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## Coates' Canons Blog: An In-Depth Look at Medical Exemptions from COVID-19 Vaccine Mandates

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An increasing number of employers are making vaccination against COVID-19 a condition of employment. In the near future, the federal Occupational Safety and Health Administration (OSHA) and the North Carolina Division of Occupational Safety and Health (NC OSH) are likely to require most larger employers to adopt a vaccine mandate (see here). Vaccine mandates are lawful, subject only to medical exceptions required by the Americans with Disabilities Act (ADA) and religious exceptions required by Title VII of the Civil Rights Act of 1964 (see here). Media reports suggest that employees are asking for medical or religious exemptions in significant numbers. This blog post looks at the medical exemption under the ADA. What kinds of conditions would justify an exemption? What documentation may an employer require? A future blog post will address requests for religious accommodations.

### Background

As a general rule, the ADA requires employers to provide a reasonable accommodation to the disabilities of employees. A medical condition that would make it dangerous for an employee to receive a COVID-19 vaccination would be a disability that would require an accommodation. The likely accommodation would be exemption from the vaccination requirement. An employer may require documentation from a medical professional sufficient to establish the existence of a disability and to show how it interferes with the employee's ability to perform job duties or fulfill conditions of employment.

Suppose an employer requires all employees to be vaccinated against COVID-19 and an employee asks for an exemption as an accommodation under the ADA. The employer is entitled to documentation from the employee's health care provider about both the nature of the medical condition that makes vaccination inadvisable. *How does* the condition makes it unsafe for the employee to receive any or all of the COVID-19 vaccines? The EEOC has said that it generally considers exemption from a vaccine requirement to be a reasonable accommodation in where an employee provides such information. But an employee who fails to provide the information requested, attested to by their physician, is not entitled to an accommodation. The employee may be held to the vaccination requirement and, ultimately, fired.

### Few Medical Conditions or Disabilities Stand in the Way of COVID-19 Vaccination

As it happens, there are few medical conditions that prevent someone from safely getting a COVID-19 vaccine. There are, however, many misconceptions about the safety of the vaccine for people with certain disorders. The federal Centers for Disease Control has made clear that **people who have the following conditions may safely be vaccinated against COVID-19:**

- autoimmune conditions, including Guillain-Barre syndrome and chronic fatigue syndrome;
- being immunocompromised or taking medications that suppress the immune system;
- allergic reactions to ingredients not in any of the COVID-19 vaccines;
- alpha-gal meat allergy;
- history of Bell's palsy;
- local injection site reactions (redness, pain, itchiness) after previous vaccinations;
- expected vaccine side effects experienced from previous COVID-19 or flu vaccines (fever, chills, fatigue, headache, vomiting, diarrhea, muscle or joint pain);
- pregnancy and breastfeeding.

Further, according to the CDC, previous infection with SARS-CoV-2, the virus that causes COVID-19, is *not* a medical reason for which exemptions should be granted. Employees who have been infected with COVID-19 should still be vaccinated as vaccination protects against re-infection. An employee with COVID-19 who was treated with monoclonal

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antibodies or convalescent plasma, however, should wait until 90 days after treatment before getting vaccinated. Similarly, an employee who suffered from multisystem inflammatory syndrome (MIS-A) during or after COVID-19 infection should also wait until 90 days after COVID-19 infection or diagnosis with MIS-A (MIS-A is a condition in which different body parts become inflamed, including the heart, lungs, kidneys, brain, skin, eyes, or gastrointestinal organs).

### **Allergic Reactions to Ingredients in the COVID-19 Vaccines**

The most common medical conditions for which an exemption would be required under the ADA are known allergic reactions to ingredients in a COVID-19 vaccine or immediate reactions to a previous dose of one of the vaccines. According to the CDC, a severe allergic reaction is one that needs to be treated with epinephrine, an EpiPen or with medical care. An immediate allergic reaction is one that occurs within 4 hours of vaccination and includes symptoms such as hives, swelling, wheezing or respiratory distress. For comprehensive information on allergies and the COVID-19 vaccines, see the CDC webpage *COVID-19 Vaccines for People with Allergies*.

### ***Allergic Reactions to COVID-19 Vaccination Ingredients are Rare***

The Pfizer and Moderna mRNA vaccines contain *polyethylene glycol (PEG)*. PEG allergies can be serious, but they are rare—so rare that PEG is a primary ingredient in many laxatives and an inactive ingredient in many other medications. The Johnson & Johnson vaccine contains *polysorbate 80*. Like PEG, it can cause severe allergic reactions. But it is also commonplace, found in creams, ointments, and lotions, and it is an additive in tablets. ***The CDC website has a list of ingredients for each of the COVID-19 vaccines here.*** Employers may require employees and their health care providers to list the specific ingredient(s) to which the employee is allergic. An employer does not have to accept a blanket statement that the employee “is allergic to vaccine ingredients.”

Luckily for employees and employers, an allergy to an ingredient in the mRNA vaccines produced by Pfizer and Moderna usually usually does not mean an allergy to the Johnson & Johnson vaccine and vice-versa. Taking the other vaccine is what the CDC recommends.

### ***Common Allergens That Are NOT in Any of the COVID-19 Vaccines***

None of the three COVID-19 vaccines currently in use contain eggs, gelatin, latex or preservatives – substances to which many people are allergic. They do not contain metals such as iron, nickel, cobalt, lithium or rare earth alloys. All three vaccines are free from manufactured products such as microelectronics, electrodes, carbon nanotubes or nanowire semiconductors.

