

Questions and Answers on the Covid-19 Vaccine

Pacific Justice Institute

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Question: Can my employer order me to take a Covid vaccination: can they threaten to fire me if I do not comply?

Answer: Yes. However, there are provisions for religious and medical exemptions / accommodations, which will be discussed in detail later in this resource.

On August 23, 2021, the U.S. Food and Drug Administration approved the first COVID-19 vaccine. The vaccine has been known as the Pfizer-BioNTech COVID-19 Vaccine, and will now be marketed as Comirnaty (koe-mir'-na-tee), for the prevention of COVID-19 disease in individuals 16 years of age and older. The vaccine also continues to be available under emergency use authorization (EUA), including for individuals 12 through 15 years of age and for the administration of a third dose in certain immunocompromised individuals.¹

The vaccines were previously administered under the Emergency Use Authorization (EUA), because the vaccines were not studied for a sufficient time to ensure there are no long-term side effects. As of May

¹ FDA Approves First COVID-19 Vaccine, News Release, U.S. Food and Drug Administration.

28, 2021, in an update of its COVID-19 guidance, the Equal Employment Opportunity Commission said employers could require all workers physically entering a workplace to be vaccinated against the coronavirus but that federal law may require the employer to provide reasonable accommodations for employees who aren't vaccinated because of a disability or religious belief.²

A number of courts have upheld the EEOC update, and the Department of Justice has issued an opinion that employers and colleges / universities are permitted to compel vaccinations, regardless of the facts listed below:

1. The EUA itself, 21 U.S. Code § 360bbb-3, requires: ... "Individuals to whom the product is administered are informed— of the option to accept or refuse administration of the product, of the consequences, if any, of refusing administration of the product..."³
2. Each person who is about to receive a Covid-19 vaccine is given a fact sheet, which states in part: WHAT IF I DECIDE NOT TO GET THE (insert drug company name) COVID-19 VACCINE? It is your choice to receive or not receive the (insert drug company name) COVID-19 Vaccine. Should you decide not to receive it, it will not change your standard medical care.⁴
3. In the 2004 case of *Doe v. Rumsfeld*,⁵ plaintiffs challenged the government's Anthrax Vaccination Immunization Program (AVIP), because anthrax vaccine adsorbed (AVA) had never been approved by the FDA as a safe and effective drug for protection against inhalation anthrax. Yet the government was forcing military personnel to take the vaccine. The United States District Court for the District of Columbia issued an injunction prohibiting the use of AVA on the basis that the vaccine is either a drug unapproved for its intended use or an investigational new drug, and thus requires informed consent.
4. In August 2020, Amanda Cohn, MD, the Executive Secretary of The Centers for Disease Control Advisory Committee on Immunization Practices (CDC-ACIP) stated: "I just wanted to add that, just wanted to remind everybody, that under an Emergency Use Authorization, an EUA, vaccines are not allowed to be mandatory. So, early in this vaccination phase, individuals will have to be consented and they won't be able to be mandated."⁶

Question: What if taking the vaccination violates a sincerely held religious belief of mine?

Answer: Title VII of the Civil Rights Act of 1964 (42 U.S.C. §2000e et seq.) prohibits two categories of employment practices. It is unlawful for an employer:

² "What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws", U.S. Equal Employment Opportunity Commission (EEOC), Section K Vaccinations.

³ 21 U.S. Code § 360bbb-3 - Authorization for medical products for use in emergencies. Subsection (e)(1)(A)(ii)

⁴ <https://www.cdc.gov/vaccines/covid-19/eua/index.html>

⁵ *Doe v. Rumsfeld*, 341 F. Supp. 2d 1, 2004 U.S. Dist. LEXIS 21668

⁶ <https://www.youtube.com/watch?v=p0zCEiGohJs&list=PLvrp9iOILTQb6D9e1YZWpbUvzfptNMKx2&inde>

“(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual’s race, color, religion, sex, or national origin.”⁷

There is a process involved when asserting your rights under Title VII. The process begins when you communicate to your employer that you are unable to be vaccinated for COVID-19 because of a sincerely held religious belief, practice, or observance. Once an employer is on notice that an employee’s sincerely held religious belief, practice, or observance prevents the employee from getting a COVID-19 vaccine, the employer must provide a reasonable accommodation unless it would pose an undue hardship.

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 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.

An employer should thoroughly consider all possible reasonable accommodations, including telework and reassignment. The EEOC and US Department of Labor, Occupational Safety and Health Administration, provide resources to assist employers in creating accommodations for employees.

However, employers are not required to make accommodations if such accommodations will create an “undue hardship” for the employer, having more than minimal cost or burden on the employer.⁸ However, the courts have stated that to have an undue hardship, “an employer must either provide factual evidence that co-workers of an accommodated employee will be significantly imposed upon, or that a material disruption of the work routine will occur. Mere hypothetical scenarios of what could happen... if an employee is granted an accommodation are wholly insufficient.”⁹

⁷ 42 U.S.C. § 2000e–2(a).

⁸ EEOC, sections K 12 and K 6.

⁹ *Heller v. EBB Auto Co.*, 8 F.3d 1433, 1440 (9th Cir. 1993); *Tooley v. Martin-Marietta Corp.*, 648 F.2d 1239, 1241 (9th Cir. 1981); *Burns v. Southern Pacific Transp. Co.*, 589 F.2d 403, 406-07 (9th Cir. 1978).

Ultimately, if an employee cannot be accommodated, employers should determine if any other rights apply under the EEO laws or other federal, state, and local authorities before taking adverse employment action against an unvaccinated employee.¹⁰

If the request is denied, then employees may be able to look to two different governmental agencies to help them preserve their rights, their state-based agency that enforces state laws preventing workplace discrimination and the federal agency that enforces federal laws preventing workplace discrimination. For a California employee, for example, these two agencies would be the Department of Fair Employment and Housing (DFEH) for state law claims or the Equal Employment Opportunity Commission (EEOC) for federal law claims. Whenever employees in California seek to bring a claim based upon workplace discrimination, they are legally barred from filing a civil lawsuit until after they first file a claim with either the DFEH or EEOC, as applicable. For purposes of vaccine-related discrimination claims, the following sources of law are addressed by the DFEH and EEOC, respectively:

DFEH: California-based agency charged with enforcing various civil rights laws, including the Fair Employment and Housing Act (FEHA) and the California Family Rights Act (CFRA); and

EEOC: Federal-based agency charged with enforcing various federal laws against employment discrimination, including Title VII of the Civil Rights Act of 1964 (“Title VII”), the Americans with Disabilities Act (ADA), the Equal Pay Act (EPA), the Age Discrimination in Employment Act (ADEA) and the Genetic Information Nondiscrimination Act (GINA).

PJI provides a resource to assist employees in requesting a religious exemption / accommodation from a mandated vaccine [here](#).

If your employer is not complying with the above procedure, or if you disagree with their findings related to accommodations, contact the Pacific Justice Institute to discuss your legal rights.

Question: What if I have a disability covered under the Americans with Disabilities Act (ADA) that prevents me from taking the vaccine?

Answer: Under the ADA, an employer may require all employees to meet a qualification standard that is job-related and consistent with business necessity, such as a safety-related standard requiring COVID-19 vaccination. However, if a particular employee cannot meet such a safety-related qualification standard because of a disability, the employer may not require

¹⁰ EEOC, K 12.

compliance for that employee unless it can demonstrate that the individual would pose a “direct threat” to the health or safety of the employee or others in the workplace.

In the case of Covid, that would include evaluation of things such as the current level of community spread, whether the employee works alone or with others, works inside or outside; the available ventilation; the frequency and duration of direct interaction the employee typically will have with other employees and/or non-employees; the number of partially or fully vaccinated individuals already in the workplace; whether other employees are wearing masks or undergoing routine screening testing; and the space available for social distancing.

