

# Legal Connections



Learn more about election law information in our latest issue of CBA Lawyers Quarterly: [cbalaw.org](http://cbalaw.org)

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LEGAL EXPERTISE FOR THE BUSINESS COMMUNITY

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## MANDATORY COVID VACCINATIONS: THERE IS NO VACCINE AGAINST LEGAL RISK

At some point, there will be a vaccine for COVID-19. For employers, the question becomes whether they can require their employees to get vaccinated as a condition of employment once a COVID vaccine is available. The answer is generally yes, but employers must be aware of the potential legal risks and practical considerations in mandating vaccination for their workforce.

In 1905, during a smallpox outbreak, the United States Supreme Court upheld a state law permitting localities to require vaccination. In *Jacobson v. Massachusetts*, the Supreme Court held that “a community has the right to protect itself against an epidemic of disease which threatens the safety of its members, including by enact[ing] quarantine laws and health laws of every description.” Numerous courts have used *Jacobson* to uphold government actions relating to COVID-19 against challenges. As one court explained, “*Jacobson* instructs that all constitutional rights may be reasonably restricted to combat a public health emergency.” Additionally, courts have regularly upheld employers’ requirements that health care workers get the flu vaccine.



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Even though courts have upheld mandatory vaccination policies, employees still may request religious and medical accommodations. In turn, employers must at least consider whether such an accommodation is feasible.

Under Title VII, if an employer receives notice that an employee’s “sincerely held religious belief” prevents them from taking the vaccine, the employer generally must provide reasonable accommodation. A personal anti-vaccination belief usually will not support a “sincerely held religious belief.”

Even if an employee does have a religious opposition to getting the COVID-19

vaccine, the employer can still deny the accommodation if it would pose an “undue hardship.” An “undue hardship” for religious accommodation means that the accommodation would impose “more than de minimis cost” to the operation of the employer’s business. This is a lower standard than under the Americans with Disabilities Act. Under the ADA, an employee may be entitled to an exemption from a mandatory vaccination requirement based on a disability that prevents them from taking the vaccine. This would be a reasonable accommodation barring undue hardship (i.e., significant difficulty or expense).

Whether an employee who has a sensitivity to a vaccine is “disabled” for purposes of the ADA is currently unclear. Employers should note that state civil rights laws may provide greater protection than the ADA. But assuming that an employee is disabled, the employer can deny the accommodation by showing, as the Supreme Court explained, “special (typically case-specific) circumstances that demonstrate undue hardship in the particular circumstances.”

The U.S. Equal Employment Opportunity

Commission, which enforces Title VII and the ADA, has classified COVID-19 as a “direct threat” under the ADA. This means that an individual with the virus poses a “significant risk of substantial harm” to others in the workplace which has permitted employers to require medical testing and screening that the ADA usually prohibits. Employers will need to wait to see how the EEOC views a mandatory COVID-19 vaccine as well as whether federal and state agencies issue guidance on workplace vaccination policies.

Employers will need to determine whether mandatory vaccinations are necessary for their workplace and, if so, implement a vaccination policy. They will likely face religious, medical and personal exemption requests and may consider encouraging employees to be vaccinated, distributing public health information about the vaccine and making vaccinations available at the workplace. Employers also must consider what they will do should an employee be an anti-vaxer or claim a religious or medical objection to the vaccine. For some industries, where the work involves high-risk populations or employees work in close proximity, a mandate may make more sense. Employers need to keep apprised of new laws, regulations and agency guidance and consult with counsel in drafting, implementing and administering these policies and in responding to accommodation requests. ■

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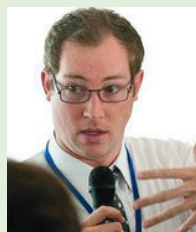
## HOW BUSINESSES CAN SUPPORT DEMOCRACY

As we approach the November 2020 election, businesses across Ohio are donating PPE, registering their employees to vote or encouraging their employees to make their voice heard on Election Day. But there is another big way Ohio businesses can help make sure this upcoming election is a success – by helping our effort to recruit poll workers.

It’s important to remember that this fall, Ohioans will have the same great options they’ve become used to over the years - voting in-person

on election day, early at their county board of elections or by absentee by mail. To make that in-person election run smoothly, Ohio needs more than 55,000 Ohioans to sign up to serve as a poll worker. We need Ohioans to step up and help us defend democracy.

Ohio Secretary of State Frank LaRose is calling it the “Give a Day for Democracy” initiative – and it’s already being embraced by businesses throughout the state to bolster poll worker recruitment. With



ERIC HEIS  
Ohio Secretary of State

65 percent of past Ohio poll workers being age 61 or over, there is a concern that many may choose not to serve this November due to the disproportionate impact of COVID-19 on older populations. The Secretary has also partnered with licensing boards to give Ohio lawyers, CPAs, realtors and others required continuing

education credits if they serve as a poll worker. It’s a real win-win for all involved.

Additionally, businesses must also remember their responsibility to the voter. Stated simply, Ohio’s election law (ORC 3599.06) prohibits any employer from discharging or threatening to discharge an employee for taking a reasonable amount of time to vote on any election day, and from refusing to permit an employee to serve as an election official on any election day.

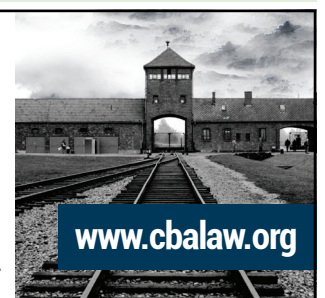
Remember, all voices need the opportunity to be heard. Together, we can make it happen. ■

**Hollywood and the Holocaust:**  
Ethical & Legal Issues Raised by Revisionist History



**OCTOBER 16, 2020**  
1:30-4:45pm on Zoom

Presenters are bestselling author and Emmy Award-nominated producer Joshua M. Greene (left) and internationally known attorney Raymond Brown (right). 3.0 CLE Hours (w/1.0 Prof. Conduct).



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