

Can Employers Make COVID-19 Vaccinations Mandatory?

By: Colleen M. Arnett
Livorno and Arnett Co., LPA
1335 Dublin Road, Suite 108-B
Columbus, Ohio 43215
Telephone: 614-224-7771

As I'm sure you are all aware, COVID-19 vaccines are projected to be approved and distributed soon, and first responders are expected to be some of the first to receive the vaccination. While this may be welcome news for some, we also know that there will be many who do not want to get the vaccine. Because of this, the questions facing fire locals are: Can employers mandate that firefighters and paramedics receive vaccinations if they deem it necessary for public health and safety? If so, are there any state and federal laws in place for firefighters and paramedics who refuse to receive the vaccination? As explained further below, there are some state and federal legal considerations, however, it will likely be exceedingly difficult for a firefighter or paramedic to refuse to be vaccinated against COVID-19.

State

In May, 2019, Ohio House Bill 268 was introduced. HB 268 would prohibit an employer from taking adverse employment action against a person who has not or will not be vaccinated. However, at this time the Bill remains in the committee and there has been no further action.

Federal

ADA

Under the ADA, employers are required to provide reasonable accommodations for an employee's disability. Therefore, if a firefighter suffers adverse medical consequences to vaccinations, he may be entitled to a reasonable accommodation. Such disability may include an inability to be vaccinated due to contraindication if the vaccination would substantially or materially limit the ability to perform major life activities. In other words, moderate reactions to vaccines will not be legally sufficient. An ADA claim will only be available to firefighters who suffer serious medical consequences from being vaccinated. In order to receive an accommodation, the firefighter must first put their employer on notice, request an accommodation from their employer, and provide medical documentation to substantiate their claim of a disability affecting a major life activity.

Title VII

Under Title VII, firefighters with sincerely held religious objections to vaccines may also seek a religious accommodation to a vaccination requirement *unless* an employer demonstrates that it is unable to reasonably accommodate an employee's religious observance or practice without undue hardship on the conduct of the employer's business. In other words, an employer is obligated to try to reasonably accommodate an employee's religious beliefs to the extent it does not cause an undue hardship on the business. While "religion" for this purpose need not be based on a belief in the existence of a "supreme being," or be a mainstream faith, it is important to note that objections which are merely political, moral, medical, or otherwise not contained within a larger recognized belief-system by the firefighter will not be sustained under Title VII.

In order to establish a "prima facie" case of discrimination under Title VII, the employee must show: 1. the observance or practice conflicting with an employment requirement is religious in nature; 2. the employee called the religious observance to the employer's attention, and; 3. the religious observance or practice was the basis for the employee's discharge or other discriminatory treatment. A firefighter who wishes to challenge a mandatory vaccination policy will face two primary hurdles: 1. proving their objection to the vaccine is, in fact, religious, and; 2. rebutting the employer's claim that it offered a reasonable accommodation, or that any reasonable accommodation would cause undue hardship.

Under Title VII, while employers must engage in a dialogue with an employee seeking an accommodation, it is important to note that an employer is not required to offer an employee his or her preferred accommodation, rather the accommodation that is offered simply must be reasonable. Additionally, while it is unlikely that a fire department will offer no accommodation to a vaccine objection based on sincerely held religious beliefs, that may be the case, and objecting employees may find it difficult to show that the employer would not suffer an undue hardship in the vaccine context. In other words, the pandemic-level risks of COVID-19 may make it easy for an employer to demonstrate an undue hardship. Therefore, even if the employer does not offer an accommodation, safety concerns regarding COVID-19 may make it difficult for firefighters to overcome a claim that any accommodation would cause an undue hardship on the employer.

Despite the potential objections to mandatory COVID-19 vaccination, it seems as if ultimately employers will generally be able to mandate that firefighters and paramedics receive vaccinations if they deem it necessary for public health and safety. That being said, we believe that a mandatory vaccination policy is a term and condition of employment, and therefore we encourage Unions to bargain this issue with their employer if the employer indicates it wants to implement a mandatory vaccination program.