If it is determined that an employee with a disability who is not vaccinated would pose a direct threat to self or others, the employer must consider a reasonable accommodation to reduce or eliminate that threat, such as requiring the employee to wear a mask, work a staggered shift, making changes in the work environment (such as improving ventilation systems or limiting contact with other employees and non-employees), permitting telework if feasible, or reassigning the employee to a vacant position in a different workspace.

Similar to the requirements under Title VII for sincerely held religious beliefs, employers are not required to make accommodations that impose “undue hardship” on the employer. However, the standard for undue hardship is different under the ADA, as it requires a “significant difficulty or expense.”

Also, under the ADA, it is unlawful for an employer to disclose that an employee is receiving a reasonable accommodation or to retaliate against an employee for requesting an accommodation.¹¹

Question: What if I have a medical condition that prevents me from taking the vaccine?

Answer: The CDC makes very few exceptions medical conditions, as follows:

1. People who have weakened immune systems- People with HIV and those with weakened immune systems due to other illnesses or medication might be at increased risk for severe COVID-19. They may receive a COVID-19 vaccine. However, they should be aware of the limited safety data:
 - A. Information about the safety of COVID-19 vaccines for people who have weakened immune systems in this group is not yet available
 - B. People living with HIV were included in clinical trials, though safety data specific to this group are not yet available at this time
 - C. People with weakened immune systems should also be aware of the potential for reduced immune responses to the vaccine, as well as the need to continue following current guidance to protect themselves against COVID-19.

¹¹ EEOC, K 5, K 6.

2. People who have autoimmune conditions- People with autoimmune conditions may receive a COVID-19 vaccine. However, they should be aware that no data are currently available on the safety of COVID-19 vaccines for people with autoimmune conditions.
3. People who have previously had Guillain-Barre syndrome (GBS)- With few exceptions, the independent Advisory Committee on Immunization Practices (ACIP) general best practice guidelines for immunization do not include a history of GBS as a precaution to vaccination with other vaccines.
4. People who have previously had Bell's palsy- Cases of Bell's palsy were reported following vaccination in participants in the COVID-19 vaccine clinical trials. However, the Food and Drug Administration (FDA) does not consider these to be more than the rate expected in the general population. They have not concluded these cases were caused by vaccination.¹²

The general rule is that if you have a medical condition that your doctor will certify should exclude you from vaccination, present that documentation to your employer if they are mandating vaccination. If you feel the employer is responding in an unreasonable manner, contact the Pacific Justice Institute to discuss your legal rights.

Question: What if I am allergic to the vaccine or its components?

Answer: The Centers for Disease Control and Prevention (CDC) begins with the following definitions:

- An allergic reaction is considered severe when a person needs to be treated with epinephrine or EpiPen or if the person must go to the hospital. Experts refer to severe allergic reactions as anaphylaxis.
- An immediate allergic reaction happens within 4 hours after getting vaccinated and could include symptoms such as hives, swelling, and wheezing (respiratory distress).

If You Are Allergic to an Ingredient in a COVID-19 Vaccine-

If you have had a severe allergic reaction or an immediate allergic reaction—even if it was not severe—to any ingredient in an mRNA COVID-19 vaccine, you should not

¹² COVID-19 Vaccines for People with Underlying Medical Conditions, Centers for Disease Control and Prevention (CDC), updated September 1, 2021.

get either of the currently available mRNA COVID-19 vaccines (Pfizer-BioNTech and Moderna).

If you have had a severe allergic reaction or an immediate allergic reaction to any ingredient in Johnson & Johnson's Janssen (J&J/Janssen) COVID-19 vaccine, you should not get the J&J/Janssen vaccine.

If You Are Allergic to Other Types of Vaccines

If you have had an immediate allergic reaction—even if it was not severe—to a vaccine or injectable therapy for another disease, ask your doctor if you should get a COVID-19 vaccine.

If You Have Allergies Not Related to Vaccines

The CDC recommends that people get vaccinated even if they have a history of severe allergic reactions not related to vaccines or injectable medications—such as food, pet, venom, environmental, or latex allergies. People with a history of allergies to oral medications or a family history of severe allergic reactions may also get vaccinated.¹³

If you have any of the allergies described by the CDC, provide that documentation to your employer if they are mandating vaccination. If you feel the employer is responding in an unreasonable manner, contact the Pacific Justice Institute to discuss your legal rights.

Question: What if I am pregnant?

Answer: The CDC states that you MAY get the vaccine if you are pregnant, however, “key considerations you can discuss with your healthcare provider include:

- How likely you are to being exposed to the virus that causes COVID-19
- Risks of COVID-19 to you and the potential risks to your fetus or infant
- What is known about COVID-19 vaccines:
- How well they work to develop protection in the body
- Known side effects of vaccination
- Limited, but growing, information on the safety of COVID-19 vaccination during pregnancy
- How vaccination might pass antibodies to the fetus. Recent reports have shown that people who have received COVID-19 mRNA vaccines during pregnancy (mostly during

¹³ COVID-19 Vaccines for People with Allergies, Centers for Disease Control and Prevention (CDC), updated March 25, 2021.

their third trimester) have passed antibodies to their fetuses, which could help protect them after birth.”¹⁴

Question: What if I am breastfeeding?

Answer: The CDC states “Clinical trials for the COVID-19 vaccines currently authorized for use under an Emergency Use Authorization in the United States did not include people who are breastfeeding. Because the vaccines have not been studied on lactating people, there are no data available on the:

- Safety of COVID-19 vaccines in lactating people
- Effects of vaccination on the breastfed baby
- Effects on milk production or excretion”¹⁵

Question: What if I do not want to take the vaccine because I am concerned about side effects or future health issues?

Answer: At this time, there is no allowance for persons who are declining the vaccine for health concerns. The Pacific Justice Institute will monitor current and future legal actions and revise this information as necessary.

Question: I recently tested positive for Covid 19. Should I get the vaccine?

Answer: People with COVID-19 who have symptoms should wait to be vaccinated until they have recovered from their illness. You should isolate yourself for at least 14 days since symptoms first appeared and at least 24 hours with no fever without fever-reducing medication and other symptoms of COVID-19 are improving.¹⁶

Question: I already had Covid and recovered, so I have antibodies to fight off future exposures. Do I still have to get a vaccine?

¹⁴ COVID-19 Vaccines While Pregnant or Breastfeeding, Centers for Disease Control and Prevention (CDC), updated August 11, 2021. NOTE: The CDC, a top federal government medical agency, uses politically correct language that does not acknowledge the biological difference between men and women.

¹⁵ COVID-19 Vaccines While Pregnant or Breastfeeding, Centers for Disease Control and Prevention (CDC), updated August 11, 2021. NOTE: The CDC, a top federal government medical agency, uses politically correct language that does not acknowledge the biological difference between men and women.

¹⁶ Interim Clinical Considerations for Use of COVID-19 Vaccines Currently Approved or Authorized in the United States, Centers for Disease Control and Prevention (CDC), updated August 31, 2021.

Answer: There is a growing mountain of evidence that people who have natural immunity, from having had COVID-19 and recovered, do not need a vaccination. Overwhelming evidence shows that the natural immunity is superior to the immunity produced by vaccines, and while still statistically small, the possibility of adverse side effects from the vaccine are higher for those with natural immunity.

