

What you need to know about Covid requirements in the workplace in Florida

By Susan Lundine – Managing Editor, Orlando Business Journal,
Aug. 3, 2021

Many companies have been looking at their return to the office after having staff work remotely since last year due to the Covid-19 pandemic.

However, the recent rapid spread of variants of the virus coupled with differing safety guidelines from federal, state and local governments are creating some confusion for businesses, employers and customers.

Here, local employment attorney **Shannon L. Kelly**, a partner with **Allen Norton & Blue PA** law firm in Winter Park, discusses Covid-19 requirements in Florida workplaces to help local firms make decisions:



Shannon L. Kelley

Can businesses and schools require their staff and visitors be vaccinated and or wear a mask? Gov. Ron DeSantis has indicated that he will sign an Executive Order prohibiting mandatory mask policies for students, however it is unknown at this time whether this will address school staff or visitors. Further, Executive Order 21-81 signed on April 2 prevents businesses from conditioning customer access to services based on vaccination status. However, nothing prevents businesses from requiring that masks be worn. Also, there is no prohibition against businesses requiring their staff to be vaccinated. In a non-unionized work force, an employer simply can put this rule in place, but in a unionized workforce, an employer may need to bargain with the union over this requirement.

Am I exempt from taking the vaccine if I'm pregnant or for religious reasons? If an employer requires that its employees receive the Covid-19 vaccination, it will need to consider reasonable accommodations due to either an employee's disability or sincerely held religious beliefs, unless an accommodation poses an undue hardship to the employer. In the Covid-19 context, it is possible that some types of employers, such as medical facilities, would have a compelling argument that accommodating an employee's request to be exempt from an employer's vaccine mandate poses an undue hardship. If an employer is granting accommodations to a mandatory vaccination policy for either disability related or religious reasons, then it would need to grant an accommodation for pregnant employees, as well.

Can places of employment be held legally responsible if anyone on their property gets Covid? Florida Statute 768.38, signed into law in March, places

barriers on this type of claim. It provides that for businesses other than a health care provider, a plaintiff must plead that the claim “arises from or is related to” Covid-19 “with particularity,” which requires a doctor’s sworn attestation that within a reasonable degree of medical certainty the plaintiff’s Covid-19-related harm was caused by the defendant. A court then would decide whether the defendant made a “good faith effort to substantially comply with authoritative or controlling government-issued health standards or guidance at the time the cause of action accrued.” If the court determines the defendant did make a good faith effort, the defendant is immune from liability. Thus, a reasonable effort by a business to comply with prevention protocols becomes very important and may protect them from liability.

Can I require staff and visitors to show their proof of Covid vaccination? In Florida, you cannot require visitors to provide proof of vaccination, but employers can request that employees provide this information.

Must I allow my employees to work from home if they prefer? No. If an employee requests to work from home as a request for accommodation for a medical issue or disability, an employer would need to evaluate this request in accordance with the Americans with Disabilities Act, balancing an employee’s need for accommodation with potential hardship the accommodation may cause to the employer.

Can I require my employees to “police” people about wearing masks or showing proof of vaccination? It would be unlawful to direct employees to request that visitors or customers provide proof of vaccination status. However, employers may have their employees enforce masking requirements.

Must I give my employees time off to get the vaccine? There is no requirement that employers give employees paid time off to get the Covid-19 vaccination.

Can I require that my employees not discuss Covid in the workplace or on social media? An employer needs to be very careful here, as this potentially could be a violation of the employees’ Section 7 rights under the National Labor Relations Act, and depending on the circumstances, an employee who engaged in these activities could be considered a whistle blower and have certain protections in that regard.