Impact on Employers of the FDA Approval of the Pfizer-BioNTech COVID-19 Vaccine

By Adam Gutbezahl on September 8, 2021



The U.S. Food and Drug Administration ("FDA") recently **approved use of the Pfizer-BioNTech COVID-19 Vaccine** for the prevention of the COVID-19 disease in individuals 16 years of age or older. Previously, all COVID-19 vaccinations administered in the United States were approved through Emergency Use Authorization ("EUA"), which enables the FDA to allow for use of medical products during a public health emergency. Some vaccination opponents have used the EUA approval and (prior) lack of full approval as a defense for not receiving the vaccination. The FDA's approval has now negated that purported justification for a person to not receive the COVID-19 vaccination.

The FDA's approval understandably may raise questions for employers. How does this change things? Does this affect my ability to require employees to be vaccinated? While lawyers often love to respond to questions with, "it all depends," we can comfortably say that the FDA's approval does not change the legal landscape.

As we previously addressed back in **December 2020** and again in **June 2021**, employers may require all employees physically entering the workplace to be vaccinated; however, employers must provide reasonable accommodations to employees who do not receive the COVID-19 vaccine due to a disability or a sincerely held religious belief.

If anything, the FDA's approval of the Pfizer-BioNTech COVID-19 Vaccine simply negates one argument (that was not legally protected) which employees may have previously made for not receiving the vaccine. The same will apply as other COVID-19 vaccine approvals are forthcoming.

Have a question regarding COVID-19 in the workplace or other employment issues? ***Adam Gutbezahl*** *is a member of Ruberto, Israel & Weiner's* ***Employment Practice Group*** *and* ***Litigation Practice Group****. He can be reached at* ***agg@riw.com****, (617) 570-3502, or on Twitter at* ***@gutbezahl****.*

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