

Workplace Protests and Mandatory Vaccinations

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Employers remain entangled with COVID-19 and vaccinations, including internal and external protests. COVID-19 cases continue climbing, fueled by the Delta variant. Vaccinations are lagging behind, but may increase now that the FDA has officially approved a vaccine. As more employers consider shifting from encouraging to mandating vaccinations, there is a risk of internal protests by employees as well as external protests involving the public. What are some of the related issues for employers to consider?

Q: Can employers mandate vaccinations of their employees?

A: Generally speaking, yes, most employers have the legal right to mandate vaccinations, subject to several exceptions or considerations. For example, some employees might object to vaccination due to disability or religious reasons, triggering the accommodation process under the Americans with Disabilities Act or Title VII. Also, unionized employers should engage in collective bargaining with the union before mandating vaccinations.

Q: Can employees internally protest work-related decisions such as making vaccinations mandatory?

A: Yes, most employees of private employers are covered by the National Labor Relations Act (NLRA), which permits protected concerted action. Not all internal protests are covered by the NLRA, so careful legal analysis of actual situations is required. Even if covered by the NLRA, the protest must not violate lawful company policies. And, in the context of mandatory vaccinations, an employee—even one who protests—would likely still need to comply with the policy and be vaccinated in order to continue working there.

Q: Can protests occur at work?

A: Yes, but protests must comply with lawful company policies, which often set when and where such protests occur. If a workplace protest becomes a work stoppage, then an employer has the right to move the work stoppage off company property.

Q: Where is the typical place for protesting by employees?

A: Typical locations for protests are non-work areas, sidewalks, or right-of-ways.

Q: Can members of the public, who do not work for an employer, protest an employer's work-related decision such as mandating vaccinations?

A: Yes, workplace decisions occasionally spill over into the local community and generate external protests and political debate. That recently happened in the Carolinas after some employers, including hospitals, required their employees to be vaccinated in order to continue working there.

Q: What laws govern public protests?

A: Although there is a right to engage in public protests, generally speaking it must be peaceful and lawful. For example, the protests should not occur on private property without consent of the property owner. The protest should comply with all applicable laws, including local ordinances that often require obtaining a permit.

Q: What are some steps for employers to consider before internal or external protests occur?

A: Each employer's needs and goals will likely differ, but the following are some steps to consider:

- Review, update, or implement relevant policies, such as the distribution and solicitation policy, labor relations strategies, crisis response plans, and communication strategies.
- Understand the nature and scope of the employer's private property rights by reviewing related documents such as deeds or leases.
- Confirm the perimeter of the property and post appropriate notices such as "No Trespassing" signs.
- Evaluate security measures such as identification procedures, visitor access, video monitoring, or on-site security personnel as appropriate for the site.
- Evaluate access issues involving parking lots and entrances.
- Develop a response plan addressing internal and external security.
- Conduct training of supervisory personnel regarding the NLRA and other relevant laws.

Conclusion

Given the increased risk of internal or external protests about workplace issues such as vaccinations, employers should take steps now to be prepared.