

David Dubberly on SC Businesses Mandating Vaccinations

Related Professionals

David E. Dubberly
803.253.8281
ddubberly@nexsenpruet.com

Practices

Employment & Labor Law

Media Mention

The Charleston Post and Courier, *WLTX Columbia*, *WBTW Florence*, *WJBF Augusta*, *WSPA Spartanburg*, *WCBD Charleston*, and *WSAV Savannah*.
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Nexsen Pruet's Employment & Labor practice group leader David Dubberly was quoted in numerous articles by *The Charleston Post and Courier*, *WLTX Columbia*, *WBTW Florence*, and *WJBF Augusta* on what South Carolina companies should know about vaccine requirements. He was also featured on multiple news shows across South Carolina and Georgia, including *WSPA Spartanburg*, *WCBD Charleston*, and *WSAV Savannah*.

David shared his insights on how the FDA's authorization removes potential legal issues over mandates, what issues employers can expect with various vaccine policies, and other policies to deal with reluctant workforces.

The Charleston Post & Courier Excerpt

Lexington Medical Center, where the vaccination rate among employees is 75 percent, also is mulling a possible mandate, spokeswoman Jennifer Wilson said.

"More are likely to do it," attorney David Dubberly, chairman of Nexsen Pruet's employment and labor law practice, told members of the South Carolina Chamber of Commerce.

In a recent chamber survey, 73 companies out of roughly 300 respondents said they were considering a mandate. Another 14 employers already had requirements in place. The majority, 178 companies, said they would not implement a requirement.

FDA approval removes a potential legal issue over whether employers could mandate a vaccine operating under emergency authorization status, Dubberly said.

Pfizer received full approval for its vaccine Aug. 23 and Moderna's is expected to be approved in the next couple months.

"Part of the reason for some of the concern about the (emergency authorization) status was, when you administered one of the vaccines, they had to provide the individual receiving the vaccine with a fact sheet. And one of the things that it said in that fact sheet is it is your choice to receive or not," Dubberly said. "Some people said, well, you can't require vaccines as a condition of employment if the fact sheet says that it's somebody's choice."

Despite the hesitancy this caused for some, legal arguments against mandates have been struck down in federal court, Dubberly said. In fact, federal workers' protection agencies like the U.S. Equal Employment Opportunity Commission and the Occupational Safety and Health Administration encourage them.

The potential loss of workers is a final barrier, especially as some businesses struggle to staff up.

"For many employers if they adopt a mandate, they risk losing 10 or 20 percent of their workforce that feels strongly about not getting vaccinated," Dubberly said. "So that is another practical issue that employers need to take into account."

Meanwhile cases of COVID-19 in the Palmetto State are rising with thousands of new cases announced daily by the S. C. Department of Health and Environmental Control, and more than 700,000 people have contracted the disease to date. The virus has killed more than 10,000 South Carolinians.

What Dubberly said will continue to be more common is a hybrid approach.

"Not necessarily a mandate but weekly testing and incentives for people to be vaccinated," he said.

Read the full article here.

WJBF Augusta Excerpt

Earlier this month, Nephron Pharmaceuticals Owner and CEO Lou Kennedy announced her company would be requiring the COVID-19 vaccine for their 2,000 employees. Kennedy said there are exceptions for religious or medical reasons.

She said they made the decision after hearing about the situation in South Carolina hospitals. Kennedy said, "We're making the drugs the front-line workers need and we have to keep our family safe to help patients get what they need."

Nephron's announcement was made before the Pfizer vaccine got full FDA approval. Some labor attorneys in the state are expecting more companies to follow suit.

The South Carolina Chamber of Commerce hosted a discussion with business owners and attorneys this week. They talked about what things a business and employees could expect if they require the COVID-19 vaccine.

According to the labor attorneys, a vaccination mandate has pros and cons. It could make employees and others feel safer at work but it could also lead to some employees leaving their job or protests.

David Dubberly with Nexsen Pruet told business owners, "You're going to get pushback. Some of the pushback is going to be legitimate, honest questions. Some of the pushback is going to be easily disproven and even comically absurd in some situations."

Kennedy said, so far at Nephron, the reception has been good. She said one or two employees have decided to leave.

She said, "Some of the folks thought it would be a rocky announcement and might cause protests or disruption to business. I can tell you it's been smooth and easy to get done." Kennedy is hopeful they'll reach 100% vaccination and help protect their workers and their families.

Employees at Nephron were required to get their first shot by Friday evening and complete their vaccination by Sept. 30th.

Read the full article here.