

Unexpected Long-Lasting Impacts of the COVID-19 Pandemic on Employers

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The COVID-19 pandemic has undoubtedly had long-lasting impacts on the workplace as we now enter the twentieth month of the pandemic. Some effects were expected, such as increased safety precautions, layoffs, rehiring, closed offices, and remote work. However, some of the challenges facing employers have been a bit more unexpected and longer-lasting than initially anticipated. In the later months of the pandemic, companies have been navigating vaccine mandates and increases in Americans with Disabilities Act (ADA) requests against a backdrop of worker shortages and continued safety concerns, which weigh heavily on the decisions they are making as it relates to workplace policies.

Vaccine Mandates

Since vaccines became available earlier this year, employers have been grappling with whether to mandate or encourage vaccination or stay silent. Initially, the lion's share of employers were opting to remain silent on vaccination or encourage vaccination through incentives or gentle nudging to avoid the hassle of mandating vaccination and providing religious and medical exemptions. Though, as it became clear over the summer that the COVID-19 pandemic was far from over, many employers began to consider mandating vaccination. This change was largely driven by a shift in public opinion, bold moves at the federal level, and the practical need for many employers with in-person operations to keep their workforce healthy and working.

However, with many companies struggling to hire and retain enough employees to staff their operations fully, the analysis for many employers has gone well beyond the health and safety of their employees. Ahead of the implementation of the federal mandate through the Occupational Safety and Health Administration (OSHA) issuing an Emergency Temporary Standard, due to industry-agnostic worker shortages, many employers have opted to encourage vaccination over requiring it since they cannot afford to terminate employees for failing to comply with a vaccine mandate. For those who have decided to mandate vaccination, many have faced walkouts and terminations, sometimes resulting in a mass exodus of their workforce.

ADA Requests

The COVID-19 pandemic has resulted in many business owners and Human Resource (HR) professionals taking a crash course in ADA compliance. While many employers may typically receive a couple of requests per year, the pandemic has led to an increase in these requests, with some being COVID-19 related and many being COVID-19 adjacent. As it relates to COVID-19 specifically, while temporary COVID-19 illness is not a disability, many employers have received leave and accommodation requests related to managing risk around contracting COVID-19 with a pre-existing condition or COVID-19 long-hauler illness. Additionally, companies have seen an increase in employees needing to take time away from work or needing accommodations for mental health conditions. In many instances, these requests have led employers to dig deep into the EEOC's guidance on these issues and examine the interaction between the ADA and FMLA and determine how accommodating employee needs impact the business's operations.

Overarching in both of these issues are the operational burdens of administering these policies and the impact on the company's workforce based on employees being unavailable to work or terminated or restricted from returning to the office. As employers continue to navigate employment matters related to the COVID-19 pandemic, they will continue to face increased administrative burdens related to keeping their workforce safe and accommodating and retaining employees. There is no shortage of complex issues and legal landmines involved, and employers must stay vigilant regarding legal compliance and consider the practical and legal consequences of their actions.