

## Are Vaccinations of Farmworkers Mandatory

*Written by Rob Roy, Ventura County Agricultural Association*

With the upcoming phase of implementation of vaccinations for certain essential workers, such as farmworkers and related agricultural industry employees (e.g., packing houses, coolers etc.), many growers have been contacting the Association office with respect to whether an employer can require a mandatory COVID-19 vaccination as a condition of employment.

The Association briefly covered this issue in its last E-Memo and provided VCAA members with a CDC document entitled “[FAQs about COVID-19 Vaccination in the Workplace: For Employers](#)”.

As a general rule, the CDC notes that ADA-covered employers should simply **encourage** employees to get the vaccine, rather than requiring them to take it. For employers covered by the American’s with Disability Act, the CDC notes that “an employee may be entitled to an exemption based on an ADA disability that prevents him/her from taking the vaccine. These include disability considerations, such as a potential allergy to the vaccine. **Employers who adopt a policy should make sure that it includes the above consideration for protection of employees.**

Under California’s FEHA, an employee’s refusal to be vaccinated because of an alleged disability reason may also be evaluated under the FEHA. According to VCAA’s General Counsel such vaccinations are for the protection of the worker and fellow workers. This virus constitutes a “direct threat” to the safety and well-being of the employee, as well as fellow employees under the ADA. As such, employees must be strongly encouraged to take the vaccine!

Another exception recognized under Title VII of the Civil Rights involves a religious exception and accommodation. The issue may arise under Title VII or the California Fair Employment and Housing Act. The employer must provide a reasonable accommodation to an employee who communicates his/her sincere religious belief that hinders them from accepting the vaccine. Once the employer has been notified of the need for religious accommodation, the employer must engage in an interactive meeting with the employee to determine if there are any reasonable accommodations available, to avoid the mandatory vaccination. However, it should be noted that general reasonable accommodations for religious reasons are qualitatively different when dealing with an infectious virus. In such a case, possible work scheduling, voluntary substitutes, lateral transfers and change assignments will not resolve the problem of potential workplace infection.

The Association has included with this E-Memo, a [legal memorandum prepared by the law firm of Kahn, Soares & Conway, LLP, legal counsel to the California Strawberry Commission](#). The memorandum addresses in more detail these exceptions under the ADA, Title VII and the FEHA. Also linked herewith are the “[FAQS about COVID-19 Vaccination in the Workplace: for Employers](#)”, as well as a Section K entitled “Vaccinations” from a document issued by the US Equal Employment Opportunity Commission entitled “[What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws](#)”.

VCAA will be reaching out to other statewide agricultural attorneys to discuss the preparation of a policy mandating COVID-19 vaccinations. Anticipated provisions of a potential policy are outlined below:

Any policy with respect to the requirement of mandatory vaccinations should not only cover the above-mentioned exceptions under Title VII and the ADA/FEHA, but should also include the following elements: (1) if workers are allowed to leave work in order to obtain the vaccinations; (2) if so, the payment of non-productive time for their travel time spent to and from the place of the vaccination during the workday; (3) payment of an employee's mileage at the applicable IRS mileage reimbursement rate; and lastly, (4) disciplinary provisions for those instances where employees refuse, without sufficient legal justification, to be vaccinated. Such a policy might also include a provision to require an employee to stay home until such time that he/she has obtained the required vaccination. In such a case, employees may be eligible for a temporary unemployment insurance benefits because the exclusion from work was compelled by the employer.

In the meantime, the County has yet to furnish a specific protocol on how agricultural employees will be vaccinated in Ventura County. At this time, the State's vaccine distributions have not met the needs of individuals within Ventura County who need to be vaccinated. Nevertheless, VCAA recommends that employers stay in contact with the County in terms of registration of employees for available vaccinations. Members are advised to go to the County website at <https://www.venturacountyrecovers.org/vaccine-information/>.