

MEMORANDUM

DATE: July 28, 2021

RE: Vaccines & Heat/Fire Rules

Mandating Vaccinations in the Workplace

The U.S. Department of Justice recently issued an opinion stating that employers may mandate that employees receive vaccinations approved under the Emergency Use Authorization (EUA) statute, subject to whatever rights for accommodation the employee may have under other federal or state laws, such as federal and state anti-discrimination laws. Although this opinion demonstrates that the federal government is taking the position that the EUA statute does not prevent an employer from mandating vaccinations, at this point we have no indication whether a court in Oregon will agree with this opinion if an employee challenges an employer's policy. Further, Oregon's existing prohibition on mandating that health care workers be vaccinated supersedes this opinion so that restriction is still valid. Bottom line – there is no clear directive under existing law whether an employer can require an employee to get a vaccine that has been approved under the EUA statute. However, this opinion goes a long way towards providing some support to employers who are wanting to take this step. Employers who want to mandate the COVID-19 vaccine should proceed with caution, consult with their attorney, and make sure to include a process of evaluating employees' requests for accommodation associated with a disability or sincerely held religious belief.

Workplace Safety Rules Associated with Hot and/or Smoky Weather

Oregon OSHA recently issued the Heat Illness Prevention Rule, which took effect earlier this month. Here is a link to the OR-OSHA guidance on this rule: <https://osha.oregon.gov/OSHAPubs/factsheets/fs85.pdf>.

Here is a summary of the key points:

- Applies to workers exposed to temperatures where the heat index is **over 80 degrees** for more than 15 minutes every hour. In that case, employers are required to provide the following:
 - Access to sufficient shade (blockage of direct sunlight)
 - Access to 32 oz. of water per hour per employee (can offer sports drinks also but not instead of)
 - Effective communication in case of emergency
 - Training about workplace factors, employee rights and personal risk factors by August 1

- If heat index is **over 90 degrees** for more than 15 minutes every hour, employers are required to provide the following:
 - All requirements apply for 80 degrees, plus:
 - The ability to observe and monitor employees for signs and symptoms of heat-related illness as well as effective communication with supervisor
 - A 10-minute cool down/rest period for every two hours of work (can coincide with existing rest breaks)
 - Emergency medical and acclimatization plans

Oregon's Mandatory Sick Leave Law Expanded

Oregon Bureau of Labor and Industries recently issued regulations that extend Oregon's mandatory sick leave to include absences associated with:

- The need to evacuate from the employee's home address or the employer's place of business due to an emergency evacuation order of Level 2 (SET) or Level 3 (GO);
- Absences because of a public official's determination that the air quality index or heat index is at a level where continued exposure to such levels would jeopardize the employee's health.

So under this new rule, employees who miss work due to these reasons can use accrued Oregon sick leave to protect those absences.

For more information, please contact our Labor and Employment attorneys, [Amanda Walkup](#), [Andy Lewis](#) and [Mario Conte](#).

This summary provides general information and should not be construed as legal advice or a legal opinion on any specific facts or circumstances. If you have specific legal questions, you are urged to consult with your attorney concerning your own situation.