

## Federal Court: Yes. Your Employer Can Force You to Get the COVID Vaccine

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By **Jeffrey Campolongo** | June 17, 2021



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As businesses continue to reopen and we prepare for a post-pandemic world, the interminable question confronting employers is whether they can mandate that employees receive a COVID-19 vaccine in order to work. In some ways, the premise seems completely antithetical to what we know about employment law. There are very few instances where an employer can outright demand that an employee submit to an invasive medical procedure. Front-line workers and those involved in public health come to mind, however, there are few other examples.

What does that mean for the rest of the business world? What about employees who have limited or no contact with the public? Does it make sense for employers to require those folks to be vaccinated too? Is it even legal to mandate vaccination?

One federal court in Texas has weighed in. In *Bridges v. Houston Methodist Hospital*, No. H-21-1774 (S.D. Tex. Jun. 12, 2021), U.S. District Judge Lynn Hughes for the District of Texas dismissed a lawsuit brought by 117 employees at Houston Methodist Hospital who sued over the hospital's COVID-19 vaccine requirement. Jennifer Bridges alleged in the lawsuit that the hospital was unlawfully forcing its employees to be injected with one of the currently available vaccines by June 7, or be fired.

Bridges advanced two arguments. First, she claims she is being coerced into being injected with a vaccine that is experimental and dangerous. Second, Bridges contends that she will be wrongfully terminated if she refuses to accept the vaccine.

Texas law regarding wrongful termination only protects employees from being terminated for refusing to commit an act carrying criminal penalties to the worker. Here, since Bridges did not specify what illegal act she has refused to perform (except for refusing to be a "human guinea pig," the court rejected the argument. Receiving a COVID-19 vaccination is not an illegal act, and it carries no criminal penalties, the judge wrote.

Furthermore, unlike Pennsylvania, Texas does not recognize a public policy exception to at-will employment. Even if it did, the court wrote, the injection requirement would be entirely consistent with public policy. Involuntary quarantine for contagious diseases and state-imposed requirements of mandatory vaccination do not violate due process.

The court also disabused Bridges and her co-workers of the notion that the currently available vaccines have not been fully approved by the Food and Drug Administration (FDA) or that forcing its employees to be inoculated equates to a human trial. Federal law authorizes the Secretary of Health and Human Services to introduce into interstate commerce medical products intended for use in an “emergency” such as the COVID-19 pandemic. Moreover, Bridges’ analogy likening the injection requirement to forced medical experimentation during the Holocaust was “reprehensible,” according to the decision.

The court embraced the hospital’s argument that its vaccine policy is intended to save lives in the face of a global emergency. The choice to vaccinate is meant to keep staff, patients and their families safer. Bridges, the court wrote, can freely choose to accept or refuse a COVID-19 vaccine; however, in failing to do so, “she will simply need to work somewhere else.”

The opinion references the recent revisions to the Technical Assistance Manual from the Equal Employment Opportunity Commission (EEOC).

See <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>. On May 28, the EEOC announced that employers can require employees to be vaccinated against COVID-19 subject to reasonable accommodations for employees with disabilities or sincerely held religious beliefs that preclude vaccination.

The key updates to the technical assistance are summarized below:

- Federal EEO laws do not prevent an employer from requiring all employees physically entering the workplace to be vaccinated for COVID-19, so long as employers comply with the reasonable accommodation provisions of the ADA and Title VII of the Civil Rights Act of 1964 and other EEO considerations.
- Federal EEO laws do not prevent or limit employers from offering incentives to employees to voluntarily provide documentation or other confirmation of vaccination obtained from a third party (not the employer) in the community, such as a pharmacy, personal health care provider, or public clinic.
- Employers that are administering vaccines to their employees may offer incentives for employees to be vaccinated, as long as the incentives are not coercive.
- Employers may provide employees and their family members with information to educate them about COVID-19 vaccines and raise awareness about the benefits of vaccination.

Some other important takeaways from the revised EEOC guidance include assistance dealing with employees who refuse to be vaccinated due to a disability (covered by the ADA) or a sincerely held religious belief, practice or observance (covered by Title VII). To the extent that the accommodation does not pose an undue hardship on the operation of the employer's business, employers should consider accommodations such as: allowing an unvaccinated employee entering the workplace to wear a face mask, work at a social distance from co-workers or nonemployees, work a modified shift, get periodic tests for COVID-19, be given the opportunity to telework, or finally, accept a reassignment. As a best practice, the EEOC recommends that employers introducing a COVID-19 vaccination policy should notify all employees that the employer will consider requests for reasonable accommodation based on disability on an individualized basis.

In the context of religious accommodation requests from individuals who wish to either decline the vaccine or wait until an alternative version or specific brand of COVID-19 vaccine is available to the employee, the EEOC suggests that such requests should be processed according to the same standards that apply to other accommodation requests.

EEOC guidance further explains that the definition of religion is broad and protects beliefs, practices, and observances with which the employer may be unfamiliar. Therefore, the employer should ordinarily assume that an employee's request for religious accommodation is based on a sincerely held religious belief, practice or observance. However, if an employee requests a religious accommodation, and an employer is aware of facts that provide an objective basis for questioning either the religious nature or the sincerity of a particular belief, practice, or observance, the employer would be justified in requesting additional supporting information.

In contrasting the revised EEOC guidance with the claims brought by the Houston Methodist Hospital employees, referenced above, it is interesting to note that none of the claims were premised on an ADA or religious accommodation. There was no religious objection, nor disability claimed by the employees that would normally warrant an interactive process. Instead, the employees objected based on conspiracy theories about the vaccines and analogized to being human guinea pigs in concentration camps in Nuremberg. Perhaps a more reasoned, scientific approach may have fared better. Perhaps not. Either way, it is clear that employer-mandated vaccines are here to stay.

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