

[View in browser](#)

*The Pennsylvania Municipal League provides the PELRAS UPDATE as a benefit of the PELRAS Program.
Articles provided by Campbell Durrant, P.C.*



August 2021



Is It Time to Mandate the Vaccine? The Delta Variant Surge and the Full Approval of the Pfizer Vaccine Have Many Employers Considering Mandates

By Benjamin R. Patchen, Esq. and Tiffany R. Allen, Esq.

The 2021 early summer season initially brought relief and hope to many as transmission of the COVID-19 virus steadily declined. The pandemic restrictions that kept us away from loved ones were lifted, and we were able to travel and enjoy our favorite summer activities. Employers brought employees who were working from home back into the office, and relaxed masking and social distancing policies for vaccinated employees. However, as summer progressed a new, stronger mutation of the coronavirus, named the Delta variant, began affecting the United States. As of August 23, 2021, the seven-day average of reported infections was 2,513 cases per day, up 25.6% from a week prior and up more than five times over the last 30 days.

[Read More](#)

Takeaways

- Recent guidelines from the EEOC and DOJ permit employers to ask about employee vaccination status, request proof of vaccination, and to mandate the vaccine, subject to consideration of religious and disability accommodations.
- Employers can mandate vaccination as a condition of employment for at-will employees.
- Employers can require regular testing and mask wearing for employees who choose not to vaccinate as a condition of employment for at-will employees.
- Labor counsel should be consulted on bargaining implications of prior to mandating vaccines or masking and regular testing for unionized employees.

The Bottom Line

Public employers, in light of the surging Delta variant and the FDA Pfizer vaccine full approval, should consider implementing a mandatory vaccine policy, a mask policy, or both. Mandating the vaccines for at-will employees and new hires is an easy act; however, public employers who wish to mandate the vaccine for established bargaining unit employees should review the applicable collective bargaining agreement for safety provisions and consult with labor counsel regarding bargaining over the policy, or its impact.

EEOC Issues Guidance on Sexual Orientation and Gender Identity Discrimination

By Julie A. Aquino, Esq.

The EEOC recently issued guidance regarding sexual orientation and gender identity discrimination in the workplace. As you may recall, the United States Supreme Court held in 2020 that discriminating against employees because of their sexual orientation or transgender status violates Title VII's prohibition on discrimination based on "sex." Accordingly, Title VII forbids sexual orientation and gender identity discrimination when it comes to any aspect of employment, including hiring, firing, pay, job assignments, promotions, benefits, etc. It is also unlawful to subject an employee to harassment that creates a hostile work environment based on sexual orientation or gender identity.

[Read More](#)

Takeaways

- Discriminating against employees because of their sexual orientation or transgender status violates Title VI's prohibition on discrimination based on "sex."
 - Dress codes that would prohibit a transgender person from dressing or presenting consistent with that person's gender identity may be deemed discriminatory, even if the policy's intent was not to target or discriminate against transgender individuals.
 - Employers may have separate bathrooms for men and women, but, according to the EEOC, may not deny an employee equal access to a bathroom that corresponds to the employee's gender identity.
-

The Bottom Line

The EEOC recently issued guidance pertaining to sexual orientation and gender identity discrimination. Although accidental misuse of a transgender employee's preferred name and pronoun does not violate Title VII, intentionally and repeatedly using the wrong name and pronoun to refer to a transgender employee could contribute to a hostile work environment. Furthermore, dress code policies that prohibit a transgender person from dressing or presenting consistent with that person's gender identity could be deemed discriminatory even if that was not the policy's intended purposes. Regarding employee bathrooms, the EEOC advises that employees may not be denied equal access to a

bathroom that corresponds to the employee's gender identity. Read Campbell Durrant's full article for further information regarding the EEOC's recent guidance.

Questions? Please contact:



Tiffany R. Allen
tallen@cdblaw.com
Ph#: [610-227-2597](tel:610-227-2597)



Benjamin R. Patchen
bpatchen@cdblaw.com
Ph#: [610-227-2594](tel:610-227-2594)



Julie A. Aquino
jaquino@cdblaw.com
Ph#: [412-395-1261](tel:412-395-1261)



Pennsylvania Municipal League

414 N. 2nd St.
Harrisburg, PA 17101
800-922-8063

You are receiving this bimonthly (Feb., April, June, Aug., Oct., Dec.) PELRAS Update as a benefit of your membership in The Pennsylvania Municipal League or The League's Public Employer Labor Relations Advisory Service (PELRAS).

