



# Legal Connections

LEGAL EXPERTISE FOR THE BUSINESS COMMUNITY

JANUARY 8, 2021

When you need an attorney, trust the CBA. Check out our online lawyer directory to find what you need: [directory.cbaw.org](http://directory.cbaw.org).

**Jill Snitcer  
McQuain, Esq.**  
Executive Director  
[jill@cbaw.org](mailto:jill@cbaw.org)



## THE ART OF THE PIVOT

The definition of "pivot" is "to turn." I've been thinking about all the pivots that have occurred since March 2020 and all those that continue to be made as the novel coronavirus causes us to rethink how we operate personally and professionally. I was in the midst of a pivot from the full time practice of law after 20 years to venture capital when the pandemic halted my fundraising.



**BRIAN LALIBERTE, ESQ.,**  
Laliberte LLC

and small and medium sized businesses. I did this out of necessity to survive the economic turmoil created by the pandemic.

Here are some thoughts about how to execute a successful pivot.

Assess your current circumstances and context realistically and objectively. If you aren't scared witless at this point, you have to do something even scarier: view volatile, uncertain, complex and ambiguous circumstances as an opportunity. At the same time, you must be wary of the threats presented in your specific situation and account for them in your decision to pivot and in executing your ultimate strategy.

Identify your competitive advantage. Ask yourself: what makes you, or your

I pivoted again. I leveraged the experience and judgment I honed over the course of my legal career and a set of new skills developed during my mid-career MBA studies at The Ohio State University Fisher College of Business to create two new firms: a fractional general counsel platform and a consulting firm focused on early stage technology companies

firm, better at or more uniquely capable of delivering value to your clients or customers that they will choose you over your rivals? This requires a lot of self-awareness and a willingness to be radically honest about the space in which you operate professionally and who you are and what you want personally. Once you identify your advantage, you can organize around it.

State your objectives. What is it that you want to achieve in your pivot given the competitive advantage you identified? What is your desired end state? Once you know these things, you can muster and align your resources to create and deliver the value that attracts and retains clients and customers to you and your firm.

Focus on hitting your chosen competitive sweet spot. Create and deliver value in your own distinct way. Do this consistently and exceptionally.

Behave consistently with your objectives. Commit to your pivot and execute.

Invest in yourself. Take the time you need

to improve your substantive skills and add new ones. Sustain your focus and energy by doing the things you love when you're not at the office.

Inspire your people to invest their time, energy, and talent. Give them the resources to execute the pivot. Support and reward them.

Check your work. Plan, do, check, adjust, adapt. Do this iteratively to continuously improve your ability to pivot successfully. A pivot is evolutionary and never ends. It is as dramatic and necessary as all of the previous stages of a pivot. It requires you to continually adapt, improve, innovate, grow, and apply all of your capabilities.

Persevere. Despite the challenges, believe in yourself and your team. Know that if you don't succeed, you'll gain additional skills and build resilience that will set you up for future success.

Pay it forward. When you succeed, help others who can benefit from your experience. ■

JOIN THE CBA FOR A SERIES ON GETTING FOCUSED WHILE WORKING FROM HOME; LEARN HOW TO USE TOOLS YOU ALREADY HAVE TO CONQUER ORGANIZATION, EMAIL MANAGEMENT, DEADLINES AND MORE: [CBALAW.ORG](http://CBALAW.ORG)

## EEOC ISSUES GUIDANCE ON EMPLOYER-MANDATED COVID-19 VACCINE PROGRAMS

The EEOC recently published guidance in anticipation of employers mandating that their employees get COVID-19 vaccines as they become more widely available. The EEOC confirms that employers can require that employees receive the COVID-19 vaccination as a condition of employment and may also require proof of vaccination subject to certain limitations.

Such limitations include providing reasonable accommodations (including telework and leaves of absence) to employees with disabilities under the Americans with Disabilities Act whose disability(ies) prevent them from getting the vaccine.

Employers mandating COVID-19 vaccines for their employees must also



**JAMES G. PETRIE, ESQ.,**  
Bricker & Eckler



**KOFI A. SEMANYA, ESQ.,**  
Bricker & Eckler

provide reasonable accommodations to employees who are unable to receive the vaccine because of a sincerely held religious belief, practice or observance, unless the accommodation poses undue hardship on the employer under Title VII. Similar to the ADA, if the employer cannot provide a reasonable accommodation, then the employer may exclude the employee from

the workplace by again considering alternative accommodations.

While the employer is allowed to request proof of receipt of the vaccine, subsequent questions, such as asking an employee why they did not receive the vaccine, may elicit information about a disability and would only be allowed if such inquiry is considered job-related and consistent with business necessity.

Lastly, according to the EEOC guidance, administering a COVID-19 vaccine to employees or requiring proof of having received a vaccine does not, by itself, implicate the Genetic Information Nondiscrimination Act (GINA). However, employers should be cautious of pre-vaccination medical screening questions that elicit genetic information and thereby potentially violate GINA. If the

pre-vaccination questions do include questions about genetic information, then employers who want to ensure that employees have been vaccinated may want to only request proof of vaccination, instead of administering the vaccine themselves.

In sum, COVID-19 vaccines will soon be available to many employers and employees. While the EEOC provides that employers can require vaccination as a condition of employment, employers still need to be aware of limitations posed by the ADA, Title VII, and GINA. In anticipation, employers should begin developing plans for whether they want to mandate the vaccine, and if so, how they will administer such a program to ensure compliance with all applicable laws. ■



COLUMBUS BAR ASSOCIATION  
**REAL  
PROPERTY**  
LAW INSTITUTE 2021

A must for the serious real estate practitioner, topics include the state of the real estate market in the wake of COVID-19, dealing with small commercial banks, technology in real estate transfers, and much more.

Register at [cbaw.org](http://cbaw.org) or call (614) 221-4112.

