




COVID-19

UPDATE:
December 18, 2020

**Coronavirus / COVID-19
Response Team**


MILLER 
JOHNSON
Attorneys

1

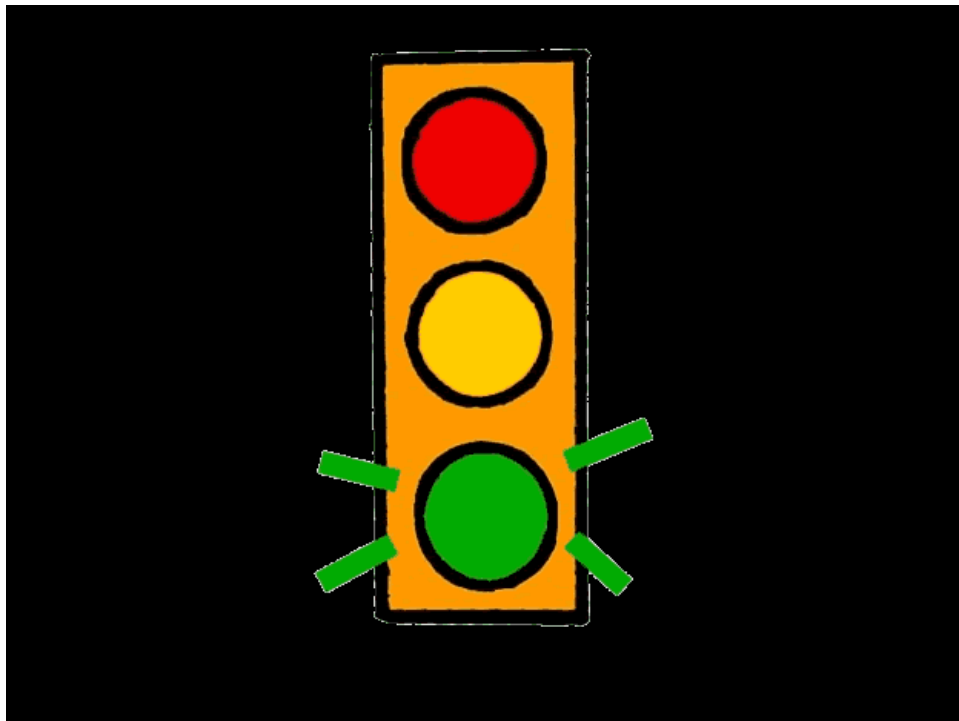
MILLER 
JOHNSON
Attorneys

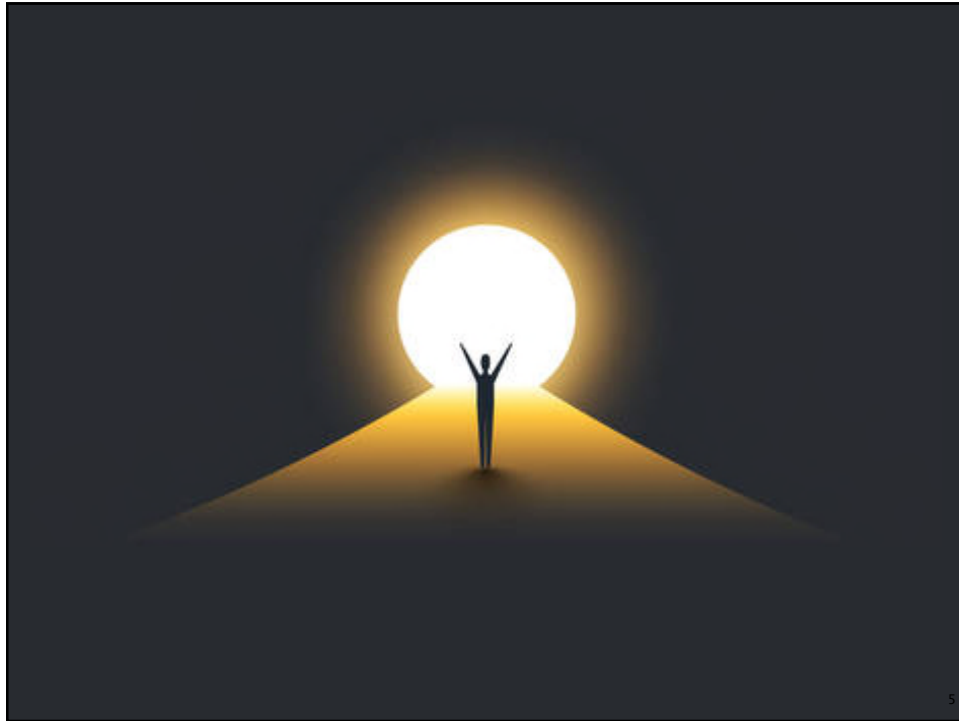
**The New EEOC Guidance
Regarding COVID-19
Vaccinations**

» Sarah Willey

MILLER 
JOHNSON
Attorneys

The materials and information have been prepared for informational purposes only. This is not legal advice, nor intended to create or constitute a lawyer-client relationship. Before acting on the basis of any information or material, readers who have specific questions or problems should consult their lawyer.





Today's Topics

1. What do you need to know if you plan on requiring employees to receive the vaccine?
2. What do you need to know if you plan to make vaccination optional?

