

CNN Fires Three Unvaccinated Workers

By Allen Smith, J.D.

August 10, 2021

CNN recently fired three workers for violating its COVID-19 policy by entering the workplace unvaccinated. The network had been relying on an honor system rather than requiring proof of vaccination, according to *The New York Times*.

Employers are well-advised to go beyond the honor system if they require the vaccine or permit employees to not wear masks, said Jonathan Segal, an attorney with Duane Morris in Philadelphia and New York City. Proof of vaccination or signed attestation are other options. Segal also recommended that employers follow the U.S. Centers for Disease Control and Prevention's recent guidance on wearing masks indoors (www.shrm.org/resourcesandtools/legal-and-compliance/employment-law/pages/cdc-masks-indoors.aspx), regardless of vaccination status, in substantial- or high-transmission areas.

We've gathered articles on the news from *SHRM Online* and other trusted media outlets. CNN declined to comment.

'Zero-Tolerance Policy'

"In the past week, we have been made aware of three employees who were coming to the office unvaccinated. All three have been terminated," CNN President Jeff Zucker wrote in an internal memo. "Let me be clear—we have a zero-tolerance policy on this." He added, "We expect that in the weeks ahead, showing proof of vaccination may become a formal part" of the process for entering the workplace.

(*The New York Times* (<https://www.nytimes.com/2021/08/05/business/media/cnn-vaccine-mandate.html>))

Firmer Legal Grounds for Vaccine Mandates

In general, employers can mandate that employees receive vaccines that have full and final approval of the U.S. Food and Drug Administration (FDA), such as the flu vaccine. Because the COVID-19 vaccines are in the FDA's emergency use authorization (EUA) phase, some employers have not required COVID-19 vaccines. But recent legal guidance puts employers on firmer legal grounds when requiring employees to be vaccinated or either undergo regular testing and rigorous safety standards or be fired. For example, the Department of Justice Office of Legal Counsel clarified that EUA status does not prohibit employers from mandating vaccines. Employers nonetheless must provide reasonable disability-related and religious accommodations. In addition, employers should follow state law restrictions, such as Montana's, prohibiting vaccine mandates for employees.

FEATURED RESOURCE HUB PAGE



COVID-19 Vaccination Resources

(JD Supra (<https://www.jdsupra.com/legalnews/are-vaccine-mandates-becoming-the-new-2141748/>))

(www.shrm.org/hr-today/news/hr-news/Pages/COVID-19-Vaccination-Resources.aspx)

'Soft Mandate'

President Joe Biden isn't making COVID-19 vaccines mandatory for federal workers but is making it more difficult for those who choose to remain unvaccinated. They will have to submit to frequent COVID-19 testing, wear masks and socially distance themselves in the office. This approach is known as a "soft mandate," explains Dorit Reiss, a law professor who specializes in vaccine policy at the University of California Hastings Law School in San Francisco. "There are consequences here," Reiss said. "They're just less harsh than 'get vaccinated or you're fired.' "

(Forbes (<https://www.forbes.com/sites/katiejennings/2021/08/03/who-can-mandate-covid-19-vaccination/amp/>))

Strict Mandate

Some employers are taking a stricter stance. More than 150 Houston Methodist employees have resigned or were fired following the hospital system's requirement they get a COVID-19 vaccine to remain employed. The employees had two weeks to get the vaccine after they were suspended for not following the mandate. On June 12, a judge dismissed a lawsuit some workers had filed against Houston Methodist regarding its vaccine mandate.

(*SHRM Online* (www.shrm.org/resourcesandtools/legal-and-compliance/employment-law/pages/unvaccinated-workers-resignations-terminations.aspx?_ga=2.160115005.1881725037.1628510756-1102745045.1615925853))

[*see SHRM members-only* (www.shrm.org/hr-today/news/hr-news/Pages/COVID-19-Vaccination-Resources.aspx) *COVID-19 Vaccination Resource Hub Page* (www.shrm.org/hr-today/news/hr-news/Pages/COVID-19-Vaccination-Resources.aspx)]

Are COVID-19 Vaccine Mandates Legal?

Though there are certain limits to employer vaccine mandates, such as accommodation requirements, the short answer to whether they are legal is yes. "The starting point for this is that employers, private or public, have both the right to set workplace conditions and a duty to provide a safe workplace for the employees," Reiss said. Most experts believe that employers can mandate that workers have a COVID-19 vaccine that is authorized for emergency use or else face workplace consequences. But full approval from the FDA could prompt more businesses to mandate vaccines.

(U.S. News & World Report (<https://www.usnews.com/news/health-news/articles/2021-08-02/explainer-are-coronavirus-vaccine-mandates-for-employees-legal>))

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