

Legal Connections



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ONE SHOT FITS ALL? EMPLOYERS STRUGGLE WITH VACCINATION

Most people do not hesitate to vaccinate their children before entering elementary school, or to get an annual flu shot themselves. Others find these decisions difficult. Actress Jenny McCarthy vocally opposed the standardized frequency of childhood vaccines, believing this contributed to her son's autism. And Scientist Jenna Elfman has argued that laws mandating childhood vaccines before enrolling in school or daycare limits parental choice.



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The Americans with Disabilities Act (ADA) permits exemptions from mandatory flu shots when an individual has "true medical contraindications such as anaphylaxis to vaccine, known allergy to vaccine component or severe egg allergy." The medical contraindication must be documented by the primary care provider or sub-specialist caring for the employee.

The ADA permits employers to make medical inquiries following a request for an accommodation if the disability or need for accommodation is not known or obvious. The employee's provider must sufficiently document a disability, as defined by the ADA: the nature, severity and duration of the impairment; the activities that the impairment limits; the extent to which it limits the employee's ability to perform the activities; and why the requested accommodation is needed.

Exemptions may also be requested for religious reasons, where the employee demonstrates a sincerely held religious, moral or ethical belief against vaccination. Denying a requested reasonable accommodation of an employee's sincerely

held beliefs, if it will not impose an undue hardship on the business, could give rise to a discrimination claim.

So what's an employer to do? Consider the following practical pointers:

- Consider job descriptions note vaccinations as an essential function or requirement of the job.
- Establish a policy and deadline for lodging objections to mandatory vaccines, and explain the process for filing objections. Explain the procedure or work alternatives if exempted from the vaccination requirement. Have employees sign for receipt of this policy.
- Consider giving employees requesting an exemption time off to reconsider, which may also give the employer and employee time to evaluate alternatives.
- In some instances, the use of a mask at work during the traditional flu season may reduce the transmission of the flu and be an acceptable accommodation. This could mean added cost to the employer and possible resistance on the part of employees.

Employees are sometimes required to be vaccinated in:

Health Care

Education

As a last resort, an employer may have no choice but to terminate the employee if there is no reasonable accommodation, but this should only be done after consulting with counsel and with an understanding of the potential risks, which can include costly litigation.

There is no shortage of difficult choices on both sides of this debate, so employers and employees are encouraged to communicate expectations and concerns and find acceptable solutions if possible. ■

LEAN SIX SIGMA AT YOUR FIRM: EXTRA/OVER-PROCESSING

As we tackle our last waste, Extra/Over-Processing, this is a good time to pause and talk about what all wastes have in common. In the beginning of the series, we defined value as anything you do that the client is willing to pay for, that's done right the first time and changes the client's situation. Waste is the opposite of value. What is the common denominator? The challenge to think differently about how you get your work done. Waste happens when we keep on doing what we have always done, and we do not encourage innovation and invite people to find a better way whenever possible.

Not too long ago I was at a firm and noticed that a paralegal had UPS overnight envelopes in a prime location on her desk. I asked why they were there; she explained that she used them almost every day to overnight documents to clients. I took the time to try to understand the "why" behind the overnight mailing and determined that the only reason she was doing it was because she had always done it that way. That example is the textbook definition of over-processing, or doing more than necessary to get the job done.



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Other examples of extra/over-processing include doing work that goes beyond the scope of your engagement with the client, especially when you are not going to get paid for it. We call that scope creep. Or emailing and mailing something, when the email is all the client really needs. Another favorite of mine is writing personal cover letters and attaching them to your bills.

Some firms find that excessive research is over-processing and it does not only cost the client more in time, but in research costs as well.

Unfortunately, eliminating waste is not a one-time event. You must adopt a culture that is constantly on the lookout for waste, and constantly in search of finding the better way. It's called Continuous Improvement: the exercise of finding ways to be a little better today than we were yesterday, and finding opportunities to delight our clients by working as efficiently and cost effectively as possible. ■



September 8 11:00am-12:30pm Columbus Bar Association

MARITAL FINANCIAL INFIDELITY

Divorce cases can be tricky enough without the added allegations of financial misconduct. With the help of a forensic CPA, you can learn how to identify under-reported income, spot fraud, and trace assets.



Registration:

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