

## Mandatory Flu Vaccine Policies: Dealing With Employees Who Refuse the Shot

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Flu season is coming, and healthcare (and other) organizations may be asking whether they should have [mandatory flu vaccine policies](#). If an employer decides to implement a mandatory program, the next question is how to administer it.

In the healthcare industry, mandatory vaccination programs for employees are common. A number of states require healthcare employers to offer the vaccine or to ensure that employees receive it (with certain exceptions). The Centers for Disease Control (CDC) and Prevention [website](#) tracks these various state laws and their requirements, and the CDC itself recommends that all health care workers get vaccinated (including all workers having direct **and indirect** patient care involvement and exposure).

However, “mandatory” doesn’t always mean mandatory. In some circumstances, healthcare providers may have to grant exceptions to their “mandatory” vaccination programs. Federal and state discrimination laws require employers to provide reasonable accommodations to employees with disabilities and sincerely-held religious beliefs. Some employees may be medically unable to receive the flu vaccine. Others may have religious objections. Absent undue hardship, healthcare providers will need to create exceptions to their “mandatory” policies for employees as a reasonable accommodation for the employees’ disabilities or religious practices.

Missteps in the accommodation process can open the door to litigation. Last year, the U.S. Equal Employment Opportunity Commission (EEOC) sued a hospital that declined to grant religious exemptions for six employees who refused the flu vaccine. The case settled for \$300,000. Another similar case, *Equal Employment Opportunity Commission v. Baystate Medical Center*, is still pending in federal court.

So how can healthcare employers implement mandatory flu vaccine policies? Every workplace and situation is different, but there are a few key points to keep in mind:

- **Be prepared. Before** rolling out a mandatory vaccination requirement, an employer may want to have a process in place for requesting accommodations. A carefully written vaccination policy can describe that process, so employees understand where to turn if they need to ask for accommodation. Employers may also want to have forms for employees to fill out to request a waiver as an accommodation.
- **Objections based on religion or disability.** Employers have an obligation to accommodate **only** sincerely held religious beliefs or disabilities. But remember, “religion” and “disability” are broad terms. The EEOC and at least one federal court consider [veganism, in some circumstances, to constitute a religious belief](#) that could exempt an employee from a flu-vaccination requirement. The bottom line is that an employee’s objection to a vaccine might not appear to be “religious” at first blush, but it could be religious in the eyes of the law. Medical conditions or restrictions causing the need to forego a flu vaccine should be relatively rare. Recently, non-egg options and versions of the shot that are safe for



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those with egg allergies have become available. However, valid medical objections may still exist.

- **Explore accommodations.** Employers may want to have general reasonable accommodations policies, as well as procedures and request forms, to manage the interactive process. For an employee who declines the vaccine, the appropriate accommodation will depend on a variety of factors, including whether the employee's position involves patient contact. Depending on the circumstances, appropriate accommodations may include modifying the employee's work duties, finding an alternate version of the flu shot (or a nasal spray), having the employee wear a surgical mask, transferring the employee to a vacant position, or a leave of absence. Once the accommodation is in place, an employer can continue working with the employee to make sure it remains effective and feasible.
- **Document.** In the context of vaccines and otherwise, employers will want to carefully document the accommodation process in writing. Specifically, businesses should keep clear records of precisely what accommodations have been requested, considered, negotiated, and either granted or rejected. Employers may also want to make sure documentation identifies who was involved in the process, when each step took place, whether disciplinary action was taken, and why each decision was made along the way.

Since mandatory flu vaccine programs have been a hotbed for litigation (and a source for the viral spread of misinformation), healthcare providers may want to proceed with caution and make sure their processes and procedures comply with applicable discrimination laws.

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