

Electronic Alert

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And So It Begins: First Known Lawsuit Over Vaccine Mandate Filed in New Mexico

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Employers considering vaccine mandates take note: one of the earliest known lawsuits challenging an employer-mandated vaccine policy has been filed in New Mexico. As we discussed in our previous E-Alert, employers can generally require vaccination, but there are exceptions and additional considerations that complicate the issue. The lawsuit filed in New Mexico raises some of the arguments we previously discussed and can expect to see repeated.

The lawsuit stems from Doña Ana County's "Mandatory COVID-19 Vaccination Directive," which required all first responders to receive a COVID-19 vaccination, unless a reasonable accommodation was approved. A detention officer employed at the Doña Ana Detention Center sued over the County's mandatory-vaccine policy. He is seeking an injunction to prevent his employer from disciplining or terminating him for refusing vaccination.

The employee argues the County cannot legally require employees to receive a vaccine processed under the U.S. Food and Drug Administration ("FDA") Emergency Use Authorization ("EUA") process. Federal law requires, as a condition of authorization, that the FDA ensure recipients of a EUA vaccine are notified that they have the option to accept or refuse the vaccine. The employee argues his employer cannot lawfully mandate vaccination in light of the EUA right-to-refuse and that federal law preempts inconsistent requirements including the County's vaccine mandate.

This lawsuit is an interesting test case, as it challenges an employer's right to require vaccination of an employee who objects to the vaccine for reasons other than those protected by the law, such as for a disability or religious beliefs.

We will continue to provide updates as more lawsuits are filed and the law on COVID-19 vaccines continues to develop and change. Employers considering vaccine mandates should remain informed and consult with counsel to determine whether they can legally require vaccines and analyze other important considerations for their workplace.

For questions related to COVID-19 vaccine considerations or for any other matters related to COVID-19 in the workplace, contact Natalie Pattison at 503-276-2104 or npattison@barran.com.