

Mandatory Workplace COVID Vaccines: A Review of Current Law

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Mandatory COVID-19 vaccination for employees has become a heated topic over the past year and many employers are considering mandates with hope that their workplaces will go back to normal. In order to protect employees, clients, vendors, and guests, companies view mandating the COVID vaccine as a tool. However, is it legal for an employer to mandate a vaccine? Let's review the current law on this topic.

EEOC Guidance

The Equal Employment Opportunity Commission (EEOC) has released guidance that allows employers to mandate the COVID-19 vaccine according to the Oregon Bureau of Labor and Industries. Because Oregon is a right to work state, many employers believe they can mandate vaccines as a condition of employment.¹

Emergency Use Vaccines

The problem with this thinking is that current COVID-19 vaccines are only allowed under an Emergency Use Authorization (EUA) from the Food and Drug Administration (FDA).² With an EUA, vaccine recipients are required to have the right to refuse.³ Additionally, Dr. Amanda Cohn (the Center for Disease Control's Secretary of the Advisory Committee on Immunization Practices) stated that vaccines approved as EUAs, "are not allowed to be mandatory. So, early in this vaccination phase, individuals will have to be consented and they won't be able to be mandatory."⁴

Need Legal Help? ICAN

The Informed Consent Action Network (ICAN) has graciously stepped up to the plate and is willing to help any person whose employer is mandating the vaccine.⁵ If you need legal help in fighting against a workplace COVID-19 mandate, email freedom@icandecide.org and provide a copy of the written notice showing that the COVID-19 vaccine is required.

1. <https://www.oregon.gov/boli/employers/Pages/employment-at-will.aspx>
2. <https://www.statnews.com/2020/12/11/fda-grants-historic-authorization-to-a-covid-19-vaccine-setting-stage-for-rollout/>
3. <https://www.law.cornell.edu/uscode/text/21/360bbb-3>

4. <https://www.cdc.gov/vaccines/acip/meetings/downloads/min-archive/min-2020-08-508.pdf>
5. <https://www.icandecide.org/>
6. <https://www.eeoc.gov/publications/ada-your-responsibilities-employer>
7. <https://www.oregon.gov/boli/workers/Pages/covid-vaccine.aspx>

Options if Mandated

Should your employer decide to mandate the COVID-19 vaccine and you are not willing to fight a legal battle, there are other options available to you.

1. In Oregon, an employee can request a *non-medical* exemption for the COVID-19 vaccine by providing necessary paperwork stating that they are refusing the vaccine for philosophical reasons. This will be a unique document that must be obtained from your employer.
2. Medical and religious exemptions are both protected by Federal law.
 - a. A person with a disability recognized by the Americans with Disabilities Act (ADA)⁶ that makes them unable to be vaccinated are exempt from any mandates.
 - b. Employees can request a religious exemption to the Covid-19 vaccine through protections spelled out in Title VII of the Civil Rights Act of 1964.
3. According to current OR law, any person professionally licensed or certified to provide health care, employees of a healthcare facility, a licensed health care provider or clinical laboratory, firefighters, law enforcement officers, corrections officers, or parole and probation officers are exempt from mandatory vaccines of any kind.⁷

For the three examples above, employers would determine if an undue hardship exists prior to considering reasonable accommodations (social distancing, wearing a mask, and/or working from home).

Oregonians for Medical Freedom values everyone's ability to decide which medical procedures are necessary for their unique situation. Each person is an individual and one size fits all mandates are in no one's best interest. We will continue to fight for bodily autonomy and health choice.