

Arizona employers, be mindful of new statutes, administrative guidance on vaccine mandates

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As the COVID-19 delta variant continues to surge and with full Food and Drug Administration (FDA) approval of the Pfizer vaccine, many employers are again thrust into uncertainty about how to maintain a safe workplace. As you seek the right path forward, be mindful of the August 20 opinion issued by the Arizona attorney general with respect to whether an Arizona employer may require a COVID-19 vaccine as a condition of employment. Long-standing state and federal laws, as well as legislation that took effect September 29, 2021, will affect your decisions.

New legislation doesn't mention private employers

Arizona lawmakers recently passed A.R.S. § 36-681, which prohibits the state “and any city, town or county of this state” from requiring “any person to be vaccinated for COVID-19.” Similarly, the legislature enacted A.R.S. § 15-342.05(B), which states a “school district or charter school may not require a student or teacher to receive a vaccine for COVID-19.” As previously noted, the statutes are effective September 29.

Conspicuously absent from the statutes is any requirement or prohibition with respect to a private employer's decision to mandate vaccinations as a condition of employment.

May you require employees to get COVID-19 vaccination?

Federal and Arizona law currently allows private employers and businesses to impose a vaccination requirement. But there are significant restrictions on your ability to do so:

- If you institute a COVID-19 vaccine mandate, you must provide a reasonable accommodation to employees who can't get the shots because of a disability or a sincerely held religious belief; and
- Places of public accommodation requiring patrons to be vaccinated must provide a reasonable accommodation to those who can't obtain the shots for the same reasons.

To be clear, Arizona law expressly forbids public entities from requiring a COVID-19 vaccination as a condition of employment under certain circumstances.

How Arizona's largest private employer is proceeding

In July, Banner Health, Arizona's largest private employer, became the state's first to require its employees to get the COVID-19 vaccination. Its approximately 52,000 employees must be fully vaccinated by November 1.

At the time of this writing, other large healthcare providers haven't followed suit, indicating their hesitation was based on the vaccine's emergency approval. That may change after the FDA's recent full approval of the Pfizer vaccine and with Moderna likely to follow suit soon.

It's been common practice for healthcare providers to require employees to get the flu vaccine each year, so Banner's mandate comes as no surprise. Nonetheless, the company is offering incentives for employees to roll up their sleeves such as:

- Paid time off (PTO) to get vaccinated;
- Mileage reimbursement; and
- Points towards a wellness program for discounts on health insurance.

Employers considering a vaccine mandate should think about offering similar incentives to employees to ease the implementation.

Tune in for part 2

Now that you've become familiar with the applicable Arizona laws affecting vaccine mandates, the next step is to prepare to address employees' reasonable accommodation requests. In the article “Tips on making reasonable accommodations for employee vaccine mandates”, we'll show you how to navigate the accommodation process.

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