### **What a Medical Exemption Request Form Should Look Like**

An employer may allow employees simply to state the reasons why they should be granted a medical exemption from the vaccination requirement. The far better practice would be to require a form signed by the employee’s medical provider. The form should make clear what kind of provider counts. The broad categories of practitioners from whom the Family and Medical Leave Act regulations require employers to accept FMLA certifications *do not apply here*. In fact, many hospitals, in their role as employers, require the signature of a licensed physician, physician assistant, or nurse practitioner. They do not typically honor requests signed by R.N.s, chiropractors or holistic health practitioners.

To make the form easier for the provider to complete and for the employer to review, consider using check-off boxes. One box might be for diagnosed allergies to a vaccine ingredient, with an instruction to the provider to name the specific ingredient to which the employee is allergic, the date of diagnosis, and the nature of the allergic reaction. It might be worth noting on the form that an allergy to one type of vaccine provides an exemption to only that one type. An employee allergic to components of the mRNA vaccines would not be exempt from the Johnson & Johnson vaccine and vice-versa.

A second check-off box might be for severe allergic reactions (anaphylaxis or any reaction requiring the use of epinephrine, an EpiPen or medical care) to previous doses of a COVID-19 vaccine or to PEG (used in the Pfizer and Moderna vaccines) or polysorbate 80 (used in the Johnson & Johnson vaccine).

An additional check-off box with room for explanation might allow a provider to describe any other medical condition that precludes vaccination. Employers are entitled to reasonable details and can send the employee back to have the provider

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give more information if the provider has not described why this employee cannot safely receive the vaccine. For this ADA accommodation, employers have the right to a diagnosis or description of the condition and of the way in which it prevents an employee from fulfilling an employment requirement – here vaccination.

For employees asking for a delay in vaccination due to the use of monoclonal antibody treatment or convalescent plasma in treating a previous case of COVID-19, the employer may want to ask for the date of the treatment and grant an exemption that expires 90 days afterwards.

Examples of medical exemption forms used by hospitals as employers are available online. Hospitals have been among the earliest employers to require vaccination as a condition of employment (some acting even before OSHA issued its Emergency Temporary Standard (ETS) for healthcare workers). See here to see the form used by the UNC Health system and here to see the form used by DukeHealth. They are similar and both are provided as examples by the Society of Hospital Epidemiologists. A form used by the University of Pennsylvania health system breaks down the check-box reasons differently (note that the employee certification should not be copied as HIPAA does not apply to employers and employment records and this certification is specific to the procedures of the health system).

## Conclusion

Employers requiring vaccination against COVID-19 must accommodate those who are unable to take any of the authorized vaccines for a legitimate medical reason. The accommodation would likely include an exemption from the vaccination requirement. As I discussed here, accommodations may take any one of a number of different forms. But before an employer is required to accommodate an employee, the employer is entitled to a full and complete explanation of the nature of the employee's medical condition and how it precludes COVID-19 vaccination. Given the apparently large number of employees claiming medical exemptions and the relatively few conditions that actually stand in the way of vaccination, employers committed to their mandate would be wise to insist on full documentation.

I will discuss exemptions based on religious exemptions to COVID-19 vaccines in a later blog post.

## Links

- [www.cdc.gov/vaccines/covid-19/downloads/summary-interim-clinical-considerations.pdf](http://www.cdc.gov/vaccines/covid-19/downloads/summary-interim-clinical-considerations.pdf)
- [www.cdc.gov/coronavirus/2019-ncov/vaccines/faq.html?s\\_cid=10492:covid%20vaccine%20ingredients:sem.ga:p:RG:GM:gen:PTN:FY21](http://www.cdc.gov/coronavirus/2019-ncov/vaccines/faq.html?s_cid=10492:covid%20vaccine%20ingredients:sem.ga:p:RG:GM:gen:PTN:FY21)
- [www.cdc.gov/mis/mis-a.html](http://www.cdc.gov/mis/mis-a.html)
- [www.cdc.gov/coronavirus/2019-ncov/vaccines/recommendations/specific-groups/allergies.html](http://www.cdc.gov/coronavirus/2019-ncov/vaccines/recommendations/specific-groups/allergies.html)
- [www.cdc.gov/vaccines/covid-19/clinical-considerations/covid-19-vaccines-us.html#Appendix-C](http://www.cdc.gov/vaccines/covid-19/clinical-considerations/covid-19-vaccines-us.html#Appendix-C)
- [ortp.guidelinecentral.com/wp-content/uploads/sites/10/2021/08/UNC-Medical-Exemption-Form.pdf](http://ortp.guidelinecentral.com/wp-content/uploads/sites/10/2021/08/UNC-Medical-Exemption-Form.pdf)
- [covidvaccine.duke.edu/sites/default/files/Request%20for%20Medical%20Exemption%20from%20COVID-19%20Vaccine.pdf](http://covidvaccine.duke.edu/sites/default/files/Request%20for%20Medical%20Exemption%20from%20COVID-19%20Vaccine.pdf)
- [coronavirus.upenn.edu/sites/default/files/University%20of%20Pennsylvania%20Medical%20Exemption%20Request%20Form.pdf](http://coronavirus.upenn.edu/sites/default/files/University%20of%20Pennsylvania%20Medical%20Exemption%20Request%20Form.pdf)