

HEALTH FREEDOM

DEFENSE FUND

NOTICE TO EMPLOYERS

March 2, 2021

This serves as notice to all employers that any compulsory COVID-19 requirement imposed upon an employee violates federal law.¹ Title 21, Section 360bbb-3 of the Federal Food, Drug, and Cosmetic Act (the “FD&C Act”) vests the Secretary of Health and Human Services with the permissive authority to grant Emergency Use Authorizations (“EUAs”). However, the statute requires that:

individuals to whom the product is administered are informed—

- (I) that the Secretary has authorized the emergency use of the product;
- (II) of the significant known and potential benefits and risks of such use, and of the extent to which such benefits and risks are unknown; and
- (III) **of the option to accept or refuse administration of the product**, of the consequences, if any, of refusing administration of the product, and of the alternatives to the product that are available and of their benefits and risks.

On December 11, 2020, the FDA issued an EUA for the emergency use of the Moderna mRNA COVID-19 vaccine for recipients 16 years of age or older. On December 18, 2020, the FDA issued an EUA for the emergency use of the Pfizer/BioNTech mRNA vaccine for recipients 18 years of age or older. On February 27, 2021, the FDA issued an EUA for the emergency use of the Johnson & Johnson COVID-19 vaccine (referred to as the Janssen vaccine) for recipients 18 years of age or older.

Each EUA for the three emergency authorized COVID-19 vaccines was issued in conjunction with a similar Fact Sheet from the FDA. For example, the Janssen fact sheet contains the following notice:

INFORMATION TO PROVIDE TO VACCINE RECIPIENTS/CAREGIVERS

As the vaccination provider, you must communicate to the recipient or their caregiver, information consistent with the “Fact Sheet for Recipients and Caregivers” (and provide a copy or direct the individual to the website www.janssencovid19vaccine.com to obtain the Fact Sheet) prior to the individual receiving the Janssen COVID-19 Vaccine, including:

- FDA has authorized the emergency use of the Janssen COVID-19 Vaccine, which is not an FDA approved vaccine.
- ***The recipient or their caregiver has the option to accept or refuse the Janssen COVID-19 Vaccine.***

Thus, any attempt to force an employee to take a COVID-19 vaccine is contrary to both federal law and the conditions under which the COVID-19 vaccine has been authorized for use.

We at the Health Freedom Defense Fund urge U.S. employers to comply with the FD&C Act and the terms of the EUA and its accompanying Fact Sheet, and advise all employees that they have the right to refuse to take any COVID-19 vaccine. Any other course of action is contrary to federal law.

¹ Title 21 U.S.C. § 360bbb-3(e)(1)(A)(ii)(I-III).