

Mandatory Vaccine and Health Screens: Employers Should Ensure that Such Actions are Job-Related and Consistent with Business Necessity

Labor & Employment Law Update

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Flu season is here and offers an opportune time to discuss the tricky intersection between the Americans with Disabilities Act (ADA) and employers' efforts to require mandatory vaccinations and health screenings for employees. Some employers, especially those in the health care field who provide direct services to patients, require employees to pass a health screening or receive certain vaccinations either upon hire or at other periodic intervals. Employers should ensure that these efforts comply with the ADA.

The ADA allows certain health screenings and inquiries depending on what point in the stage of employment the screening or inquiry takes place. Per the federal regulations supplementing the ADA, employers are generally prohibited from asking any disability-related questions or requesting any medical exams before a conditional offer of employment is extended to the applicant. Once an offer of employment is made, an employer may require a medical examination if the same examination is used for all entering employees in that job category. If an employer uses certain criteria from these examinations to screen out employees, those criteria must be job-related and consistent with business necessity. As for current employees, the ADA generally prohibits employers from requiring current employees to undergo medical examinations or inquiries unless the employer can show that the exam is job-related and consistent with business necessity.

The Eighth Circuit Court of Appeals recently issued an opinion analyzing these very rules and provided further clarity on what types of exams may be deemed job-related and consistent with business necessity for employers working in the health care setting. In *Hustvet v. Allina Health System*, the appellate court affirmed summary judgment for an employer that required that the plaintiff complete a health assessment tracking whether employees had immunity to certain communicable diseases. The health assessment revealed that the plaintiff, who worked in a patient-centered role within the health care system, did

not have immunity to rubella. When the plaintiff refused to receive a rubella vaccine, her employer terminated her employment. The court deemed the employer's medical examination to be job-related and consistent with business necessity and therefore held that the employer did not violate the ADA.

The court found that requiring the plaintiff to receive the rubella vaccine was job-related and consistent with business necessity. In so finding, the court reasoned that the employer selected a class of employees – those who interacted directly with patients – who needed to complete a health assessment because that class of employees posed a genuine safety risk, and that the specific assessment allowed the employer to decrease that risk. The court confirmed that an employer in the health care field may require that employees undergo health assessments or receive mandatory vaccinations in order to ensure employee and patient safety by decreasing the risk of communicable disease exposure and transmission.

Employers who require mandatory health screens or vaccinations should ensure that the examination measures are supported by a job-related reason, consistent with business necessity, apply similarly to all employees within a job category, and are no more intrusive than necessary. Any information collected through these medical examinations must be collected and maintained on separate forms and maintained in a separate confidential medical file.

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