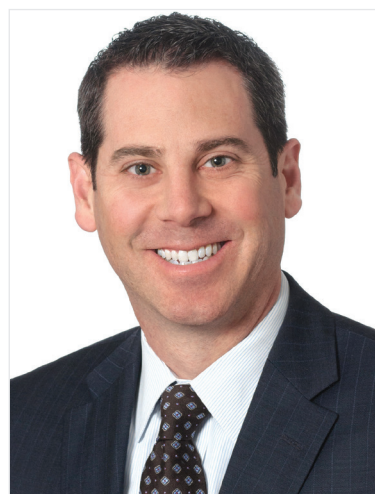


How FDA approval of the Pfizer vaccine is changing employers' minds on mandatory jobs

Now that the Food and Drug Administration has approved the Pfizer vaccine, many employers are looking into vaccine mandates for employees. Since the agency's full approval in August, public confidence in getting a shot has grown and vaccination rates have risen.

Recently, **Crain's Content Studio** sought insight from Scott R. Matthews, a partner at the law firm of Windels Marx Lane & Mittendorf, into how to navigate this issue. Matthews is an employment and litigation lawyer who serves clients in the real estate, marketing, financial services, executive recruiting, professional services, transportation, retail and manufacturing industries.



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mandates for employees. Employers can now take solace in knowing that one argument against imposing a vaccine mandate—that the vaccine had only been approved on an emergency basis—has been removed. This, combined with the few courts that have upheld the legality of vaccine mandates, has emboldened many employers.

Employers who have instituted mandates are also more comfortable applying strict scrutiny to requests for exemptions to the mandate. Human resources and legal professionals are on firmer ground when considering

later sue the employer if there's a complication from the vaccine?

MATTHEWS: It is unlikely that an employee could successfully sue based on a complication because of the vaccine. It is essentially a voluntary decision to comply with an employer's vaccine mandate (rather than resign).

It is more likely that litigation will focus on whether an exemption request was properly denied. Employers should first consider whether an individual employee has legitimate grounds to seek exemptions. The law affords an exemption to those employees who have a

by the Centers for Disease Control and Prevention outlining what is and is not considered a medical contraindication to vaccination.

Crain's: How is the Delta variant changing employers' perspectives on vaccine mandates?

MATTHEWS: The Delta variant's transmissibility is prompting employers to institute vaccine mandates to protect their workforce, vendors and customers from the spread of the

disease. The manner in which the disease has morphed has set back efforts to return to pre-pandemic operations, thereby affecting employers' plans and business.

While many employers have been able to adjust to remote work because of technological advances, those working in the hospitality, manufacturing, health care and retail industries, for example, require in-person operations that are hampered by the speed at which the Delta variant has infected populations. ■

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Employers are able to probe the extent of the objection if there is a good-faith basis to do so, but should do so carefully and with the assistance of counsel.

Crain's: How has the approval of the Pfizer vaccine changed employers' thinking about vaccine mandates?

SCOTT R. MATTHEWS: The FDA's approval of the Pfizer vaccine has spurred significant movement on the part of employers who had been reluctant to institute vaccine

requests for exemptions to a mandatory vaccine policy.

Crain's: What legal issues come into play when there is a vaccine mandate? Could an employee who is compelled to get vaccinated by an employer

sincerely held religious belief opposing vaccination, or a medical condition that makes vaccination unsafe, provided that the exemption does not place undue hardship on the employer.

The religious exemption based on a sincerely held belief is widely considered to include objections based not just on an established religion, but also on ethical and moral grounds. Employers are able to probe the extent of the objection if there is a good-faith basis to do so, but should do so carefully and with the assistance of counsel.

Employers should insist on a doctor's written certification of need for a medical vaccine exemption. Most doctors and health care workers follow federal vaccine recommendations published



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