

# LEGAL *Alert*

## Mandatory Flu Shot *for* Employees: Policy Implementation *and* Best Practices

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More and more health care employers are requiring that all employees get the influenza vaccine in order to help protect patients and coworkers during flu season. This trend has resulted in questions pertaining to the legality of such policies, as well as how to properly implement a mandatory influenza vaccination policy for employees. Employers may adopt mandatory flu shot policies which are drafted and implemented in a legally compliant manner.

### Legal Regulation of Vaccination Policies

As a condition of employment, an employer may require that all employees receive a flu shot. However, an employer's compulsory flu shot policy must provide for exemptions in order to comply with various laws regulating the employer/employee relationship. For example, if an employee with a physical or mental disability refuses a flu shot, the employer may have to make a reasonable accommodation in order to comply with the federal Americans with Disabilities Act (ADA) and the Michigan Persons with Disabilities Civil Rights Act, unless the accommodation would impose an undue hardship on the employer. A reasonable accommodation could take the form of exempting the employee from the requirement and instead requiring a different protective measure, such as wearing a surgical mask. Similarly, if an employee objects due to a sincerely held religious belief, the employer may also have to provide a reasonable accommodation in order to comply with the federal Civil Rights Act of 1964 and the Michigan Elliot-Larsen Civil Rights Act, unless doing so would impose an undue hardship on the employer.

If an employee refuses to comply with the employer's policy and/or any reasonable alternative protective measures required by the employer if an exemption is granted, an at-will employer may pursue disciplinary action which could include termination. An employer should understand that, as with other employment decisions, its determination to impose disciplinary action for noncompliance could be challenged by the employee and is not binding on governmental agencies or the courts. In appropriate circumstances, an employer should consult knowledgeable legal counsel before making employment-based decisions.

## Employers Should Adopt a Written Policy

It is advisable for an employer that wishes to require flu shots to adopt a written flu shot policy so that all employees have reasonable advance notice that receiving an annual influenza vaccination is a condition of employment. The policy should set an annual compliance deadline based on the anticipated start of the flu season and outline consequences for noncompliance. For instance, the policy may list the steps triggered by noncompliance, such as a written warning, suspension, and termination if the noncompliance is not cured within a certain time frame. The policy should also specify what written documentation the employee must furnish to the employer to prove that the employee was vaccinated.

## An Employer's Policy Should Include Exemptions

An employer's influenza vaccination policy should provide a process for employees to request an exemption from the employer. Additionally, the policy should notify employees that if the employer grants an exemption, employees are required to comply, as a condition of employment, with reasonable alternative protective measures specified by the employer.

*Exemptions should be allowed for a number of reasons, including:*

1. a sincerely held religious belief or creed;
2. a qualifying physical or mental disability;
3. a prior severe allergic reaction to the flu shot;
4. a history of Guillain-Barré Syndrome; or
5. some other relevant medical reason.

If an employee requests an exemption, the employer will need to determine whether an exemption should be granted and if so, the reasonable alternative protective measures that it will require the employee to comply with during flu season. An employee's request for an exemption, as well as the employer's decision, should be documented in writing.

## Strategies for Improving Vaccination Rates

Educating employees about the benefits and importance of the flu shot may help maximize employee participation. Just like frequent hand washing and wearing gloves, the flu shot is an important protective measure for employees and patients. The Centers for Disease Control and Prevention (CDC), the Advisory Committee on Immunization Practices (ACIP), and the Healthcare Infection Control Practices Advisory Committee (HICPAC) recommend that all U.S. health care workers get vaccinated annually against influenza<sup>1</sup>. The CDC has a variety of resources related to influenza vaccination for health care workers ([www.cdc.gov/flu/healthcareworkers.htm](http://www.cdc.gov/flu/healthcareworkers.htm)), as well as general information pertaining to adult immunization ([www.cdc.gov/vaccines/hcp/patient-ed/adults/index.html](http://www.cdc.gov/vaccines/hcp/patient-ed/adults/index.html)) that may be helpful to employers and employees in the health care field.

<sup>1</sup> [www.cdc.gov/flu/healthcareworkers.htm](http://www.cdc.gov/flu/healthcareworkers.htm)



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