

Yes, your boss can fire you if you refuse to get a Covid vaccine

[cnbc.com/amp/2020/12/07/covid-vaccine-update-your-boss-can-fire-you-if-you-refuse-the-coronavirus-shot.html](https://www.cnbc.com/amp/2020/12/07/covid-vaccine-update-your-boss-can-fire-you-if-you-refuse-the-coronavirus-shot.html)

December 7, 2020

KEY POINTS

- Companies are considering compulsory Covid vaccination requirements as a condition of employment.
- "Under the law, an employer can force an employee to get vaccinated, and if they don't, fire them," said Rogge Dunn, a Dallas labor and employment attorney.
- Anti-discrimination laws would enable eligible employees to request an exemption from a company-wide coronavirus vaccine mandate.



Vials with Covid-19 Vaccine stickers attached and medical syringe with the US pharmaceutical company Pfizer and BioNTech German biotechnology company logos.

Vincent Kalut | Photonews | Getty Images

The country's first Covid vaccine could be authorized for emergency use as soon as Thursday. If Pfizer and BioNTech get the green light, distribution is set to begin within days.

But as difficult as the research, development and distribution stages have been, some experts argue the hardest part of fighting the virus is actually what comes next: convincing the U.S. population to take the vaccine.

Roughly four in ten Americans say they would "definitely" or "probably" not get a vaccine, according to a recent survey by the Pew Research Center. While this is higher than it was two months ago, to achieve herd immunity, experts say that about 70% of the population needs to be vaccinated or have natural antibodies.

Employers, however, may not be taking "no" for an answer.



Under the law, an employer can force an employee to get vaccinated, and if they don't take it, fire them.

Rogge Dunn

Dallas labor and employment attorney

"A couple of my corporate clients are leaning toward making the Covid vaccine mandatory," said Rogge Dunn, a Dallas labor and employment attorney.

His clients range from companies in manufacturing to food and beverage — industries that have been battered for months due to the pandemic and government-mandated lockdowns. A vaccine promises employers a return to some form of normal, which is desperately needed as businesses look to recover profits.

Mandating the vaccine in the workplace

One of Dunn's clients in the restaurant sector thinks a compulsory inoculation requirement could be a game changer for business.

"They think it gives them a competitive advantage," explained Dunn. "They could say to their customers, 'Hey, our restaurant is safe. All of our employees have been vaccinated.'"

It may be, in part, a PR tactic, but Dunn said it is totally within an employer's rights to implement this kind of requirement.

"Under the law, an employer can force an employee to get vaccinated, and if they don't take it, fire them," said Dunn.

Dorit Reiss, a professor at the University of California Hastings College of Law, said that private businesses have pretty extensive rights. "Requiring a vaccine is a health and safety work rule, and employers can do that," said Reiss.

Take the health-care system. Dr. Hana El Sahly, who oversees a clinical trial for Moderna's vaccine candidate, believes hospitals could eventually make Covid inoculation a condition of employment, similar to how the annual influenza vaccine is required of all medical staff.

"We all have to demonstrate that we took our flu shot before we go out and see our patients on the wards," said El Sahly. "When we are sick, we cannot deliver vital functions to the community."

A few exceptions

There are, however, a few notable exceptions to this kind of blanket requirement. If a work force is unionized, the collective bargaining agreement may require negotiating with the union before mandating a vaccine.

Anti-discrimination laws also provide some protections. Under the Americans with Disabilities Act, workers who don't want to be vaccinated for medical reasons are eligible to request an exemption. In this case, an employer would have to provide reasonable accommodation, such as allowing the employee to work remotely.

Under Title VII of the Civil Rights Act of 1964, if taking the vaccine is a violation of a "sincerely held" religious belief, they, too, would potentially be able to opt out.

How soon could this happen?

When the FDA meets this week, they will decide whether to grant an emergency use authorization, or an EUA, to Pfizer and BioNTech. It may seem like semantics, but an EUA is not the same thing as full approval.

"An emergency use authorization is not a license," said Reiss. "There's a legal question as to whether you can mandate an emergency observation. The language in the act is somewhat unclear on that."

Mandatory vaccination protocols, therefore, may have to wait until the FDA completes the entire approval process for the Pfizer-BioNTech vaccine.

What is clear, however, is that if an employer does choose to mandate the Covid vaccine, a company is not liable should an employee develop side effects from a vaccine. Instead, experts say that any claims would be routed through worker's compensation programs and treated as an on-the-job injury.

Rewarding vaccination

For now, Dunn is advising his clients to wait three months until after a significant number of the population has been vaccinated. In the meantime, some of the businesses Dunn represents are considering incentives instead.

There are a few carrots that employers could offer. "One option is that if you get the vaccine, you don't have to have your temperature taken every day, or you don't have to wear the same level of PPE," Reiss said.

There's also talk of offering financial perks to employees who opt in to taking the vaccine. Dunn said some of his clients, including a restaurant and one company in the manufacturing sector, are seriously considering giving a cash bonus to employees who get inoculated.

And for those who still refuse? Rather than firing them, Reiss said employers could require that they complete an educational course that delves into trial efficacy data and the experience of participants.

Yasir Batalvi, a 24-year-old living in the Boston area, was one of 30,000 people who joined the trial for the Moderna vaccine. Despite initial concerns about the potential side effects, he said he's no longer worried.

"I'm not too concerned about actual long-term effects," said Batalvi. "We know from most vaccination trials that any adverse events show up in the first couple of months."

Ultimately, the U.S. is still in the midst of an employment crisis. Record unemployment numbers have put immense pressure on the labor market, especially in service-based industries, where workers are most at risk. That is a big part of why the Centers for Disease Control and Prevention has advised prioritizing frontline employees in the queue for inoculation.

So workers may not have much of a choice if they want to keep a job.