

The EEOC Did Not Say Federal Law Permits Requiring a Covid-19 Vaccine

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Legal Update by [Informed Consent Action Network](#)

June 16, 2021

In the [article](#), “Can employers require workers to get the COVID vaccine?”, Bailey Aldridge claims that, given the updated rules of the Equal Employment Opportunity Commission (EEOC), “your employer can require you to get a COVID vaccine.” Aldridge even claims that “The EEOC says there are no federal laws that prevent an employer from requiring employees who are physically in the workplace to get the COVID-19 vaccine.”

The EEOC’s [guidance](#), however, does not claim that an employer can legally require an emergency use COVID-19 vaccine. The EEOC guidance merely states that the “federal EEO [Equal Employment Opportunity] laws do not prevent an employer from requiring” an emergency authorized COVID-19 vaccine. That is not surprising because the EEO laws apply only to discrimination based on certain protected classes, such as race, religion and national origin.

Federal law is, of course, far broader than the narrow EEO laws. In recognizing that there are other federal laws that do prohibit an employer from requiring a COVID-19 vaccine, the EEOC’s guidance also states that, “These three vaccines were granted Emergency Use Authorizations (EUA) by the FDA” and that, “It is beyond the EEOC’s jurisdiction to discuss the

legal implications of EUA or the FDA approach.”

When one reviews the FDA’s EUA and its approved labeling, a.k.a. “fact sheets,” for [each COVID-19 vaccine](#), they each clearly provide that: “It is [the vaccine recipient’s] choice to receive or not receive the COVID-19 Vaccine.” The reason each fact sheet includes this language is because the same [section](#) of the Federal Food, Drug, and Cosmetic Act that authorizes the FDA to grant an EUA also requires the Secretary of Health and Human Services to “ensure that individuals to whom the product is administered are informed ... of the option to accept or refuse administration of the product.”

That same section of the Act also authorized the Secretary, and only the Secretary, to provide the “consequences” for refusing to receive an EUA product and the EUAs for each COVID-19 vaccine do not include permission to terminate an employee for refusing the vaccine.

ICAN hopes that the Department of Justice will do its job and enforce the federal law prohibiting mandating an EUA vaccine and will continue to push it to enforce this important law.

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