



## Potential NLRA Impacts Of A Mandatory COVID-19 Vaccination

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With COVID-19 vaccinations now approved by the Food and Drug Administration (FDA) for emergency use authorization, employers are beginning to question whether they should require employees to get a COVID-19 vaccination. In making this decision, employers should be mindful of a number of legal considerations, one of which is the impacts of such a policy under the National Labor Relations Act.

It's important to note that both union and non-union employers may be impacted by the NLRA. Specifically, Section 7 of the NLRA grants employees the right to engage in protected concerted activities for the purpose of collective bargaining or other mutual aid or protection, and makes it unlawful for an employer to interfere with or restrain employees in the exercise of those rights. Generally speaking, there is protected concerted activity when two or more employees act together to improve their terms and conditions of employment.

Examples of protected activity in this context could include protesting against a mandatory vaccination policy (or the lack of one), organized office communications or flyers among coworkers concerning a vaccination mandate, or discussions among coworkers about the vaccine. Employers should exercise caution and consult labor and employment counsel before taking any adverse action against employees who collectively discuss or protest a mandatory vaccination policy, because such action could result in an unfair labor practice charge against the employer.

If a union is already involved in the workplace, the starting point for employers is to consider whether the controlling collective bargaining agreement permits a mandatory vaccination policy or not. If a mandatory vaccination policy falls within the language of the collective bargaining

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agreement, then the employer may be able to unilaterally implement the work policy without first bargaining with the union. However, if a mandatory vaccination policy does not fall within the language of the collective bargaining agreement, requiring COVID-19 vaccinations may be considered a mandatory subject of bargaining that gives rise to a duty to bargain prior to implementation. Unilaterally implementing such a policy in this situation may lead to a meritorious unfair labor practice charge.

Although there are a number of legal considerations to take into account before implementing a mandatory COVID-19 vaccination policy, employers should keep in mind the impacts of the NLRA to avoid an unfair labor practice charge.