There has been evidence dating back to January 2021 that natural immunity is superior to immunity from vaccination. However, until just recently, the CDC and other government officials have refused to acknowledge this evidence and still required vaccines. The CDC has not updated this subject on their website since March 2021. We at PJI believe that the government will shortly be forced to acknowledge the effectiveness of natural immunity. We make that statement because of overwhelming evidence and because of the recent recognition of natural immunity in a statement from Doctor Anthony Fauci. Here are the details:

1. The Spectrum Health hospital system in Michigan announced on September 9, 2021, that it now grants an exemption to those who have a positive PCR or antigen test for COVID-19 plus a positive antibody test from within the past three months. The exemption, the first for a major health system in Michigan, was developed "as new research has emerged" on natural immunity.¹⁷
2. A professor at George Mason University filed a lawsuit over the University's mandatory vaccination policy for employees and others. Professor Todd Zywicki based the lawsuit on the fact that he had natural antibodies from a previous COVID-19 infection. On August 17, 2021, the University relented and is allowing the professor to remain on campus unvaccinated for "medical reasons unique to Prof. Zywicki".¹⁸
3. Aaron Kheriaty, a professor of psychiatry and human behavior at the University of California, Irvine, and director of UCI's Medical Ethics Program and member of the UC Office of the President Critical Care Bioethics Working Group, has filed a recent lawsuit over the UC coronavirus vaccine mandate, which he argues he does not need because of his natural immunity against the virus. The lawsuit is still pending.¹⁹
4. Europe is currently recognizing natural immunity in a number of circumstances, including its European Union travel passport system.²⁰

¹⁷ "Spectrum Health workers can use natural immunity as vaccine mandate exemption", by Beth LeBlanc, The Detroit News, September 12, 2021.

¹⁸ "George Mason grants medical exemption to faculty member who sued over vaccine policy", by Rick Seltzer Senior Editor, Higher Ed Dive, August 18, 2021.

¹⁹ "California professor sues over vaccine mandate, says he has natural immunity", by Emma Colton, Fox News, September 9, 2021.

²⁰ "EU Presidents Officially Sign Regulation on EU Vaccine Passports for Travel", Schengenvisa.info News, June 14, 2021

5. On September 14, 2021, the CDC tweeted: “If you’ve had #COVID19 in the past 3 months and you’ve been exposed to someone with COVID-19, you don’t need to get tested if you don’t have new symptoms.” This is announcing new policy via @cdc.gov
6. On September 10, 2021, Doctor Anthony Fauci was on CNN being interviewed by Sanjay Gupta. CNN's Sanjay Gupta asked if people who have already recovered from COVID-19 should still be required to get the vaccine. "I don't have a really firm answer for you on that," he said Thursday on CNN. "I think that is something that we need to sit down and discuss seriously."²¹ As previously stated, this is the first time a government official has acknowledged the possibility that people with natural immunity may not need to be vaccinated. Up until this point, all of their responses stated that persons with previous COVID-19 infections need to be vaccinated.

There is mounting evidence that natural immunity is superior to vaccination:

- a. Washington University School of Medicine in St. Louis and published May 24, 2021, in the journal Nature, found that even a mild case of coronavirus could leave people with lifelong protection against the virus.²²
- b. In a study in the United Kingdom published April 9, 2021, “the authors suggest that infection and the development of an antibody response provides protection similar to or even better than currently used SARS-CoV-2 vaccines.”²³
- c. A study conducted by the Cleveland Clinic was released June 8, 2021, finding that “individuals with previous SARS-CoV-2 infection do not get additional benefits from vaccination”. They found that none of the 1,359 previously infected who remained unvaccinated contracted SARS-CoV-2 over the course of the research despite a high background rate of COVID-19 in the hospital.²⁴
- d. A similarly conducted study led by a researcher at University of California Los Angeles found that there was no difference in the infection incidence between vaccinated individuals and individuals with previous infection.²⁵

²¹ “Fauci: Natural Immunity vs. Vaccine For COVID-19 Needs To Be Discussed Seriously”, by Tim Hains, Real Clear Politics, September 10, 2021.

²² Immunity to the Coronavirus May Persist for Years, Scientists Find, The New York Times, May 26, 2021.

²³ “Correlates of protection from SARS-CoV-2 infection”, by Florian Krammer, The Lancet, April 9, 2021

²⁴ <https://doi.org/10.1101/2021.06.01.21258176>.

²⁵ <https://www.medrxiv.org/content/10.1101/2021.07.03.21259976v2.full-text>.

- e. A study from researchers at the La Jolla Institute for Immunology found that the immune systems of those who recovered from COVID-19 had durable memories of the virus up to eight months after infection.²⁶
- f. A study from researchers at Emory University and Fred Hutchinson Cancer Research Center which found that recovered COVID-19 patients, mount broad, durable immunity after infection, and that “[t]he durable antibody responses in the COVID-19 recovery period are further substantiated by the ongoing rise in both the spike and RBD memory B cell responses after over 3–5 months before entering a plateau phase over 6–8 months. Persistence of RBD memory B cells has been noted.”²⁷
- g. Aarhus University Hospital in Denmark studied the immune response following SARS-CoV-2 infections in 203 recovered patients. The patients’ disease severity ranged from mild to serious cases that required hospitalization. The authors found that the vast majority of recovered individuals had detectable, functional SARS-CoV2 spike-specific adaptive immune responses, despite diverse disease severities, making vaccination post-COVID-19 for any of them redundant.²⁸
- h. The most recent study of T-cell immunity six months after infection demonstrated that every single person tested showed “robust T cell responses to SARS-CoV-2 virus peptides [six months after primary infection] in all participants” which included those with “asymptomatic or mild/moderate COVID-19 infection.”²⁹
- i. A new Israeli study of over 6 million participants found that natural immunity from SARS-CoV-2 infection was better than vaccination immunity in reducing risk of COVID-19 reinfection, hospitalization, and severe illness. Vaccination was highly effective, with overall estimated efficacy for documented infection of 92.8%, hospitalization 94.2% and severe illness 94.4%. Similarly, the overall estimated level of protection from prior SARS-CoV-2 infection for documented infection was 94.8%, hospitalization 94.1%, and severe illness 96.4%.²² As the study explains, “both the BNT162b2 vaccine and prior SARS-CoV-2 infection are effective against both subsequent SARS-CoV-2 infection and other COVID-19–related outcomes.”³⁰
- j. Another study from Israel found that the vaccinated had 6.72 times the rate of infection as compared to those that had had COVID-19: With a total of 835,792 Israelis known to

²⁶ <https://www.nih.gov/news-events/nih-research-matters/lasting-immunity-found-afterrecovery-Covid-19>.

²⁷ <https://doi.org/10.1016/j.xcrm.2021.100354>.

²⁸ [https://www.thelancet.com/journals/ebiom/article/PIIS2352-3964\(21\)00203-6/fulltext](https://www.thelancet.com/journals/ebiom/article/PIIS2352-3964(21)00203-6/fulltext).

²⁹ <https://www.uk-cic.org/news/cellular-immunity-sars-cov-2-found-six-months-nonhospitalised-individuals>.

³⁰ <https://www.medrxiv.org/content/10.1101/2021.04.20.21255670v1>.

have recovered from the virus, the 72 instances of reinfection amount to 0.0086% of people who were already infected with COVID. By contrast, Israelis who were vaccinated were 6.72 times more likely to get infected after the shot than after natural infection.³¹

- k. An outbreak of SARS-CoV-2 caused by the Gamma variant infected 24/44 (55%) employees of a gold mine in French Guiana. The attack rate was 15/25 (60.0%) in fully vaccinated miners, 6/15 (40.0%) in those partially vaccinated or with a history of COVID-19 (none of the partially vaccinated with a history of COVID-19 were positive), and 3/4 (75%) in those not vaccinated. The attack rate was 0/6 among persons with a previous history of COVID-19 versus 63.2% among those with no previous history.³²
- l. Irish researchers recently published a review of eleven cohort studies with over 600,000 total recovered COVID patients, not all of whom were well defined and may have had suspected COVID-19 with positive serologies later on who were followed up with over ten months. They found the reinfection rate to be 0.27% “with no study reporting an increase in the risk of reinfection over time.” Based on this data, the researchers were able to assert that “naturally acquired SARS-CoV-2 immunity does not wane for at least 10 months post-infection.” The study also did not identify any case of reinfection of SARS-CoV-2 that resulted in further transmission of the virus.³³

NOTE: The research cited in d-l above appears in a declaration from Joseph Ladapo, MD, PhD, et al., filed August 23, 2021, in the case of *AARON KHERIATY M.D., v. THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, a Corporation, and MICHAEL V. DRAKE, in his official capacity as President of the UNIVERSITY OF CALIFORNIA*, case # 8:21-cv-01367 JVS (KESx), United States District Court, Central District of California, Southern Division.

