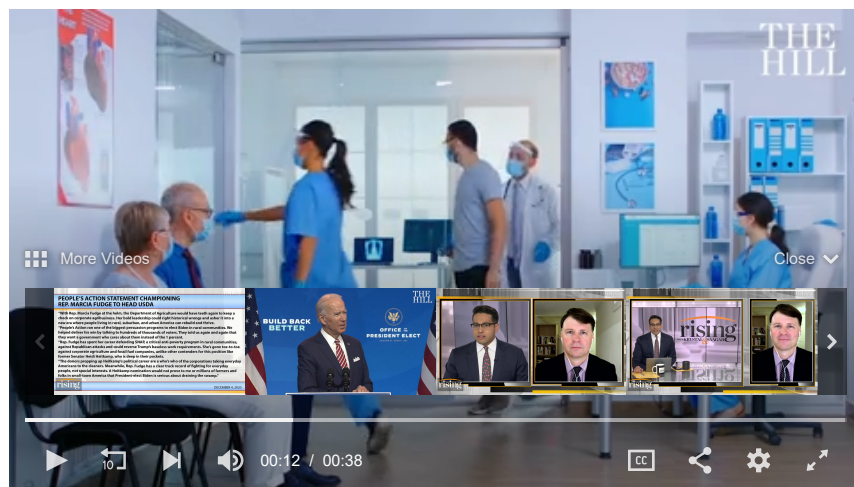




Employers debate whether to require COVID-19 vaccine for workers

BY ALEX GANGITANO - 12/06/20 08:00 AM EST

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Companies will soon face a tough decision about whether to require their employees to get vaccinated for COVID-19 as a condition for returning to work.

New polling shows that nearly 60 percent of Americans said they would get the vaccine, up from 50 percent in September but still far below the amount needed to fuel a robust economic recovery.

Employers believe they are on firm legal ground to mandate vaccinations, but that doesn't mean enforcement won't be without its challenges, particularly given the backlash in some parts of the country to mask mandates and smaller groups opposed to vaccinations of any kind.

"Companies can require it, yes, but they may bump up against legal limits. COVID is such uncharted territory that as we see employers acting, as we see others acting, more edges in the law are being articulated," said Allison Hoffman, University of Pennsylvania Carey Law School professor.

Some business groups are starting to get out in front of the issue by voicing public support for vaccination requirements.

Jay Timmons, CEO of the National Association of Manufacturers, stressed that the vaccine is needed to protect essential personnel, including manufacturing workers, and that his group would back member companies implementing vaccination requirements.

"While there are likely legal concerns with blanket mandates, if any of our members believed that a requirement at their company was the right thing to do, we would certainly support that within the bounds of the law. Because America's future depends on folks rolling up our sleeves in a new way," Timmons told The Hill.

The legal limits that employers could run up against are related to the American Disabilities Act (ADA) and Title VII of the Civil Rights Act of 1964, which allow for employee vaccination exemptions under certain health and religious reasons.

The Equal Employment Opportunity Commission (EEOC) in March said an employer covered by the ADA and Title VII can't compel all of its employees to take a vaccine.

"The Commission continues to closely monitor the developments of a COVID-19 vaccine and is actively evaluating how a potential vaccine would interact with employers' obligations under the Americans with Disabilities Act, Title VII of the Civil Rights Act of 1964, and the other laws the Commission enforces," Christina Saah Nazer, an EEOC spokeswoman, told The Hill.

President-elect Joe Biden weighed in on the debate this past week, though not about workers specifically.

"I don't think it should be mandatory. I wouldn't demand it to be mandatory," Biden said at a news conference in Wilmington, Del. "Just like I don't think masks have to be made mandatory nationwide."

"I'll do everything in my power as president of the United States to encourage people to do the right thing and when they do it, demonstrate that it matters," he said.

Barry Furrow, director of the Health Law Program at Drexel University Kline School of Law, said employers can mandate vaccinations, at their peril.

"Employers can say, 'We can do it,' but they'd be foolish to do it in the face of resistance. Our culture is so resistant to being told what to do," he said.

Delta CEO Ed Bastian predicted that getting the COVID-19 vaccine will become a requirement for international travel but that, for now, the airline will just encourage its employees to get it.

"We're going to strongly encourage that airline employees all get vaccinated. Airline employees are frontline workers and will be given priority as a frontline worker. I can't wait to get vaccinated and we're going to strongly encourage all our people to get that protection from the deadly virus," he told NBC on Thursday.

For companies that do mandate vaccinations, where the country is in the distribution process could determine what level of resistance employers face, if any.

"I think a lot of this will come down to how aggressive employers are with mandates, how are people feeling about the vaccine, how much time will there be for people to get comfortable with the vaccine. I think if employees feel safe, it will reduce the expansionary effect," Hoffman said.

Rob Wilson, president of Employco USA and human resources expert, said employees should expect some companies, especially large corporations or front-line industries, to require they get the vaccine.

"It's a serious liability, not just financially but also when it comes to alerting your staff and customers and making sure you're doing your due diligence to protect everyone under your company umbrella," Wilson said.

He added that company-sponsored injection sites and reminders about taking a vaccine by a certain date are likely to start popping up soon.

The head of the Consumer Brands Association, which has asked the Centers for Disease Control and Prevention for vaccine priority for its industry, said he is optimistic that requiring workers in the consumer-packaged goods industry to take the vaccine won't be necessary.

"Based on flu clinic participation, we are optimistic about industry employees' desire to receive the vaccination, hopefully offsetting any need for a mandate," said Geoff Freeman, the association's CEO.

"That being said, we're in the first inning with the vaccine and we expect confidence to grow significantly as more information is provided over the coming months."

The U.S. plans to immunize 100 million people by the end of February, a number based on the number of vaccines that could be available from Moderna and Pfizer/BioNTech.

Former Presidents Obama, George W. Bush and Clinton are offering to receive the vaccination on camera to build public trust.

Furrow, of Drexel University, said convincing employees will come down to messaging.

"[Employers] have to be careful not to call it a mandate but to start with really good information about the reliability and lack of significant risks of the vaccine," he said.

"They need to try to fold vaccination programs into their own wellness programs, figure out incentives to get workers to cooperate, make workers have to justify reasons for resisting being vaccinated."

