

# You Get a Shot, and You Get a Shot! California Paves the Way for Mandatory Vaccination Policies

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Weeks after the Equal Employment Opportunity Commission (“EEOC”) weighed in, the California Department of Fair Employment and Housing (“DFEH”) recently released [updated COVID-19 employment FAQs](#) addressing the permissibility of employer-mandated COVID-19 vaccination policies.

Taking a page from the EEOC’s January 2021 [guidance](#), the DFEH indicated that employers *may* require employees to receive an FDA emergency use authorized COVID-19 vaccine so long as the employer does not discriminate against or harass employees or job applicants on the basis of a protected characteristic and provide reasonable accommodations related to disability and/or sincerely-held religious beliefs.

Per the DFEH’s guidance, if an employer mandates vaccinations in the workplace and an employee objects on the basis of a disability, the employer must engage in an interactive process with, and reasonably accommodate, the employee with a disability-related reason for not being vaccinated—unless the accommodation would pose an undue hardship to the employer, the employee cannot perform the essential job duties even with a reasonable accommodation, or the employee cannot perform the job duties without endangering the employee’s or others’ health and safety. Similarly, employees who decline to obtain a vaccination on the basis of religious beliefs or practices must be provided with a reasonable accommodation, unless it would pose an undue hardship to the employer.

And, what about employees who merely don’t trust the vaccine? The DFEH’s new guidance indicates there is no obligation to reasonably accommodate employees whose opposition to being vaccinated is not related to a disability or religious beliefs.

But, how can employers ensure that employees are, in fact, vaccinated? The DFEH's guidance indicates that employers *may* require employees to furnish "proof" that they have been vaccinated as part of the vaccine requirement—because this is not a disability- or religious creed-related inquiry or medical examination. However, the DFEH's FAQs caution employers to instruct employees to omit any protected medical information from their documentation prior to submission. Further, once collected, the DFEH indicated that employers must maintain records of employee or applicant vaccination as confidential medical records.

As vaccines have become more accessible, much of the initial insecurity surrounding them has given way. One indicator of this shift is the decrease in vaccines wasted over time. In January, when the vaccine faced more skepticism, states rarely used over 60 percent of their available doses. Now, states [report](#) using 80-90% of their daily vaccines and [California](#) is vaccinating over 350,000 people per day. Employers looking to implement a mandatory vaccine policy may seek to capitalize on this positive momentum as we return to the workplace and even a semblance of normalcy.

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