In summary, we at PJI believe that the overwhelming evidence that natural immunity from having had COVID-19 is superior to the immunity from vaccination will force the government to accept it in lieu of vaccination. It appears that process has begun.

Question: Is there a difference between my employer “strongly encouraging” me to get the vaccine versus mandating the vaccine?

Answer: We believe there is. As of April 21, 2021, US Department of Labor (DOL), Occupational Safety and Health Administration (OSHA) provided guidance as follows:

³¹ <https://www.theblaze.com/op-ed/horowitz-israeli-government-data-shows-natural-immunity-from-infection-much-stronger-than-vaccine-induced-immunity#toggle-gdpr>.

³² https://wwwnc.cdc.gov/eid/article/27/10/21-1427_article.

³³ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8209951/pdf/RMV-9999-e2260.pdf>.

“If an employer requires its employees to be vaccinated, adverse reactions to the vaccines are considered “work-related” by OSHA. Employers who require COVID-19 vaccines must notify OSHA within 24 hours of an employee’s inpatient hospitalization (or within eight hours of an employee’s death) resulting from an adverse reaction.”

Sometime between April 21 and May 24, 2021, OSHA changed its reporting guidance to:

“DOL and OSHA, as well as other federal agencies, are working diligently to encourage COVID-19 vaccinations. OSHA does not wish to have any appearance of discouraging workers from receiving COVID-19 vaccination, and also does not wish to disincentivize employers’ vaccination efforts. As a result, OSHA will not enforce 29 CFR 1904’s recording requirements to require any employers to record worker side effects from COVID-19 vaccination through May 2022. We will reevaluate the agency’s position at that time to determine the best course of action moving forward.”

Apparently OSHA believed that adverse reactions to mandatory Covid vaccinations were eligible for Workers Compensation.

In looking at liability, the vaccine manufacturers and distributors have been given immunity. In addition, there is immunity from liability under the 2005 PREP act (Public Readiness and Emergency Preparedness Act) for "program planners" who facilitate or supervise an onsite vaccination program, but that applies to liability for facilitating the vaccination. But there is no immunity for an employer who mandates an employee take the vaccine.

There are some older court cases on this issue. In 1949, in the case of *Roberts v. U.S.O. Camp Shows Inc.*, an employee was directed by his employer to receive various inoculations, and as a result, contracted encephalitis. The California Second District Court of Appeal held that "incapacity caused by illness from vaccination or inoculation may properly be found to have arisen out of the employment where such treatment is submitted to pursuant to the direction or for the benefit of the employer."³⁴

In 1983, in the case of *Maher v. Workers' Comp. Appeals Bd.*, a nurse applied to work at a hospital. A mandatory test for tuberculosis resulted in treatment that injured her. The California Supreme Court found that "the rule is well settled that where an employee submits to an inoculation or a vaccination at the direction of the employer and for the employer's benefit, any injury resulting from an adverse reaction is compensable under the Workers' Compensation Act."³⁵

Therefore, if your employer is pressuring you to get the vaccine, we recommend that you ask them if getting the vaccine is mandatory and get that in writing.

³⁴ *Roberts v. U. S. O. Camp Shows, Inc.*, 91 Cal. App. 2d 884, 205 P.2d 1116, 1949 Cal. App. LEXIS 1319

³⁵ *Maher v. Workers' Comp. Appeals Bd.*, 33 Cal. 3d 729, 661 P.2d 1058, 190 Cal. Rptr. 904, 1983 Cal. LEXIS 176, 48 Cal. Comp. Cases 326

Question- What new mandates were created as a result of President Biden's speech on September 9, 2021?

Answer- On September 9, 2021, President Biden addressed the nation regarding his plans to address the increase in COVID-19 cases. His plan for mandatory COVID-19 vaccination directly impacts a staggering 100 million American Workers, almost two thirds of the nation's workforce. The focus is on the following groups:

- a. All Employers with 100+ Employees: Mandatory Vaccination or Weekly Testing, about 80 million employees.
- b. Federal Executive Branch Workers and Government Contractors: Mandatory Vaccination, about 2.5 million employees.
- c. Health Care Employees at Medicare and Medicaid Participating Facilities, about 17 million employees.
- d. Large Indoor Entertainment and Sports Venues: Requested to require patrons to be vaccinated or produce a negative COVID-19 test.
- e. School Initiatives: Mandatory vaccination for teachers and employees in schools run by the Defense Department, and in the federal paid Head Start program, about 300,000 employees.

Employers with 100+ Employees- At the conclusion of the speech, the official White House website included this summary:

Requiring All Employers with 100+ Employees to Ensure their Workers are Vaccinated or Tested Weekly

The Department of Labor's Occupational Safety and Health Administration (OSHA) is developing a rule that will require all employers with 100 or more employees to ensure their workforce is fully vaccinated or require any workers who remain unvaccinated to produce a negative test result on at least a weekly basis before coming to work. OSHA will issue an Emergency Temporary Standard (ETS) to implement this requirement. This requirement will impact over 80 million workers in private sector businesses with 100+ employees.

The speech itself was short on details and has allowed for several interpretations of these two paragraphs. It is clear that it imposes a duty on the employer to ensure their workers are fully vaccinated, or if still unvaccinated, show a weekly negative COVID-19

test prior to coming to work. But the biggest question is how a person remains unvaccinated after this mandate is in place. We have read some interpretations of the speech that allow the employee to choose between vaccination or weekly testing, some that allow the employer to choose, and some that state the only unvaccinated people will be those who have been given a medical or religious exemption or accommodation.

The speech also lacks details on how the tests are to be done and when they must be submitted for the week. The emergency rule from OSHA has not been written as of the update of this resource. Estimates on the timing for this mandate are several weeks for the rule to be prepared, and there have been instances where complex rules such as this one have taken much longer. However, there will certainly be pressure from the White House to expedite the rule. Once the rule is in place, there will likely be 50 to 90 days to come into compliance. In addition, dozens of state Attorneys General, as well as other parties, plan to take action to stop this mandate on private businesses before it takes effect.

PJI is recommending that employers do not take concrete actions until the final rule has been published, PJI has produced guidelines for employers with 100 or more employees [here](#). As of now, there is no direction on what type of tests are required for unvaccinated employees. In our guidelines, PJI advises employers to use less intrusive methods of testing.

Federal Executive Branch Workers and Government Contractors: The government has given these employees and contractors 75 days to come into compliance.

Health Care Employees at Medicare and Medicaid Participating Facilities: We have been unable to determine whether or not a firm deadline has been set for compliance on the part of these employees. A previous directive had gone out in August regarding nursing homes.

School Initiatives, Mandatory vaccination for teachers and employees in schools run by the Defense Department, and in the federal paid Head Start program: No specific deadline could be located, but those employed by the federal government may fall under the 75 day deadline.

Question: Asking me if I have been vaccinated is asking for medical information. Isn't that a violation of HIPPA?

Answer: The Health Insurance Portability and Accountability Act of 1996, Pub.L. 104–191, commonly referred to as HIPPA, focuses on “protected health information” as maintained by the healthcare industry (including healthcare insurance providers) to prevent such information from being exploited via theft and fraud. HIPAA only applies to “covered entities” – healthcare providers, health plans, healthcare clearinghouses, and their business associates.

HIPAA (or FERPA for students) is not likely to bar an employer (or school) from legally asking any employee about his or her vaccination status. However, various state and federal laws may prevent an employer from asking an employee why he or she is not vaccinated. This does not, of course, mean that an employee may not choose to voluntarily disclose a pre-existing medical condition or sincerely held religious belief that prevents her from receiving the vaccine, so that the employee can request a reasonable accommodation if the employer is requiring Covid vaccination as a condition of employment.

