

# HEALTH FREEDOM

## DEFENSE FUND

### FREQUENTLY ASKED QUESTIONS RE THE COVID-19 VACCINE

1. Q: Can my employer force me to take the COVID-19 vaccine (the “Vaccine”) at this time?

A: Currently, the Vaccine is authorized for use as an “investigational product” under an Emergency Use Authorization (“EUA”). It is not an approved product, and is referred to in the law as an “unapproved product” because it has not been fully tested and approved for use by the FDA. Under the federal law that allows the FDA to issue EUAs (21 U.S.C. § 360bbb-3), you cannot be forced to take it. The law provides that recipients of a product authorized for use under an EUA can refuse to take the product.

2. Q: Can my employer fire me for refusing to take the COVID-19 vaccine?

A: This issue has yet to be decided by the courts. Some attorneys take the position that employers can fire employees who refuse to take the COVID-19 vaccine. However, this conclusion conflicts with the language of the critical statute, 21 U.S.C. § 360bbb-3, which provides that an unapproved product authorized for emergency use only, such as the COVID-19 vaccine can only be used if:

**(i)** Appropriate conditions designed to ensure that health care professionals administering the product 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 the emergency use of the product, and of the extent to which such benefits and risks are unknown; and

**(III)** of the alternatives to the product that are available, and of their benefits and risks.

**(ii)** Appropriate conditions designed to ensure 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.

**(iii)** Appropriate conditions for the monitoring and reporting of adverse events associated with the emergency use of the product.

(emphasis added)

Note that the recipient of the product must be informed of the option to refuse administration of the product. An employer who fires an employee for refusing to take the COVID-19 vaccine would therefore be firing an employee for asserting a right guaranteed under federal law. Moreover, the health care professionals administering the product would be administering the product in violation of federal law, and beyond the scope of the authorized use of the product. We therefore conclude that employers may not fire employees who refuse to take the COVID-19 vaccine at this time.

3. Q: Can my employer subject me to special treatment, such as forcing me to work from home, work in separate areas, or wear special protective gear should I refuse to take the COVID-19 vaccine.

A: This question has not been addressed by any court to date. An employer taking actions of nature noted above would seem to be punishing an employee for asserting the federally protected right of refusing to take an emergency vaccine that has yet to be approved by the FDA. The employer subjecting a healthy person, exhibiting no signs of illness or contagion, differently than other employees simply because that person asserted the federally protected right to refuse the vaccine could be seen as attempting to coerce that employee into taking the vaccine against their will, a violation of the federal law quoted above.

4. Q: What should I do if my employer tries to force me to take the COVID-19 vaccine?

A: You should provide your employer with the HFDF Employer Vaccine Notice, that can be downloaded [HERE](#). If your employer continues to insist that you take the vaccine, please contact us by email, and we will attempt to refer you to a lawyer in your area who has been educated on this issue who may be able to assist you. We cannot guarantee that we will be able to assist every person who contacts us, but we will do our best to try to help you.

5. Q: My employer says that the EEOC allows employers to require vaccines. What should I do?

A: Your employer is incorrect with regard to the COVID-19 vaccine. Here is a quote from the [EEOC's FAQ Website](#):

#### **K.4. Where can employers learn more about Emergency Use Authorizations (EUA) of COVID-19 vaccines? (12/16/20)**

Some COVID-19 vaccines may only be available to the public for the foreseeable future under EUA granted by the FDA, which is different than approval under FDA vaccine licensure. The FDA has an obligation to:

[E]nsure that recipients of the vaccine under an EUA are informed, to the extent practicable under the applicable circumstances, that FDA has authorized the emergency use of the vaccine, of the known and potential benefits and risks, the extent to which such benefits and risks are unknown, that they have the option to accept or refuse the vaccine, and of any available alternatives to the product.

The FDA says that this information is typically conveyed in a patient fact sheet that is provided at the time of the vaccine administration and that it posts the fact

sheets on its website. More information about EUA vaccines is available on the [FDA's EUA](#) page.

#### Fact Sheets

[FACT SHEET FOR THE PFIZER-BIONTECH COVID-19 VACCINE](#)

[FACT SHEET FOR THE MODERNA COVID-19 VACCINE](#)

[FACT SHEET FOR THE JANSSEN COVID-19 VACCINE](#)