Current Status of FDA Approval

- Pfizer-BioNTech vaccine received EUA from FDA on 12/11
 - **Authorized Use:** for the prevention of COVID-19 for individuals 16 years and older
 - **Contraindications:** Do not administer to individuals with known history of severe allergic reaction to any component of the vaccine
 - **Possible side effects:** injection site pain, fatigue, headache, muscle pain, chills, joint pain, fever, injection site swelling, injection site redness, nausea, malaise, and swollen lymph nodes

Pfizer Fact Sheet for Recipients and Caregivers

- Tell the vaccination provider about any of the following conditions:
 - have any allergies
 - have a fever
 - have a bleeding disorder or are on a blood thinner
 - are immunocompromised or are on a medicine that affects your immune system
 - are pregnant or plan to become pregnant
 - are breastfeeding
 - have received another COVID-19 vaccine

Pfizer Fact Sheet for Recipients and Caregivers

- **WHAT IF I DECIDE NOT TO GET THE PFIZER-BIONTECH COVID-19 VACCINE?**
 - It is your choice to receive or not receive the Pfizer-BioNTech COVID-19 Vaccine. Should you decide not to receive it, it will not change your standard medical care.
- **WHAT IF I AM PREGNANT OR BREASTFEEDING?**
 - If you are pregnant or breastfeeding, discuss your options with your healthcare provider
- **KEEP YOUR VACCINATION CARD**
 - When you get your first dose, you will get a vaccination card to show you when to return for your second dose of Pfizer-BioNTech COVID-19 Vaccine. Remember to bring your card when you return.

Current Status of FDA Approval

- Moderna expected to also receive EUA today
 - That vaccine will have its own EUA Fact Sheets
- Other vaccines may also receive FDA approval for use in US
 - AstraZeneca - phase 3
 - Johnson & Johnson - phase 3
 - Novavax - phase 3

1. What Do You Need To Know If You Plan On Requiring Employees To Receive The Vaccine?

Vaccine is NOT a Medical Exam

- This means that private employers CAN decide to mandate that employees receive the vaccine... But with several exceptions and considerations.

Screening Questions

- Employee is instructed to give vaccine provider information regarding certain health conditions
- If vaccine is mandatory and provided by the employer, these are health screening questions under the ADA.
 - Must be job-related and consistent with business necessity
 - This means that employer would have to show that it would be a direct threat to the employee or others if the employee does not receive the vaccine

Proof (Vaccination Record)

- Employer can request proof of vaccine
- Maintain in confidential employee health file

Potential Accommodations

- Employers must consider ADA and religious accommodations
 - Have an accommodation process ready to go
 - If employee has a legitimate disability or sincerely held religious belief, analysis will turn to direct threat analysis
- Pregnant/breast feeding employees should also not be mandated

Direct Threat

- EEOC says that employer must show that an unvaccinated employee would pose a direct threat due to a “significant risk of substantial harm to the health or safety of the individual or others that cannot be reduced by reasonable accommodation.”
- Did not say that the current COVID-19 pandemic is enough to satisfy that standard
 - Must be individualized assessment regarding the duration of the risk, nature and severity of harm, likelihood of harm and imminence of harm

Direct Threat

- Refusal to get vaccine due to disability or religious belief does NOT automatically mean exclusion from the workplace
 - Must consider alternative accommodations- i.e., protective equipment, social distancing, etc.
 - Challenge - CDC states that ALL of these things must continue for now even after vaccination.

2. What Do You Need To Know If You Plan To Make Vaccination Optional?

Screening Questions

- If employer provides the vaccine, employee must have the choice as to answer the questions
- Can decline to administer the vaccine if the employee declines to answer them

Confidentiality of Medical Information

- Can require proof of vaccine to understand who has received it
 - Same confidentiality requirements

Intentional Efforts to Encourage the Vaccine

Employee Communication Campaign

- FAQs
- Leadership getting it
- Vaccinatewestmi.com
 - FAQs
 - Flyer from Kent County Health Department

Legal Options for Incentivizing Vaccine

- Be careful not to cloak a mandate as an incentive
- PTO for missed work time to get it
- No longer pay for COVID-19 related absences (post FFCRA, check state law)

Other Questions



- Should I have a policy?
- Must insurance cover it?
- Is it otherwise free?
- Do employees still have to follow CDC/MDHHS/MIOSHA workplace requirements after they get it?
- Will schools require it for students?

MILLER JOHNSON
Attorneys



Sarah Willey
269.226.2957
willeys@millerjohnson.com

millerjohnson.com

45 Ottawa Ave SW Suite 1100 Grand Rapids, MI 49503	100 W Michigan Ave Suite 200 Kalamazoo, MI 49007	409 E. Jefferson Ave Fifth Floor Detroit, MI 48226
----------------------------------------------------------	--------------------------------------------------------	----------------------------------------------------------

23

Resource Center

<https://resources.millerjohnson.com/>

MILLER JOHNSON
Resource Center

Guidance Contact Account Log in

Our redesigned, online **Resource Center** is one of the highest value propositions we've ever offered to clients and members of the business community. You get 6 months of unlimited access, for the cost of a few hours of legal counsel, to an extensive collection of material across our employment and labor, business and corporate, and litigation practices.

Now featuring 18 sections with content organized by subject for easy reference including topics like FFCRA, Preparedness Plans, Reductions in Force, Safety, and Telecommuting as well as industry specific guidance, the **Resource Center** serves as a blueprint for businesses.

Whether you are returning your workforce after disruption, establishing new protocols, or continuing operations and looking for a one-stop shop for decision-making tools, the Resource Center serves as an on-demand, self-serve library of legal solutions without incurring hourly fees.

[Subscribe](#) [Log In](#)

Here is a sampling of what is covered by your organization's subscription:

