

Can Employers Require Their Employees to be Vaccinated?

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From January 1 to February 27, 2015, 170 people from 17 states and the District of Columbia were reported to have measles. On February 25, 2015, health official confirmed Illinois' 15th measles case in Cook County. Most of the nation's 125 cases are part of a large, ongoing multi-state outbreak linked to Disneyland in California. The Disneyland outbreak has spurred a national discussion about whether employers should require their employees to be vaccinated.



The federal government does not require vaccinations, but many states have laws requiring health care workers to be vaccinated. Almost no companies outside of the health industry require vaccinations as a condition of employment. Illinois requires: (1) employers to make available the hepatitis B vaccine and vaccine series to all employees who have occupational exposures; (2) each health care setting to ensure that all health care employees are offered the opportunity to receive seasonal, novel, and pandemic influenza vaccine during influenza seasons; (3) rubella vaccinations for nursery personnel; (4) hospitals to establish an employee health program that includes required vaccinations. See Ill. Admin. Code 56 § 350.280; Ill. Admin. Code 77 § 956.30; Ill. Admin. Code 77 §250.1820; Ill. Admin. Code 77 § 250.450.

Can employers require vaccinations? Sometimes. Most employers may institute a mandatory vaccine policy, and fire non-union workers for not complying because most employment is at will (meaning employees can be fired for any reason, at any time). However, mandatory vaccinations are usually not worth the legal ramifications and costs.

If an employer institutes a mandatory vaccination policy, it could be subjecting itself to potential liability under Title VII of the Civil Rights Act ("Title VII"), the Americans with Disabilities Act Amendments Act ("ADAAA"), and various state laws. Title VII may require an employer to provide a reasonable accommodation to an employee with religious beliefs that prevent him or her from taking vaccines. Likewise, individuals with certain disabilities may not be able to have certain vaccinations due to the risk that they will exacerbate their medical conditions. Further, unionized employers may be prohibited from imposing mandatory vaccinations without first bargaining with the union. See *VA Mason Hosp. v. WA State Nurses Assn.*, 511 F. 3d 908 (2007). Additionally, an employee contract may bar mandatory vaccinations.

If mandatory vaccinations are too costly to enforce, what should employers do? Strongly encourage employees to be vaccinated. These steps include educating your staff about how to prevent disease, educating your staff about the benefits of vaccination, instituting policies that encourage employees to remain at home (or that even force them to remain at home) if they aren't feeling well, incentivizing vaccinations by offering free or low cost vaccines at work, providing refreshments at an employer sponsored vaccine site, providing time-off to obtain vaccinations off-site, and providing them with paid or unpaid sick leave.