Question: How effective are these vaccines?

Answer: They are less effective than many would have you think. Many people who have been vaccinated have contracted Covid 19 afterward. There is concern that the effectiveness of the vaccines may diminish over time, thus requiring booster doses. Israel has found the Pfizer vaccine to be 39% effective,³⁶ and the Mayo Clinic found the Pfizer vaccine to be only 42% effective against the Delta variant. The study raises serious questions about the vaccines' long-term effectiveness, particularly Pfizer's. It's unclear whether the results signify a reduction in effectiveness over time, a reduced effectiveness against Delta, or a combination of both. "If that's not a wakeup call, I don't know what is," a senior Biden official told Axios.³⁷

Perhaps that is why the CDC has quietly changed the definition of "vaccination" on their website. Prior to September 1, 2021, the definition was: "The act of introducing a vaccine into the body to produce **immunity** to a specific disease."³⁸ (Emphasis added)

The definition was changed to: "The act of introducing a vaccine into the body to produce **protection** from a specific disease."³⁹ (Emphasis added)

This change was likely required because initially, the vaccine was promoted to give the recipient immunity to COVID-19. But it is clear that the vaccines do not provide immunity, and that they lose what effectiveness they do have over time. This is evidenced by the frequency of "breakthrough" COVID-19 cases.

In the United States, fully vaccinated people continue to test positive for Covid. According to the CDC, as of September 7, 2021, more than 176 million people in the United States had been fully vaccinated against COVID-19. During the same time, CDC received reports from 48 U.S. states and territories of 14,115 patients with COVID-19 vaccine breakthrough infection who

³⁶ "Israeli Data Suggests Possible Waning in Effectiveness of Pfizer Vaccine", by Carl Zimmer, dated July 23, 2021, updated July 28, 2021. The New York Times.

³⁷ New data on coronavirus vaccine effectiveness may be "a wakeup call", by Caitlin Owens, Axios, August 11, 2021.

³⁸ <http://web.archive.org/web/20210826113846/https://www.cdc.gov/vaccines/vac-gen/imz-basics.htm>

³⁹ <http://web.archive.org/web/20210902194040/https://www.cdc.gov/vaccines/vac-gen/imz-basics.htm>

were hospitalized or died.⁴⁰ It is worth noting that the CDC does not count all breakthrough cases, only those with hospitalization or death.

Question: Can vaccinated people with breakthrough cases of COVID-19 transmit the virus to others?

Answer: Yes, that certainly appears to be the case. The following research appears in a declaration from Joseph Ladapo, MD, PhD, et al., filed August 23, 2021, in the case of AARON KHERIATY M.D., v. THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, a Corporation, and MICHAEL V. DRAKE, in his official capacity as President of the UNIVERSITY OF CALIFORNIA, case # 8:21-cv-01367 JVS (KESx), United States District Court, Central District of California, Southern Division.

Viral carriage by the vaccinated is reflected in the recent outbreak in Barnstable County, Massachusetts, which has a 69% vaccination coverage rate amount its eligible residents.⁴¹ A recent CDC investigation found that 74% of those infected in the outbreak were fully vaccinated for COVID-19 and, even more alarming, the vaccinated had on average more virus in their nose than the unvaccinated that were infected. The study reported zero cases of infection among those that previously had COVID-19.

This forced the Director of the CDC, Rochelle Walensky, to admit that individuals vaccinated for COVID-19, while having less symptoms, can still become infected with and transmit the virus.⁴² Dr. Walensky admitted that “what [the COVID-19 vaccines] can’t do anymore is prevent transmission.”⁴³ After this admission, Wolf Blitzer asked Dr. Walensky if “you get Covid, you’re fully vaccinated, but you are totally asymptomatic, you can still pass on the virus to someone else, is that right?” and Dr. Walensky answers “that is exactly right.”⁴⁴

Question: Will there be booster shots in the United States for those who have taken the vaccines?

Answer: It appears that there will. Because the vaccines appear to lose efficacy over time, some are promoting booster shots, already being used in Israel and other countries. During his speech on September 9, 2021, President Biden stated:

⁴⁰ “COVID-19 Vaccine Breakthrough Case Investigation and Reporting”, Centers for Disease Control, August 2, 2021.

⁴¹ <https://www.cdc.gov/mmwr/volumes/70/wr/mm7031e2.htm>.

⁴² <https://twitter.com/CNNSitRoom/status/1423422301882748929>.

⁴³ <https://twitter.com/CNNSitRoom/status/1423422301882748929>.

⁴⁴ <https://twitter.com/CNNSitRoom/status/1423422301882748929>.

Now, I know there's been some confusion about boosters. So, let me be clear: Last month, our top government doctors announced an initial plan for booster shots for vaccinated Americans. They believe that a booster is likely to provide the highest level of protection yet.

Of course, the decision of which booster shots to give, when to start them, and who will give them, will be left completely to the scientists at the FDA and the Centers for Disease Control.

But while we wait, we've done our part. We've bought enough boosters — enough booster shots — and the distribution system is ready to administer them.

As soon as they are authorized, those eligible will be able to get a booster right away in tens of thousands of sites across the — sites across the country for most Americans, at your nearby drug store, and for free.

However, in spite of the proclamation by the President, the FDA is resisting the concept of a booster shot. Marion Gruber, director of the FDA's Office of Vaccines Research and Review, and her deputy director, Phil Krause, along with other experts worldwide, published a viewpoint in *The Lancet* on September 13, 2021.

"Careful and public scrutiny of the evolving data will be needed to assure that decisions about boosting are informed by reliable science more than by politics," authors wrote, adding in part: "Widespread boosting should be undertaken only if there is clear evidence that it is appropriate."

These comments come after Dr. Janet Woodcock, acting commissioner of the FDA, and Dr. Rochelle Walensky, director of the Centers for Disease Control and Prevention, recently advised the White House that regulators need more time to review necessary data before approving a COVID-19 booster shot plan. The guidance from the FDA and CDC is that both agencies have so far only accumulated enough data to suggest that some individuals who received the Pfizer vaccine should get a booster shot.⁴⁵

Back on September 2, 2021, Fox Business reported that Gruber and Krause were going to resign rather than approve the booster shots.⁴⁶

⁴⁵ "COVID-19 vaccine boosters unnecessary for most, say FDA advisers reportedly resigning over issue", by Kayla Rivas, Fox News, September 13, 2021.

⁴⁶ FDA resignations over White House booster shot guidance a 'mess for administration', by Peter Aitken, Fox Business, September 2, 2021.

Then on September 15, 2021, the FDA staff declined to take a stance on whether to back booster shots of Pfizer’s Covid-19 vaccine, saying U.S. regulators haven’t verified all the available data.⁴⁷

It is interesting that on September 15, 2021, both Pfizer⁴⁸ and Moderna⁴⁹ announced that their vaccines lose their efficacy over time. While this would appear that they are criticizing their own product, it also opens the door for tens of millions booster shots or those already vaccinated with their product. It also supports the position taken by the Biden administration.

The possibility of booster shots create questions regarding proposed vaccine passports and similar rules where you have to produce proof of vaccine. If you had two shots of Pfizer or Moderna, or one shot of Johnson and Johnson, will you be counted as vaccinated, or will a booster be required. Vaccinated people may have a greatly reduced level of antibodies over time, yet will still have the card or other documentation showing they are vaccinated.

Question: Is there an issue with heart inflammation after taking the vaccines?

Answer: On June 25, 2021, the FDA added a warning to the literature that accompanies Pfizer Inc. /BioNTech and Moderna COVID vaccine shots to indicate the rare risk of heart inflammation after its use. The fact sheets for healthcare providers have been revised to include a warning that reports of adverse events suggest increased risks of myocarditis and pericarditis.⁵⁰

As of July 30, 2021, VAERS has received 1,249 reports of myocarditis or pericarditis among people ages 30 and younger who received COVID-19 vaccine. Most cases have been reported after mRNA COVID-19 vaccination (Pfizer-BioNTech or Moderna), particularly in male adolescents and young adults. Through follow-up, including medical record reviews, CDC and FDA have confirmed 716 reports of myocarditis or pericarditis. CDC and its partners are investigating these reports to assess whether there is a relationship to COVID-19 vaccination.⁵¹

In regard to vaccination of those under 18, the survivability rates of children under 18 is 99.997% according to the CDC. More than twice the number of children die each year of

⁴⁷ “FDA staff declines to take stance on Pfizer’s Covid booster shots, citing lack of verified data”, by Berkeley Lovelace Jr, CNBC, September 15, 2021.

⁴⁸ “Pfizer Says Booster Shots of Vaccine Restore Waning Immunity”, by Robert Langreth, Bloomberg News, September 15, 2021.

⁴⁹ “Moderna analysis: Those vaccinated last year twice more likely to get COVID-19 than those jabbed recently”, by Kyle Morris, Fox News, September 15, 2021.

⁵⁰ “FDA adds warning about rare heart inflammation to Pfizer, Moderna COVID shots”, Reuters, June 25, 2021.

⁵¹ Centers for Disease Control, “Selected Adverse Events Reported after COVID-19 Vaccination”, August 2, 2021

pneumonia than have died from Covid. More than three times die from drowning, more than six times from auto accidents.⁵²

Question: Is there a risk of developing Guillain-Barré Syndrome from a vaccine?

Answer: On July 13, 2021, the FDA announced revisions to the vaccine recipient and vaccination provider fact sheets for the Johnson & Johnson (Janssen) COVID-19 Vaccine to include information pertaining to an observed increased risk of Guillain-Barré Syndrome (GBS) following vaccination, "Reports of adverse events following use of the Janssen COVID-19 Vaccine under emergency use authorization suggest an increased risk of Guillain-Barré syndrome during the 42 days following vaccination," the updated label reads. "Guillain Barré syndrome (a neurological disorder in which the body's immune system damages nerve cells, causing muscle weakness and sometimes paralysis) has occurred in some people who have received the Janssen COVID-19 Vaccine," the FDA says in the label update for patients and caregivers." In most of these people, symptoms began within 42 days following receipt of the Janssen COVID-19 Vaccine. The chance of having this occur is very low," it adds. The CDC and FDA briefly paused use of the Johnson & Johnson vaccine earlier this year because of a risk of a rare type of blood clotting complication but lifted the pause in April after determining the risk was low and the condition was treatable. The vaccine's label was updated to warn about the risk.⁵³

Question: How many deaths have been reported via the Vaccine Adverse Events Reporting System (VAERS)?

Answer: More than 363 million doses of COVID-19 vaccines were administered in the United States from December 14, 2020, through September 13, 2021. During this time, VAERS received 7,653 reports of death (0.0020%) among people who received a COVID-19 vaccine. FDA requires healthcare providers to report any death after COVID-19 vaccination to VAERS, even if it's unclear whether the vaccine was the cause.⁵⁴

Question: Is there a legal basis to challenge a vaccine mandate?

⁵² "The Kids Are Alright Why now is the time to rethink COVID safety protocols for children — and everyone else." by David Wallace-Wells, *Intelligencer*, July 12, 2021.

⁵³ "FDA warns of potential rare neurological complication with Johnson & Johnson coronavirus vaccine", by Amanda Sealy, John Bonifield and Maggie Fox, *CNN*, Jul 13, 2021

⁵⁴ Centers for Disease Control, "Selected Adverse Events Reported after COVID-19 Vaccination", September 14, 2021

Answer: When attorneys look at an issue or a set of facts to determine whether there is a legal basis for a lawsuit, relevant statutes and prior case law are the best indicators of how a particular case will play out. However, the issues surrounding mandatory Covid vaccines are so new that there is no settled case law, and very few cases currently in progress in the courts.

Some who advocate for mandatory Covid vaccinations point to *Jacobson v. Commonwealth of Massachusetts*⁵⁵, a 1905 decision regarding a mandatory smallpox vaccine. The Supreme Court held that government actions taken in the context of a public health crisis are subject to a more deferential review:

“In every well-ordered society charged with the duty of conserving the safety of its members the rights of the individual in respect of his liberty may at times, under the pressure of great dangers, be subjected to such restraint, to be enforced by reasonable regulations, as the safety of the general public may demand.”

But there are significant differences in the circumstances surrounding *Jacobson* and our current circumstances regarding Covid. First of all, the state of Massachusetts imposed a five dollar fine for refusing to take the vaccine. In today’s money that would be approximately \$140. This hardly equates with losing a job and / or damaging a career.

Secondly, while many lives were lost due to Covid, when you look at the situation today, younger persons in good health have an extremely high survival rate when infected with the Covid 19 virus. This is much different than smallpox in 1905.

In any event, the United States Supreme Court has made it clear that *Jacobson* is not controlling law in regard to Covid 19. In July of 2020, in *Calvary Chapel Dayton Valley v. Sisolak*⁵⁶, Justice Alito recognized the need for emergency action at the beginning of the pandemic when little was known about infection or mortality rates. But he then raises the question as to whether we are still in such an emergency that unquestioned drastic action is needed 10 months later. Then in November 2020, Justice Gorsuch wrote in *Roman Catholic Diocese v. Cuomo*⁵⁷:

“Government is not free to disregard the First Amendment in times of crisis . . . Yet recently, during the COVID pandemic, certain States seem to have ignored these long-settled principles.”

“Put differently, *Jacobson* didn’t seek to depart from normal legal rules during a pandemic, and it supplies no precedent for doing so. Instead, *Jacobson* applied what would become the traditional legal test associated with the right at issue—exactly what the Court does today Nothing in *Jacobson* purported to address, let alone approve, such serious and long-lasting intrusions into settled constitutional rights. In fact,

⁵⁵ 197 U.S. 11, 25 S. Ct. 358, 49 L. Ed. 643 (1905).

⁵⁶ 2020 U.S. LEXIS 3584, 2020 WL 4251360 (July 24, 2020).

⁵⁷ 208 L. Ed. 2d 206, 2020 U.S. LEXIS 5708, 28 Fla. L. Weekly Fed. S 590, ___ S.Ct. ___, 2020 WL 6948354 (Nov. 25, 2020).

Jacobson explained that the challenged law survived only because it did not “contravene the Constitution of the United States” or “infringe any right granted or secured by that instrument.” . . .

There are a number of arguments available to fight against the vaccines, and numerous lawsuits are making their way through the courts as of this writing. However, thus far there have not been any decisions that are helpful in stopping mandatory vaccinations for employees and students. We are hopeful that one or more of these cases will find their way to the Supreme Court of the United States, for a definitive decision. The Pacific Justice Institute will continue to file lawsuits as appropriate, and will closely monitor decisions on all vaccines lawsuits throughout the nation. We will update this resource with any noteworthy news and decisions.

However, there have been several decisions that uphold religious liberty, requiring employers, colleges, and in Arizona even business patrons, to acknowledge the religious exemption / accommodation.

On August 17, 2021, a Temporary Restraining Order was put in place by the United States District Court for the Western District of Louisiana, Monroe Division, against Edward Via College of Osteopathic Medicine, located on the University of Louisiana at Monroe, prohibiting the requirement of mandatory vaccinations for the plaintiffs to attend the college. However, the ruling was narrow, made solely on a Louisiana law, and the court finding that the school was a government actor, and subject to the law.⁵⁸

On August 16, 2021, former New York Governor Andrew Cuomo issued a mandate that all healthcare workers in New York State must be vaccinated against COVID-19. A lawsuit was filed by 17 doctors, nurses and other healthcare professionals who say New York's requirement violates their constitutional rights in various ways. The plaintiffs are all Christians who say they object to receiving the vaccines because the cell lines of aborted fetuses were used in their testing and development.

