Wednesday, March 4, 2015

The issue of whether United States citizens could be compelled to submit to vaccinations has been the subject of litigation since small pox was an epidemic threatening the health and well-being of the country in the early 1900s. In *Jacobson v. Massachusetts*, citizens challenged a Massachusetts state law requiring all persons over the age of 21 to be vaccinated against small pox. 197 U.S. 11 (1905). They argued that “a compulsory vaccination law is unreasonable, arbitrary and oppressive, and, therefore, hostile to the inherent right of every freeman to care for his own body and health in such way as to him seems best; and that the execution of such a law against one who objects to vaccination, no matter for what reason, is nothing short of an assault upon his person.” Id. at 26. The United States Supreme Court disagreed, finding “a real and substantial relation to the protection of the public health and safety” and noting that “the police power of a State must be held to embrace, at least, such reasonable regulations established directly by legislative enactment as will protect the public health and the public safety.” Id. at 31, 25. The Court did note, however, that this power should not be exercised in such a manner as to be arbitrary or beyond what is necessary for the safety of the public. Id. at 26.

Subsequently, the Supreme Court upheld similar mandatory vaccination requirements enforced as a prerequisite for school enrollment. *Zucht v. King*, 260 U.S. 174, 177 (1922). Pursuant to these powers, a few states have also enacted requirements for influenza vaccinations for health care workers. See [here](https://www.cdc.gov/vaccines/hcp/immunization-requirements/index.html) for CENTERS FOR DISEASE CONTROL AND PREVENTION, STATE IMMUNIZATION LAWS FOR HEALTHCARE WORKERS AND PATIENTS (current as of December 2013) See generally Abigale L. Ottenberg, Joel T. Wu, and Gregory A. Poland, et al., Vaccinating Health Care Workers Against Influenza: The Ethical and Legal Rationale for a Mandate, 101 Am. J. P. Health 212-216 (2011).

Mandatory flu vaccination requirements are not exclusive to state and local government directives. Two somewhat recent cases addressed whether private entities could impose upon health care workers the requirement that they receive the flu vaccine. First, in *Mason Hospital v. Washington State Nurses Association*, the Ninth Circuit upheld an arbitrator’s decision to strike down a hospital directive that all nurses must receive the flu vaccination. 511 F.3d 908 (9th Cir. 2007). The reason for this decision was that the requirement was not implemented in accordance with the nurses’ collective bargaining agreement. Id. Second, in *Chenzira v. Cincinnati Children’s Hospital Medical Center*, a receptionist objected to a hospital’s mandatory flu vaccination policy on the grounds that it violated her vegan dietary restrictions, which were as closely held to her as though they were religious. S.D. Ohio No. 1:11-CV-00917 (Dec. 27, 2012). The court denied a motion to dismiss, finding that the plaintiff had a plausible claim for religious discrimination. Id. Finally, though not a court case, the Equal Employment Opportunity Commission has stated that employees with certain disabilities or religious beliefs should be exempt from mandatory flu vaccination requirements imposed on their employees. See [here](https://www.eeoc.gov/eeoc/newsroom/docs/2012/12-12-flu-vaccination_rf.pdf).

Therefore, it appears that there is no general constitutional right that would prohibit someone from being compelled to be vaccinated for influenza. However, the requirement must still be implemented and enforced in accordance with other rights of employees or vendors. For example, if the requirement ran afool of a contract with the hospital or an individual’s disability or religious belief, courts would be unlikely to enforce it. Finally, some states do provide workers with the ability to opt out by law. However, it does not appear that Kentucky is counted among that number. CENTERS FOR DISEASE CONTROL AND PREVENTION, STATE IMMUNIZATION LAWS FOR HEALTHCARE WORKERS AND PATIENTS.