



## REQUIRED EXEMPTIONS FOR EMPLOYEE FLU VACCINE MANDATES

**According to both federal and California state law, employers cannot require any employee to get the flu (or any other) vaccine, without other options.**

### **Federal Law Requires a Religious Belief and Disability Exemption**

Per the U.S. Equal Employment Opportunity Commission which enforces [Federal laws prohibiting employment discrimination](#), employees are protected from employment discrimination when it involves religious and disability discrimination:

“Religious discrimination involves treating a person (an applicant or employee) unfavorably because of his or her religious beliefs. The law protects not only people who belong to traditional, organized religions, such as Buddhism, Christianity, Hinduism, Islam, and Judaism, but also others who have sincerely held religious, ethical or moral beliefs.” (<https://www.eeoc.gov/religious-discrimination>)

“The laws enforced by EEOC against disability discrimination provide job applicants and employees with four basic rights:

- Prohibit an employer from treating you differently, or less favorably, because you or a friend, parent, or someone else you associate with has a disability, has a history of once having a disability, or is treated as having a disability.
- Prohibit harassment at work by managers, co-workers, or others in your workplace based on a person's disability.
- Give you the right to request reasonable workplace changes to allow you to apply for a job, perform your job, have access to the workplace, or enjoy the same benefits available to other employees. We call these requests for "reasonable accommodation."
- Strictly limit what an employer can ask you about your health and require an employer to keep any medical information you share private, with very limited exceptions.
- Protect you from being punished or harassed at work because you or someone you closely associate with (for example, a relative or close friend) complains about disability discrimination. We call this your right to be protected from retaliation.

(<https://www.eeoc.gov/youth/disability-discrimination-01>)

This is underscored by an article in the National Law Review (July 28,2020)

(<https://www.natlawreview.com/article/vaccinate-or-terminate-mandatory-vaccination-workplace-policy>), which states:

“The EEOC first tackled mandatory vaccination in 2009 in response to the H1N1 (“swine flu”) pandemic and incorporated into its guidance established law concerning medical testing and religious objections. In its publication [Pandemic Preparedness for the Workplace](#), the EEOC provided guidance regarding disability-related medical inquiries and medical examinations that might be relevant in a pandemic. As part of the 2009 guidance, the EEOC unequivocally concluded that both the ADA and Title VII prohibited an employer from compelling its employees to be vaccinated for influenza regardless of their medical condition or religious beliefs – even during a pandemic.”

## **California State Law Requires a Declination Statement**

According to the California Occupational Safety and Health Administration (Cal/OSHA)'s Aerosol Transmissible Diseases Standard, Title 8, California Code of Regulations (CCR) Section 5199:

“Employers must make available the vaccinations that are appropriate for their employees’ exposures. All covered employers must make the influenza vaccine available during flu season...Employees are permitted to decline any recommended vaccination, but the employer must ensure that they sign the statement...for each declined vaccine...Employees who decline the seasonal influenza vaccination must sign the declination statement...An alternative declination statement is acceptable as long as it meets the CDPH requirements of Health and Safety Code Section 1288.7.” ([https://www.dir.ca.gov/dosh/dosh\\_publications/ATD-Guide.pdf](https://www.dir.ca.gov/dosh/dosh_publications/ATD-Guide.pdf))

While this regulation is specifically for employees who would have occupational exposure (defined as “exposure from work activity or working conditions that is reasonably anticipated to create an elevated risk of contracting any disease caused by ATPs or ATPs-L if protective measures are not in place.”), one has to wonder if those with occupational exposure (aka high exposure to the flu in their workplace) can decline a vaccine, should those who do not have occupational exposure be able to decline as well.

**Summary: Employers must allow employees, in California, to decline the flu or any other vaccine, if they work in an environment with occupational exposure and if they sign a declination statement. This should also apply to those without occupational exposure, but if not, by federal law, religious and disability exemptions must be allowed for all employees.**

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