On September 14, 2021, U.S. District Judge David Hurd in Utica, New York in a written order said he was blocking the mandate from taking effect on Sept. 27 because it does not allow for exemptions based on workers' religious beliefs.⁵⁹

⁵⁸ *RACHEL LYNN MAGLIULO, ET AL v. EDWARD VIA COLLEGE OF OSTEOPATHIC MEDICINE*, CIVIL ACTION NO. 3:21-CV-2304, filed August 17, 2021.

⁵⁹ “U.S. judge blocks N.Y. vaccine mandate for healthcare workers, By Daniel Wiessner, Reuters, September 14, 2021.

On August 31, 2021, a federal district judge in Michigan ordered a temporary restraining order against Western Michigan University for denying student athletes the opportunity to apply for religious exemption from the vaccine.⁶⁰

On August 20, 2021, the Arizona Attorney General issued an opinion that Arizona law should be followed in situations regarding the vaccine, and not *Jacobson v Massachusetts*. Accordingly, the ruling stated that Arizona public schools, state-sponsored colleges and universities, and employers must make accommodation for sincerely held religious beliefs. In addition, the opinion states that businesses that are places of public accommodation and that mandate vaccination for patrons must provide reasonable accommodations to patrons who cannot obtain the COVID-19 vaccine due to disability and they must not discriminate against customers who cannot obtain such a vaccine due to a sincerely-held religious belief. Again, this opinion covers only the state of Arizona.⁶¹

In Wisconsin, a County Public Health Officer ordered that all schools be closed for in-person learning for grades three through 12. A Catholic school filed a lawsuit against this action, and the Wisconsin Supreme Court found that the “portions of Heinrich's Order restricting or prohibiting in-person instruction are both statutorily and constitutionally unlawful, and are hereby vacated. Local health officers do not have the statutory authority to close schools under Wis. Stat. § 252.03. Article I, Section 18 of the Wisconsin Constitution— —not *Jacobson*— — controls the constitutional question. Because Heinrich's Order violates the Petitioners' fundamental constitutional right to the free exercise of religion, it cannot stand.”⁶² Again, this applies only to the state of Wisconsin.

During the pandemic, California Governor Gavin Newsom closed all schools for in-person instruction, both public and private. A lawsuit was filed by 14 parents and one student of a private school challenging Newsom's order. The United States Court of Appeals for the Ninth Circuit found that “as to the provision of private education, California's ban on in-person schooling during the Covid-19 pandemic abridged a fundamental liberty protected by the Due Process Clause of the Fourteenth Amendment, which could not be said to survive strict scrutiny, given the State closure order's lack of narrow tailoring...” Therefore, the court ruled that the governor had the authority to close public schools, but not private schools.⁶³

It should also be noted that PJI has been successful in causing a number of government sponsored colleges and universities to change their policies regarding religious exemptions / accommodations for students and employees, by threatening court action.

⁶⁰ *EMILY DAHL, et al. v THE BOARD OF TRUSTEES OF WESTERN MICHIGAN UNIVERSITY, et al.*, Case 1:21-cv-00757-PLM-SJB, UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION, August 31, 2021.

⁶¹ 2021 ARIZ. AG LEXIS 7 *; Ariz. Op. Att'y Gen. No. 6, August 20, 2021.

⁶² *James v. Heinrich*, 2021 WI 58, 397 Wis. 2d 516, 960 N.W.2d 350, 2021 Wisc. LEXIS 91

⁶³ *Brach v. Newsom*, 2021 U.S. App. LEXIS 21912, ___ F.4th ___

Looking generally at other possible legal arguments, the United States Supreme Court in the case of *West Virginia State Board of Education v. Barnette*,⁶⁴ stated:

“If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.”

Therefore, anytime a government actor orders you to be a recipient of the vaccine, and that conflicts with your sincerely held religious belief, they may be in violation of the First Amendment.

Also, there is an argument for basic freedom, the right to life, liberty, and a pursuit of happiness. This resource has previously quoted the large number of deaths and serious illnesses that have been reported to be a result of the Covid vaccines. According to the CDC, the chance of surviving Covid without any treatment at all is as follows: age 0-19 (99.997%), 20-50 (99.98%), 50-69 (99.5%), and >age 70 (95%)⁶⁵. As Americans compare the adverse effects with the survival rates, they should have the freedom to decide whether or not to take the Covid vaccine.

Question: What are the basic roles and powers of the government regarding vaccines?

Answer: In general, administering vaccines have not been the role of the federal government. In a report by the Congressional Research Service in 2014, discussing mandatory vaccinations, the report noted that: “Historically, the preservation of the public health has been the primary responsibility of state and local governments, and the authority to enact laws relevant to the protection of the public health derives from the state’s general police powers.” “Federal jurisdiction over public health matters derives from the Commerce Clause of the United States Constitution, which states that Congress shall have the power “[t]o regulate Commerce with foreign Nations, and among the several States....”

Congress has enacted requirements regarding vaccination of immigrants seeking entry into the United States, and military regulations require American troops to be immunized against a number of diseases. The Secretary of Health and Human Services has authority under the Public Health Service Act to issue regulations necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the states or from state to state. Current federal regulations do not include any mandatory vaccination programs; rather, when

⁶⁴ *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 63 S. Ct. 1178, 87 L. Ed. 1628, 1943 U.S. LEXIS 490, 147 A.L.R. 674

⁶⁵ TEN MEDICAL FACTS REGARDING THE COVID-19 EXPERIMENTAL VACCINES, Dr. Shelley Cole, Medical Director AFLDS, dated April 12, 2021.

compulsory measures are needed, measures such as quarantine and isolation are generally utilized to halt the spread of communicable diseases.⁶⁶

States, however, have traditionally handled vaccinations and have even mandated them in an emergency. This resource has discussed *Jacobson v. Massachusetts* from 1905 regarding the smallpox vaccine. State governments have also mandated vaccines in their schools for many years, and that right was upheld by the United States Supreme Court in 1922, in the case of *Zucht v. King*.⁶⁷

Question: Can a store or restaurant make me show proof of vaccination before doing business with me or letting me inside? Can I be required to get a vaccine passport to get into certain venues?

Answer: Generally, businesses have the right to refuse to serve persons as long as the reason is not discriminatory and it serves a legitimate purpose. For example, store management can ask someone to leave if they have no shirt or no shoes. Dressing in this manner may be upsetting to customers, causing them to leave or avoid a place of business, and thus constitutes a legitimate purpose.

However, you cannot refuse to serve someone who is in a protected class, because they are in that protected class. Race, ethnicity, sex, religion, are just some of the protected categories. Some states have additional protected categories to those of federal law.

You can also be excluded by businesses for conduct, even if it is conduct that is your right. For example, as an adult you have the right to smoke, but a store owner can require you to leave because your conduct can upset or endanger other customers. The same with being intoxicated, or being loud and boisterous.

In regard to requiring the wearing of a mask, that would very likely be considered a legitimate purpose because it is for the safety of employees and customers. The same is true for requiring proof you have taken the Covid vaccine.

If you should file a lawsuit because you were prohibited from entering or required to leave a place of business and you were not discriminated against as a member of a protected class, the remedy would likely be the ability to enter and remain in that place of business in the future. This is hardly a deterrent for inappropriate behavior on the part of a proprietor.

But a number of state legislatures and governors have taken action to preserve the rights of their citizens, to prohibit vaccine passports and / or to prohibit the requirement to prove you're

⁶⁶ "Mandatory Vaccinations: Precedent and Current Laws", Congressional Research Service, Jared P. Cole, Legislative Attorney, Kathleen S. Swendiman, Legislative Attorney May 21, 2014

⁶⁷ 260 U.S. 174, 176 (1922)

vaccinated. Conversely, New York City and other locations are requiring vaccine passports / proof of vaccination for entry.

