

Vaccine Mandates: Are the Tides of Public Opinion Turning and Will it Lead to Increased Mandates?

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Dr. Anthony Fauci recently expressed his support for more local vaccine mandates for schools and businesses, which was swiftly followed by a barrage of state and local governments and healthcare companies mandating the vaccine. While businesses have always been able to require vaccination, many have shied away from doing so based on the practical and legal implications, which include providing religious and medical exemptions and preparing to enforce a mandatory vaccination policy even if it means terminating high performing employees. Based on these complications, many private businesses have been encouraging vaccination instead of mandating it. However, with more encouragement from federal, state, and local governments and public health officials, the tides of public opinion are turning, and more businesses may opt to mandate vaccination.

That said, moving forward, regardless of guidance from governments, the CDC, and public health officials, business owners will still have to consider the practical realities of vaccine mandates and the potential pitfalls. One practical consideration for many employers has been the appetite for vaccination among their employees. When employers mandate vaccination, they have to be prepared to enforce the policy if an employee refuses to get vaccinated, which could cause them to lose top talent in a competitive job market where replacements are hard to find. Another potential pitfall to mandating vaccinations is the administrative costs associated with processing and vetting exemption requests, especially related to religious exemptions, which are often difficult to assess and determine validity. On the flip side, with the cold and flu season on the horizon, unvaccinated workers may miss substantial amounts of work for common cold symptoms.

Just last week, after Dr. Fauci encouraged vaccine mandates, I commented on this subject in the Maryland Reporter (view the article [here](#)). Since that time, as the infection and death rates related to the delta variant continue to rise, vaccine mandates have rolled out at a rapid pace with vaccine mandates for New York City, California, and Veterans Affairs workers and a wide range of medical groups and long-term care employees. Many of these mandates have been partial mandates giving employees an interesting choice: get vaccinated or get tested for COVID-19 weekly. Providing a testing option encourages vaccination by putting the burden on employees to get tested weekly and reduces the administrative headache of drilling down on exemptions claimed by employees by providing an alternative to vaccination.

While there has been an increase in vaccine mandates in the public sector that may result in increases in private business mandates, the change in public opinion does not eliminate the potential pitfalls and challenges private employers face when determining if a vaccine mandate is right for them. Accordingly, employers still have several things to consider before mandating vaccination and should be sure to have a comprehensive policy to ensure their practices are legally compliant.