

Dear Boss,

Compelling any employee to take any current Covid-19 vaccine violates federal and state law, and subjects the employer to substantial liability risk, including liability for any injury the employee may suffer from the vaccine.

Many employers have reconsidered issuing such a mandate after more fruitful review with legal counsel, insurance providers, and public opinion advisors of the desires of employees and the consuming public. Even the Kaiser Foundation warned of the legal risk in this respect. (<https://www.kff.org/coronavirus-covid-19/issue-brief/key-questions-about-covid-19-vaccine-mandates/>)

Three key concerns: first, while the vaccine remains unapproved by the FDA and authorized only for emergency use, federal law forbids mandating it, in accordance with the Nuremberg Code of 1947;

Second, the Americans with Disabilities Act proscribes, punishes and penalizes employers who invasively inquire into their employees' medical status and then treat those employees differently based on their medical status, as the many AIDS related cases of decades ago fully attest;

and third, international law, Constitutional law, specific statutes and the common law of torts all forbid conditioning access to employment upon coerced, invasive medical examinations and treatment, unless the employer can fully provide objective, scientifically validated evidence of the threat from the employee and how no practicable alternative could possibly suffice to mitigate such supposed public health threat and still perform the necessary essentials of employment.

At the outset, consider the "problem" being "solved" by vaccination mandates.

The previously infected are better protected than the vaccinated, so why aren't they exempted?

Equally, the symptomatic can be self-isolated. Hence, requiring vaccinations only addresses one risk: dangerous or deadly transmission, by the asymptomatic or pre-symptomatic employee, in the employment setting.

Yet even government official Mr. Fauci admits, as scientific studies affirm, asymptomatic transmission is exceedingly and "very rare."

Indeed, initial data suggests the vaccinated are just as, or even much more, likely to transmit the virus as the asymptomatic or pre-symptomatic.

Hence, the vaccine solves nothing. This evidentiary limitation on any employer's decision-making, aside from the legal and insurance risks of forcing vaccinations as a term of employment without any accommodation or even exception for the previously infected (and thus better protected), is the reason most employers wisely refuse to mandate the vaccine.

This doesn't even address the arbitrary self-limitation of the pool of talent for the employer: why reduce your own talent pool, when many who refuse invasive inquiries or risky treatment may be amongst your most effective, efficient and profitable employees?

First, federal law prohibits any mandate of the Covid-19 vaccines as unlicensed, emergency-use-authorization-only vaccines. Subsection bbb-3(e)(1)(A)(ii)(III) of section 360 of Title 21 of the United States Code, otherwise known as the Emergency Use Authorization section of the Federal Food, Drug, and Cosmetic Act, demands that everyone give employees the "option to accept or refuse administration" of the Covid-19 vaccine. (<https://www.law.cornell.edu/uscode/text/21/360bbb-3>)

This right to refuse emergency, experimental vaccines, such as the Covid-19 vaccine, implements the internationally agreed legal requirement of Informed Consent established in the Nuremberg Code of 1947. (<http://www.cirp.org/library/ethics/nuremberg/>).

As the Nuremberg Code established, every person must "be able to exercise free power of choice, without the intervention of any element of force, fraud, deceit, duress, overreaching, or other ulterior form of constraint or coercion; and should have sufficient knowledge and comprehension of the elements of the subject matter involved as to enable him to make an understanding and enlightened decision" for any medical experimental drug, as the Covid-19 vaccine currently is. The Nuremberg Code prohibited even the military from requiring such experimental vaccines. (*Doe #1 v. Rumsfeld*, 297 F.Supp.2d 119 (D.D.C. 2003)).

Second, demanding employees divulge their personal medical information invades their protected right to privacy, and discriminates against them based on their perceived medical status, in contravention of the Americans with Disabilities Act. (42 USC §12112(a).) Indeed, the ADA prohibits employers from invasive inquiries about their medical status, and that includes questions about diseases and treatments for those diseases, such as vaccines.

As the EEOC makes clear, an employer can only ask medical information if the employer can prove the medical information is both job-related and necessary for the business. (<https://www.eeoc.gov/laws/guidance/questions-and-answers-enforcement-guidance-disability-related-inquiries-and-medical>). An employer that treats an individual employee differently based on that employer's belief the employee's medical condition impairs the employee is discriminating against that employee based on perceived medical status disability, in contravention of the ADA. The employer must have proof that the employer cannot keep the employee, even with reasonable accommodations, before any adverse action can be taken against the employee.

If the employer asserts the employee's medical status (such as being unvaccinated against a particular disease) precludes employment, then the employer must prove that the employee poses a "safety hazard" that cannot be reduced with a reasonable accommodation.

The employer must prove, with objective, scientifically validated evidence, that the employee poses a materially enhanced risk of serious harm that no reasonable accommodation could mitigate.

This requires the employee's medical status causes a substantial risk of serious harm, a risk that cannot be reduced by any another means. This is a high, and difficult burden, for employers to meet.

Just look at all the prior cases concerning HIV and AIDS, when employers discriminated against employees based on their perceived dangerousness, and ended up paying millions in legal fees, damages, and fines.

Third, conditioning continued employment upon participating in a medical experiment and demanding disclosure of private, personal medical information, may also create employer liability under other federal and state laws, including HIPAA, FMLA, and applicable state tort law principles, including torts prohibiting and proscribing invasions of privacy and battery. Indeed, any employer mandating a vaccine is liable to their employee for any adverse event suffered by that employee. The CDC records reports of the adverse events already reported to date concerning the current Covid-19 vaccine. (<https://www.cdc.gov/coronavirus/2019-ncov/vaccines/safety/vaers.html>)

Finally, forced vaccines constitute a form of battery, and the Supreme Court long made clear "no right is more sacred than the right of every individual to the control of their own person, free from all restraint or interference of others."
(<https://www.law.cornell.edu/supremecourt/text/141/250>)

With Regards,
Employee of the Year
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