**Can a health center require its employees to receive the COVID-19 vaccine?**

Prior to implementing an employer-mandated COVID-19 vaccine program, health centers should consider the following:

* **Mandating vaccines only available under an Emergency Use Authorization (EUA) granted by the Food and Drug Administration (FDA):** Employer-mandated vaccine programs that have survived legal challenges required employees to receive FDA approved/licensed vaccines, such as the flu and smallpox vaccines. It is still unclear, however, whether an employer can mandate that employees receive vaccines only available under an EUA, such as the COVID-19 vaccines. As detailed on [FDA’s website](https://www.fda.gov/vaccines-blood-biologics/vaccines/emergency-use-authorization-vaccines-explained):

“**FDA must ensure that recipients of the vaccine under an EUA are informed**, to the extent practicable given the applicable circumstances, that FDA has authorized the emergency use of the vaccine, of the known and potential benefits and risks, the extent to which such benefits and risks are unknown, **that they have the option to accept or refuse the vaccine**, and of any available alternatives to the product.”

An employee could challenge an employer-mandated COVID-19 vaccine program while the vaccine is still under an EUA, asserting that the mandate eliminates the employee’s option to accept or refuse the vaccine. The employer could be required to defend the mandatory vaccine program in court. If/when the COVID-19 vaccines are approved/licensed by the FDA, the legal risk for employer-mandated COVID-19 vaccine programs will decrease.

* **Accommodating employees who indicate they are unable to receive a COVID-19 vaccination because of a disability or a sincerely held religious practice or belief:** The Equal Employment Opportunity Commission (EEOC) enforces the federal workplace anti-discrimination laws, including the Americans with Disabilities Act (ADA) which requires reasonable accommodation and non-discrimination based on disability and Title VII of the Civil Rights Act of 1964 (Title VII) which prohibits discrimination on the basis of race, color, national origin, religion and sex, including pregnancy. In its [COVID-19 guidance](https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws), the EEOC recognizes that employer-mandated COVID-19 vaccine programs raise questions under these federal workplace anti-discrimination laws and require employers to consider reasonable accommodations for employees who are protected under the ADA and Title VII. An employee with a disability that prevents them from receiving the COVID-19 vaccine is entitled to a reasonable accommodation barring undue hardship (defined by the ADA as significant difficulty or expense). Additionally, an employee with a sincerely held religious belief, practice, or observance that prevents them from taking the COVID-19 vaccine is entitled to a reasonable accommodation barring undue hardship (defined by Title VII as more than “de minimis cost” to the operation of the employer’s business). Employers must also determine whether state and local anti-discrimination laws apply.
* **NOTE: Health centers with unionized employees must determine whether the collective bargaining agreement allows for employer-mandated vaccine programs.**