

May An Employer Require That Its Employees Receive Flu Shots?

- Generally, yes.
- In some instances, especially for health care providers, the law may require that they be immunized, especially if they provide direct care to residents or patients.
- The Maine regulation governing healthcare workers, 10-144 CMR Chapter 264 (“Chapter 264”), comes very close to requiring it, but falls just short.
- Chapter 264 requires (with few exceptions) that healthcare workers are immunized for certain diseases, such as Rubeola, but states that “All Designated Healthcare Facilities shall adopt and implement a policy that recommends and offers annual immunizations against seasonal influenza to all personnel who provide direct care to residents of the facility.”
- Regardless, however, even if the law does not strictly require it, an employer, whether or not in the business of providing health care, may require flu shots—though subject to two exceptions.
- If an employee presents evidence that receiving the shot is medically inadvisable for that employee, the employer cannot (and should not) force the employee to take the shot. This should be obvious.
- In practice, though, complications might arise as to what “evidence” is required or acceptable by or to the employer to grant this type of medical exception.
- Also, if a “disability” under Maine or federal disability rights laws makes it medically inadvisable for the employee to receive the flu shot, the employer is under the usual requirement of making a reasonable accommodation for the employee up to the point of an undue hardship on the employer.
- Likewise, if taking the flu shot violates the religious or sincerely held philosophical beliefs of the employee, the employer must make a reasonable accommodation for the employee up to the point of an undue hardship.
- Before rolling out a mandatory vaccination requirement, an employer should figure out in advance how it will handle objections based on religion, disability, or medical inadvisability, including what sort of evidence it will require to substantiate employee objections.
- Employers also need to be aware of potential contractual issues: Terms or provisions in a collectively bargained agreement, or terms or provisions in a particular employee’s own, unique, individual employment contract with the employer, may impact whether the employer may require vaccination and what discipline, if any, up to and including termination of employment, the employer may mete out to an employee who fails to get the shot.
- If the employer requires the vaccination, and the employee is one of the statistically very, very few to have a severe adverse reaction, it will be covered by workers’ compensation insurance.
- If the employer encourages the vaccination, for example, by facilitating it during the work day at the employer’s facility, this, too, will likely be a comp claim if there is a very bad reaction.
- For employers that do not operate health care facilities providing direct patient care, there are too many different possible “shapes, sizes, and types” of different employer circumstances to say generally whether it is a good or bad idea to have some form of compulsory flu vaccine policy.
- This author’s opinion, however, is that unless there is an evident, compelling reason for doing so, an employer’s world is difficult and complicated enough without adding a mandatory flu vaccine to the mix.