According to the Becker's Hospital Review, as of September 1, 2021, seven states are looking to provide a digital solution for storing proof of vaccinations while, 21 states have implemented bans on vaccine passports in some capacity. The states with some sort of vaccine passports are California, Colorado, Hawaii, New York, Illinois, Louisiana, and New Jersey.

The states with some sort of prohibition against passports are Alabama, Alaska, Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Montana, New Hampshire, North Dakota, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, and Wyoming.⁶⁸

It is critical that citizens become involved with their government on all levels. Participation in government is vital to a thriving democracy, or in our case a representative republic. If you feel strongly about issues relating to vaccine passports or not being required to provide proof of Covid vaccination to travel, transact business, attend church, school or work, or participate in leisure or recreational activities, you should contact your elected representatives at the local, state, and federal level about executive and legislative guarantees that will preserve your liberty and freedom. Remember to support those elected officials or candidates that fight for rights that are important to you.

Question: What if I have a medical condition and a letter from my doctor exempting me from the vaccine? Can I be excused from the passport?

Answer: If you are considered disabled under the Americans with Disabilities Act and are refused service because of that disability, that is likely discrimination under the ADA, and you should have legal recourse. Federal law prohibits discrimination against disabled Americans and it can have serious consequences. But other than an ADA violation, the establishment will likely face little or no consequences for not honoring your doctor's note.

Question: What if a Covid vaccine is required for admission to a college or university?

Answer: Some colleges and universities are requiring vaccinations as a prerequisite for living on campus or attending in-person classes. However, as stated previously, in regard to state (government) sponsored institutions, if getting the Covid vaccine violates a student's sincerely held religious beliefs, there may be a basis for legal action under the First Amendment or applying state anti-discrimination laws.

⁶⁸ "Vaccine passports: 7 states with digital credentials & 21 states with bans", by Hannah Mitchell, Becker's Hospital Review, September 1, 2021.

In addition, 44 of our 50 states allow religious exemption for vaccinations. Only California, Connecticut, New York, Maine, Mississippi and West Virginia do not.⁶⁹

For example, should any government sponsored institution of higher learning in California not allow for religious exemption to a Covid vaccine mandate, there are state laws prohibiting religious discrimination. An action could be brought for religious discrimination under Article 3, Section 220 of the California Education Code, Prohibition of Discrimination; as well as California Government Code, Article 9.5, Section 11135, Discrimination.⁷⁰

As previously mentioned, refusal by government sponsored institutions of higher learning to allow religious exemptions may violate the First Amendment of the United States Constitution, which would be enforced under federal law by 42 U.S.C. § 1983.

The Fair Housing Act prohibits discrimination based on religion,⁷¹ and student housing owned by the college or university falls under the Fair Housing Act.⁷² Therefore, if a student is refused student housing on the basis of not being a recipient of the Covid vaccine, and the college or university refuses to allow religious exemptions, there may be an action for discrimination under the Fair Housing Act. This argument could be made against private colleges or universities as well as government sponsored institutions.

As previously discussed, there have been a number of court cases supporting the rights of students in state sponsored colleges and universities to get a religious exemption / accommodation from the vaccine. The Pacific justice Institute provides a resource to assist students in applying for the religious exemption / accommodation [here](#).

Question- Are there any vaccines coming that are more like the traditional vaccines we have taken as children?

Answer- Yes. Novavax has a different type of vaccine. Moderna and Pfizer are mRNA vaccines. This one is a protein subunit vaccine. It's a type of vaccine that we have used for flu, hepatitis, and HPV in the past. The company says they plan to seek full authorization to distribute the vaccine within the next few months.⁷³

However, there has been resistance from the FDA regarding the Novavax vaccine. On June 24, 2021, Atlantic magazine published an article titled: "The mRNA Vaccines Are Extraordinary, but

⁶⁹ "States with Religious and Philosophical Exemptions from School Immunization Requirements", National Conference of State Legislatures, April 30, 2021.

⁷⁰ Brennon B. v. Superior Court, 57 Cal. App. 5th 367, 2020 Cal. App. LEXIS 1077, 271 Cal. Rptr. 3d 320, 2020 WL 6689639

⁷¹ HOUSING DISCRIMINATION UNDER THE FAIR HOUSING ACT, U.S. Department of Housing and Urban Development

⁷² United States v. Univ. of Neb. at Kearney, 940 F. Supp. 2d 974, 2013 U.S. Dist. LEXIS 56009, 2013 WL 1694603

⁷³ "Novavax Vaccine getting ready to apply for full approval", by Joeli Poole, WDEF News, Chattanooga, TN, September 7, 2021.

Novavax Is Even Better”, pointing out the lack of publicity surrounding the Novavax vaccine, even though it was a traditional vaccine and was more effective than the current vaccines and testing showed a greatly reduced rate of side effects. The article goes on to say the FDA does not appear to be eager to approve it, and it could be months until it is approved:

"At the end of January, reports that yet another COVID-19 vaccine had succeeded in its clinical trials—this one offering about 70 percent protection—were front-page news in the United States, and occasioned push alerts on millions of phones. But when the Maryland-based biotech firm Novavax announced its latest stunning trial results last week, and an efficacy rate of more than 90 percent even against coronavirus variants, the response from the same media outlets was muted in comparison."

"If the FDA sees no urgency, the Novavax vaccine might not be available in the U.S. for months, and in the meantime the national supply of other doses exceeds demand. But the asymmetry in coverage also hints at how the hype around the early-bird vaccines from Pfizer and Moderna has distorted perception. Their rapid arrival has been described in this magazine as "the triumph of mRNA"—a brand-new vaccine technology whose "potential stretches far beyond this pandemic." Other outlets gushed about "a turning point in the long history of vaccines," one that "changed biotech forever." It was easy to assume, based on all this reporting, that mRNA vaccines had already proved to be the most effective ones you could get—that they were better, sleeker, even cooler than any other vaccines could ever be."⁷⁴

But recently The CDC announced that participants in the Novavax PREVENT-19 Phase 3 clinical trial are considered fully vaccinated two weeks after they have completed the vaccine series. On September 14, 2021, Japan secured 150 million doses of the Novavax vaccine.⁷⁵ These are encouraging signs that may point to a fourth-quarter 2021 approval.

In closing-

The Pacific Justice Institute is not anti-vaccination, it is pro-freedom. Undoubtedly the Covid 19 vaccines have served portions of the American population very well, and have saved lives. We commend those who have worked tirelessly since the outbreak of the pandemic to make those vaccines available in record time.

However, because they have been approved only under the Emergency Use Authorization, they should not be mandated on any American. Further, even if one or more vaccines receive full

⁷⁴ "The mRNA Vaccines Are Extraordinary, but Novavax Is Even Better", by Hilda Bastian, The Atlantic, June 24, 2021.

⁷⁵ "Novavax Vaccine getting ready to apply for full approval", by Joeli Poole, WDEF News, Chattanooga, TN, September 7, 2021.

FDA approval, Americans should have the right to assess their own risk and make informed decisions as to whether or not they want to be vaccinated.

There is risk involved in nearly everything we do in life. We as free citizens assess that risk and act accordingly. This nation was brought forth by people who took the great risk of traveling across the Atlantic Ocean to come to the New World. The United States of America was founded by people who decided to take the risk of going to war with the world's only superpower to become a free nation. The western part of our nation was settled by people who took the risk to travel across the wilderness by horse and buggy.

As previously stated, the odds of survival when contracting Covid 19, even if untreated, for healthy people under the age of 50 is 99.98% or higher⁷⁶. American citizens should have the right to examine that risk and decide whether or not a vaccination is right for them. They should not be forced in either direction by their government, nor should they become another class of citizen based on the decision they make.

⁷⁶ TEN MEDICAL FACTS REGARDING THE COVID-19 EXPERIMENTAL VACCINES, Dr. Shelley Cole, Medical Director AFLDS, dated April 12, 2021.