get it during their probationary period. In these situations, this requirement should be set forth in writing so an employee knows the failure to get the vaccine could result in a probationary removal. As with current employees, counties should be mindful of the availability of the vaccine for prospective employees.

5. Is a county mandated to require its employees to get the COVID-19 vaccination?

No. At this point, there is no legal requirement for employees to be vaccinated or for counties to require such vaccinations. This is a decision that each appointing authority has the right to make.

6. On the county level, who decides if vaccinations are mandatory for employees?

As with most employment issues, the individual appointing authority can make the decision for its employees. The board of county commissioners cannot require or prohibit other appointing authorities from requiring the vaccination.

7. Can an appointing authority treat some employees different than others?

Yes. As with many work rules, employers can make distinctions based on legitimate operational needs. For example, employees with regular public contact could be required to get the vaccine while others are not. The key will be whether these differences can be justified based on legitimate needs of the employer. The more likely an employee is to put co-workers or members of the public at risk, the more convincing these distinctions will be.

8. Is a county required to pay for the COVID-19 vaccine?

No. There is no legal obligation for a county to pay for the vaccine even if it requires employees to be vaccinated. As a practical matter, counties should consider how employees will get access to the vaccine regardless of who is paying for it. Employers may also want to review their insurance programs to determine if the vaccination is covered.

9. Can a county offer financial incentives to encourage employees to get the vaccine?

Yes. There is no prohibition against an appointing authority from offering a payment or time off to employees who voluntarily get the COVID-19 vaccinations.

10. Can a county be held liable if it does not mandate employees get the COVID-19 vaccine and someone contracts the disease?

No. There is no legal basis to hold a county liable for damages if a person gets COVID-19 from a county employee who has not been vaccinated. First, it would be difficult to prove how a person contracts COVID-19. Second, since there is no legal mandate for counties to require the vaccine, no liability can be imposed.

11. Are there any collective bargaining requirements?

Yes. Under Ohio law, public employers with unionized employees are required to bargain over matters affecting wages, hours and terms and conditions of employment. A public employer considering a requirement for bargaining unit employees to get vaccinated should, at a minimum, notify the union of this intention and meet to discuss this decision with bargaining representatives. It is unclear if the union must agree to such a mandate or whether it is sufficient to engage “effects bargaining” by entering into good faith discussions about the impact of a vaccine requirement on bargaining unit employees.

12. Should a county implement a policy concerning vaccines?

Appointing authorities may wish to implement a policy outlining which classifications will be required to be vaccinated. The policy may include information regarding the vaccine, who is required to receive the vaccine, timelines for receiving the vaccine and consequences for not receiving the vaccine. Further, employees should be advised that they will be required to provide evidence that they have received the vaccine.

For now, though, counties should continue to monitor guidance from various government agencies regarding the vaccine. Additionally, counties should work with human resources personnel and/or legal counsel if contemplating the implementation of a vaccination program.