

EMPLOYER VACCINATION REQUIREMENTS - A NEEDED SHOT IN THE ARM?

Because flu season can begin as early as October, according to the Center for Disease Control and Prevention ("CDC"), employers are already beginning to consider their approach to mandatory vaccinations for the 2013-2014 season. Do you know where your state stands on the issue?

FOUR STATES MANDATE INFLUENZA VACCINATION OF HEALTH CARE FACILITY PERSONNEL

Only four states (Alabama, Colorado, New Hampshire and Rhode Island) currently require health care facilities to develop policies to vaccinate personnel. Mandatory vaccination laws require health care facilities, sometimes limited to hospitals, to provide influenza vaccinations to all consenting personnel. Personnel who fail to consent must have either a medical or religious exemption, and those who forego receiving the vaccine based upon one of these exemptions may, generally, be required to wear a surgical or procedural mask during influenza season.

Nine states (California, Georgia, Illinois, Maine, Maryland, Massachusetts, Nebraska, Oklahoma and Tennessee) require health care facilities, sometimes limited to hospitals, to *offer* personnel an influenza vaccination at no charge.

Three states (Nevada, Oregon and Virginia) and the District of Columbia *do not require* influenza vaccination of health care facility employees, but maintain laws that *encourage* vaccination availability to health care facility personnel.

The 34 remaining states do not have laws that require health care facilities to ensure or offer influenza vaccination. But citing the vaccination's lack of efficacy and limit on autonomy, there is a bill currently pending in Wisconsin that would *prohibit* employers from requiring an influenza vaccination.

FEDERAL VIEWS

The CDC now recommends annual vaccination for all health care workers. The CDC points to evidence that, while the influenza vaccine maintains a little over 50% efficacy rate, influenza-related sickness declined in those hospitals that implemented mandatory vaccination policies. The Occupational Health and Safety Administration ("OSHA") also recommends vaccination of health care workers. However, OSHA argues against mandatory vaccination policies, stating, "that there should be a high burden showing that mandatory programs are not just desirable, but also necessary to protect the public health before the government promotes such a controversial policy that may result in employment termination."

Employers struggling with the question should be aware that, in addition to the state laws noted above, the Americans with Disabilities Act, Title VII and state discrimination laws impose obligations on employers that will affect your policy.

If you have any questions or would like assistance drafting your influenza vaccination policy, please contact Kevin Stella at 317.977.1426 or kstella@hallrender.com or your regular Hall Render attorney.