

Employer Mandates for COVID 19 Vaccination

Michael M. Costello, JD, MBA

Department of Health Administration & Human Resources, University of Scranton, Scranton, PA (USA)

Abstract— *The successful development and widespread distribution of an efficacious COVID 19 vaccine cannot be expected to bring an instantaneous conclusion to the COVID 19 pandemic. Anti-vaccination sentiment among the general public and governmental reluctance to require vaccination of citizens will probably further delay a resolution to the pandemic. However, private sector employers would seem to have the ability to require existing and prospective employees to be vaccinated.*

Keywords— *COVID 19 Vaccine; Condition of Employment.*

I. INTRODUCTION

As the northern hemisphere transitions into the autumn season, reported COVID infections have been shown to be increasing in several regions of the world (The Economist p. 15). Governmental response to the growing number of infections has varied from autocratic shutdowns to *laissez faire* policies as nations “desire to escape a trade-off between shutting down to keep people alive and staying open so that life goes on.” (ibid)

Gostin (p.362) has written of three necessary prerequisites for influenza pandemics which may also categorize the current COVID 19 pandemic: the existence of a novel virus, the ability to infect humans; and efficient human-to-human transmission.”

II. VACCINE DEVELOPMENT

Major pharmaceutical firms have been rushing to develop vaccines capable of immunizing individuals against infection, but to date, none have completed Phase III human subject trials necessary to verify the efficacy and safety of the formulations. More than one vaccine may be brought to market after successful completion of the human trials, but current estimates of wide spread availability of a safe and effective vaccine range from mid to late 2021, given the logistical concerns of manufacture and distribution.

But the successful completion of vaccine trials and widespread distribution of one or more approved vaccines does not necessarily equate to large scale inoculation of national populations. Costello (2020) wrote that vaccine coverage in the EU and United States decreased from 2010 to 2020. The article cites vaccine refusal by intended recipients as a primary concern leading to the decreased coverage. In the US, this is often referred to as the “anti-vaxer” movement allegedly driven by web-based news accounts that vaccinations are harmful to those who receive them.

In a 1905 US Supreme Court case, the court ruled that local municipalities could impose fines on citizens who refused to be vaccinated against small pox if the state authorized such local programs (Jacobson v. Massachusetts). But in the current political climate in the EU and US it would seem doubtful that any national government would compel its citizens to be vaccinated against COVID 19.

However, private employers would most likely be able to compel current and prospective employees to be vaccinated as a condition of employment. In some nations, constitutional provisions might prohibit the government from mandating that public sector employees be vaccinated, but private sector employers would seem to have discretion to require vaccinations (Cihon and Castagnera, p.613). Private sector employers could cite both economic and public health reasons for requiring employee vaccination. If all members of the workforce were administered an effective vaccine, successful continuity of the economic enterprise could be expected to continue since fewer employees would become infected and miss time at work due to isolation and quarantine. Employees who wished to continue working through pandemic conditions might well expect their employers to mandate vaccination to keep them safe.

III. CONCLUSION

The successful manufacture and distribution of a COVID 19 vaccine will not instantaneously end the pandemic and political pressures may be expected to somewhat inhibit vaccine administration among the general public, but employers in the private sector may see distinct benefits to requiring employee vaccination.

REFERENCES

- [1] Cihon, P. and Castagnera, J. (2017) *Employment and Labor Law*. Ninth edition. Boston, MA: Cengage Learning.
- [2] Costello M, Drgog J, Krcmeryova, L, Murgova, A., Gallova, A., Bujdova, A., Tomanek, P., Olah, M., Muss, C. (2020). “Vaccine Refusal and its Legal and Ethical Consequences”. *Clinical Social Work and Health Intervention*. 11(2). 2020.
- [3] “Why governments get it wrong.” *The Economist*. September 26 – October 2, 2020.
- [4] *Global Health Law* (2014) by L. O Gostin. Cambridge, MA: Harvard University Press.
- [5] *Jacobson v. Massachusetts* 197 US 11 (1905)