FLU SHOTS: Q&A FOR EMPLOYERS

With flu season right around the corner, employers may be starting to wonder what steps can be taken to ensure that the workplace remains productive and flu-free. Here are answers to some common questions about what employers can and cannot do with regard to flu shots for employees, as well as our recommendations for some best practices.

Q: As an employer, can I require that my employees get flu shots?

A: Generally, yes. Employers can make flu shots mandatory for employees. However, as described in more detail below, there are certain circumstances under which employees must be exempt from this rule and provided an accommodation.

Q: What if one of my employees says they cannot get a flu shot for religious reasons?

A: Employees who refuse to get a flu shot based on religious grounds must be provided a religious accommodation, as long as the accommodation would not pose undue hardship to the employer. For example, the employee could wear a mask covering her mouth and nose in lieu of having the flu vaccination.

As highlighted by recent EEOC litigation on this subject, it is important that the employer and employee work together to find a feasible and reasonable accommodation. Employers also cannot require certification for confirmation from a religious organization that the employee is indeed an adherent. The employee’s sincerely held religious belief is enough for protection.

Q: What if one of my employees says they cannot get a flu shot because of a medical reason?

A: An employee who cannot get a flu shot because of an ADA disability is entitled to an exemption. In this situation, employers should engage in the same interactive process described above to find a reasonable accommodation for the employee.

Q: If an employee refuses to get a flu shot but does not request a religious or medical accommodation, can they be terminated?

A: As long as the employer is acting pursuant to its mandatory flu vaccination policy, and that policy is enforced evenly for all employees, an employer could technically terminate an employee who refuses to have the mandatory flu shot.
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Q: I’m a health care employer. Do the same rules still apply for my workforce?

A: Health care employers are generally concerned about the possibility that an unimmunized employee could transmit the flu virus to a patient. There are not currently any laws in Missouri or Illinois mandating that all health care employees be vaccinated against influenza. To the extent a health care employer elects to make the flu shot mandatory, the same rules described above will apply.

Health care employers in Illinois are required to provide all employees with education on influenza, as well as the opportunity to receive the vaccine. Any employee who declines the vaccination must sign a statement stating that he or she received education about the benefits of the flu shot but declined to receive the vaccination.

Similarly, nursing home employers in Missouri must either offer the flu shot to all employees and volunteers who have direct contact with residents, or provide the employees and volunteers with information about how they can obtain the flu shot independently. These employers should also document that all employees and volunteers were offered assistance with obtaining the vaccine and should note whether each individual accepted or declined the vaccination.

Q: What best practices can I implement to keep my workplace flu-free?

A: The EEOC recommends encouraging employees to get flu shots, rather than making flu shots mandatory. To make this easier for employees and encourage more employees to have the vaccine, employers should consider bringing a mobile flu shot clinic into the workplace or providing employees with information about where flu shots are available locally.

Employers who choose to require mandatory flu shots, rather than just encourage them, should be sure to take any religious accommodation requests seriously and should truly engage in the “interactive process” with any employees who refuse the vaccination on religious or medical grounds.

For more information about flu shots or other employee health matters, or to inquire about how to best address the flu shot issue for your workplace, please contact the attorneys in our Employment & Labor practice group.