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Can employers require workers to take the coronavirus vaccine?

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By [Karin Price Mueller | NJ Advance Media for NJ.com](#)

Throughout the [coronavirus pandemic](#), some New Jerseyans have been able to work at home.

But as [vaccination efforts begin](#) in the state, officials say we're probably only a few months away from widespread vaccine availability. That could be a game-changer for employees who have spent months away from the office.

It also raises a lot of questions.

Employers are required to keep their workplaces safe, but what happens if some workers don't want to take a vaccine? Can your boss require it? What if you take the vaccine but your coworkers don't? [Do you have any rights?](#)

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Here's what you should expect.

Can my employer require me to be vaccinated for the coronavirus?

Yes.

The Employment Opportunity Commission (EEOC) last week [issued guidance](#) that employment law experts had been expecting. It said the Americans With Disabilities Act (ADA), which gives workers some rights when it comes to an employer requiring certain medical exams, doesn't apply when it comes to COVID vaccines.

"If a vaccine is administered to an employee by an employer for protection against contracting Covid-19, the employer is not seeking information about an individual's impairments or current health status, and, therefore, it is not a medical examination," [EEOC said on its website](#).

It said the requirement of a COVID vaccine would be permitted.

Employers have an obligation to ensure that their employees have a healthy and safe work environment, said Dennis Alessi, a partner and co-chair of the employment law group at Mandelbaum Salsburg on Roseland.

"It is based on this obligation that employers are permitted to require employee testing for COVID-19," Alessi said, noting he was expecting the EEOC decision that employers would have the right to require employee vaccinations.

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Employers may require vaccines if the failure to vaccinate will result in a direct threat to other employees, agreed Timothy Ford, partner and member of the employment and litigation departments at Einhorn, Barbarito, Frost & Botwinick in Denville.

But that doesn't mean employers should be in a rush to institute new vaccine rules.

"As the Pfizer vaccine has only received [Emergency Use Authorization](#), employers should be reluctant to mandate until after the Food and Drug Administration (FDA) expands authorization to its standard approval, indicating it is effective." Ford said.

Are there exceptions for certain workers?

Yes.

The [EEOC](#) has said that employees may be exempt from a mandatory vaccine if the employee has a covered disability under the [Americans with Disabilities Act \(ADA\)](#) that prevents them from taking the vaccine, Ford said.

There are other exceptions.

Ford said an employee may be excused from the vaccine requirement under the religious accommodation provision of [Title VII of the Civil Rights Act of 1964](#), which could cover religious and other exemptions.

“These are generally the exceptions for certain vaccinations like the flu shot,” Ford said.

He said using the “direct threat” standard, these exceptions, particularly in certain industries, may not apply.

“It is widely anticipated that health care providers, teachers, nurses and senior care employees will be mandated to get the vaccination,” he said.

Alessi said there could also be exceptions for employees that have underlying medical conditions, such as those severe [allergic reactions](#), which showed to be an issue for several people who took the Pfizer vaccine.

“We expect that employers will be entitled to require that employees provide medical documentation to qualify for this exception,” he said.

What if my boss doesn't require it? Can I be fired if I don't want to work with unvaccinated coworkers?

You have options.

Ford said that COVID-19 has presented employers with many unprecedented challenges, but each worker's case presents variables and should be handled on a case-by-case basis.

There may also be different circumstances depending on the job and the industry.

“Generally, an employer may terminate an employee for his or her refusal to fulfill the requirements of his or her position and/or failure to be present at work,” Ford said. “However, if an employee has a recognized disability under the [New Jersey Law Against Discrimination](#) or ADA which would impact his or her ability to return to work in an environment with unvaccinated co-workers, reasonable accommodations shall be required to the employee.”

Plus, he said, Gov. Phil Murphy's executive orders require remote work where possible for non-essential businesses.

Alessi said employees can file a complaint under the [Occupational Safety and Health Act \(OSHA\)](#), saying the employer is creating an unsafe, unhealthy work environment because the employer is not requiring all employees to be vaccinated for COVID-19.

“If the employee is fired for making such a complaint, the employee probably has a claim of retaliatory discharge for exercising his or her rights under OSHA,” Alessi said.

If I have to show proof of a vaccine, isn't it an invasion of privacy?

Yes, it is invasion of privacy, Alessi said.

“However, employers were permitted to invade employee privacy in requiring COVID-19 testing,” he said, noting that a vaccine requirement would be a continuation of the employer’s obligation to maintain a safe and healthy work environment.”

Vaccines are already required in some industries, Ford said, such as the flu vaccine.

“A certificate of immunization may be required, limiting the information provided,” he said.

Even if an employer can mandate a vaccine, that doesn’t mean an employer should, Ford said.

“Employers may not want to lose valuable employees based on their refusal to be vaccinated, particularly in the early stages of the vaccination and its implementation under an Emergency Use Authorization,” Ford said.

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