

Can North Carolina Employers Mandate that Employees Receive the COVID-19 Vaccine?

- **YES – Employers can mandate that employees receive the COVID-19 vaccine.**
 - The vaccination itself is not a medical examination
 - But, pre-screening questions by employer or employer contractor may be a medical inquiry
 - Also, asking why someone is not getting vaccinated is also likely a medical inquiry
- **But – Employers may not be able to exclude all employees from the workplace who do not get the vaccine.**

Employers have obligations to accommodate

- **Disability**
 - The Americans with Disabilities Act (ADA)
- **Religion**
 - Title VII of the Civil Rights Act of 1964 (Title VII)
- **No obligation to accommodate a simple, “I’m afraid to get vaccinated.”**

What if an Employee is Unable to Get the COVID-19 Vaccine?

- **Employers cannot exclude an employee from the workplace – or take any other action – unless they show that:**
 - The unvaccinated employee poses a direct threat due to a significant risk of substantial harm to the health or safety of the individual or others **that cannot be eliminated or reduced by reasonable accommodation**
 - Or it would impose an undue burden on the employer to provide the reasonable accommodation

Whether for a mandatory vaccination policy or an incentive program--

- **Can an employer require that an employee show proof that they have received a COVID-19 vaccine?**
 - YES--Requiring proof of vaccination is not a medical/disability-related inquiry under the ADA
 - But, employers shouldn't make additional inquiries regarding the vaccination process or why an employee did not receive the vaccine as this may constitute a disability-related inquiry and violate the ADA
 - Additionally, employees should be cautioned not to provide any medical information in connection with documentation evidencing that they have received a COVID-19 vaccine

Considerations for Employers:

- **Mandatory v. Voluntary v. Voluntary with Incentives**
- **How will your group of employees react?**
- **Is there a union to bargain with?**
- **Are their wage payment issues under the FLSA?**
- **Might it be a violation of OSHA obligation to provide a safe workplace by not mandating vaccination?**