

# Many Rhode Island companies struggle with question of vaccine mandates

By **Marc Larocque**

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*MANY RHODE ISLAND businesses are still struggling with the question of whether to enforce a COVID-19 vaccine requirement on their employees. Others have already issued a mandate. / AP FILE PHOTO / TED S. WARREN*

PROVIDENCE – Many Rhode Island businesses are struggling with the question of whether to enforce a COVID-19 vaccine requirement on their employees, asking how such a policy could impact their bottom line, and whether it would be worth it with all the potential complications it could cause within the workforce.

Others, worried about the health and safety ramifications of the highly contagious delta variant of COVID-19, and assured by the recent full U.S. Food and Drug Administration approval of the Pfizer vaccine, are now joining a growing list of employers across the country that are embracing vaccine requirements for their workers.

Robert Brooks, a managing partner and chair of the labor law department at the Providence-based Adler Pollock & Sheehan PC, said he's been receiving a flurry of calls in the past few weeks from businesses asking about the pros and cons of an employee vaccine mandate, along with the legal implications of implementing one. Those business clients span industries including entertainment, health care and manufacturing, for the most part, Brooks said.

"The questions are becoming more frequent. We're dealing with it on a daily basis," said Brooks, whose law firm of more than 100 attorneys and support staff adopted an employee vaccine mandate earlier this year. "Employers want to know a number of things. Are there any exceptions that employees can invoke if they need to avoid being vaccinated? Employers also want to talk through whether employees qualify for unemployment, if an employer mandates vaccines and an employee refuses."

Some of the largest Rhode Island-based companies that have implemented vaccine mandates include CVS Health Corp. and Blue Cross & Blue Shield of Rhode Island, both making announcements after the FDA gave full clearance to the Pfizer vaccine on March 23.

However, CVS said its vaccine requirement only applies to one-third of its 300,000 employees nationwide. The CVS vaccine mandate impacts all of the roughly 8,800 employees at the company's Woonsocket headquarters, along with clinical staff in patient-facing roles at more than 6,300 retail stores, including nurses, care managers and pharmacists.

"Due to the spread of delta variant, we are increasing our ongoing efforts for a 100% vaccination rate in our employee population to protect them, our customers, and communities more fully," said CVS spokesperson Charlie Rice-Minoso. "We're pleased that a good number of our employees are already fully vaccinated."

The selective vaccine mandate at CVS resembles policies at several large national retail brands, like Walmart and McDonald's, which have recently required COVID-19 shots for corporate office employees, but not for the lower wage frontline workers who deal with customers on a constant basis.

Some of the smaller employers in Rhode Island that have recently enacted employee vaccine mandates after the FDA announcement include nine performing arts venues, such as Trinity Repertory Company and the Providence Performing Arts Center, which are also requiring customers to show proof of vaccination or a recent negative COVID-19 test. And more should be expected to follow in the coming weeks, Brooks said.

"There was a time when the number of cases was down considerably and most of the workforce, 60 to 75 percent, was vaccinated," Brooks said. "The vaccine mandate wasn't as prevalent an issue on employers' minds. Now, with the delta variant and numbers going up, employers are coming back to revisit this. How do they respond? How do they keep their employees safe? How do they keep their businesses going and production moving in the face of a rising number of cases."

Some have been quicker to react than others. The Pawtucket-based toys and games company Hasbro Inc., acted even before the FDA gave its full approval to a COVID-19 vaccine, citing the rise in cases this summer due to the delta variant in an Aug. 12 announcement about requiring its 1,100 Rhode Island employees to get vaccinated before returning to the office in mid-October, after most employees have been working remotely this year.

Before that, in early August, a local nonprofit called College Crusade mandated 50 full-time staff to get vaccinated, before they went into about 50 different schools to help prepare 3,500 local students per year to succeed in college.

"We felt we had a very strong business rationale to protect our staff and students," said Andrew Bramson, president and CEO of College Crusade. "Some schools have told us that our staff can only come back into their buildings if they are vaccinated. That's the nature of us being guests in their schools."

The largest group in Rhode Island to face a vaccine mandate is employees at hospitals, nursing homes and other state-licensed medical facilities, after Gov. Daniel J. McKee announced a state mandate effective Oct. 1 barring unvaccinated personnel from entering health care settings. (Both Lifespan Corp. and Care New England Health System, the state's biggest hospital systems, announced mandates of their own before McKee made it a requirement statewide, along with some smaller organizations, like HopeHealth, a hospice care company.)

Still, many of the largest private employers in the state have avoided implementing a vaccine mandate.

A spokesperson for the Lincoln-based Amica Insurance Co., which employs 1,778 people in Rhode Island, said the company "is not mandating vaccines at this time," when reached for comment a few days after the FDA announcement. Amica spokesperson Brendan Downing said in an email that the company's Rhode Island headquarters has a "very high vaccination rate without a mandate in place," but that it "remains a fluid situation."

A spokesperson for FM Global, an international mutual insurance company based in Johnston with 1,281 local employees, said its staff based at the Rhode Island headquarters have continued working from home, with no vaccination requirement currently in place.

Most small businesses are not even considering an employee vaccine mandate, said Chris Parisi, president and founder of the Rhode Island Small Business Coalition, which formed during the pandemic and now has 1,500 registered members. That's largely due to the strains

currently facing the labor market, Parisi said, leaving positions unfilled and some businesses understaffed in the wake of the coronavirus pandemic, when enhanced unemployment benefits were offered by the federal government.

"We're already having difficulties when it comes to hiring," said Parisi, who owns a small business called Trailblaze Marketing. "That's one of our top issues right now. When we think about mandating things for employees, we get concerned about what kind of competitive disadvantage this puts us in."

Requiring business owners to mandate employees get vaccinated could also become time-consuming, with the potential for legal issues and unwelcome controversy, Parisi said.

"That takes time away. Time is money," Parisi said. "Small business owners, for the most part, aren't legal experts. They don't know if they can force someone to do something like that. It's tough. We're just struggling to survive. Most small businesses don't have a human resources person, either. So this will be all on the owner."

Parisi said there may be some small businesses that want to implement a vaccine mandate, and add other safety enhancements like improved ventilation and testing protocols, but they should be offered additional support from the state government.

"That's their prerogative," Parisi said. Some say it's an advantage for businesses to make their customers feel more safe. We respect that point. But what we are against is the government telling us how to run our business, especially when we are one of the highest ranked states for vaccination and have one of the lowest hospitalization and fatality rates."

Brooks said when he discusses the issue of implementing an employee vaccine mandate with business clients, he first asks them about the circumstances of the workplace and whether it's really needed.

"If it's a thriving, busy manufacturing business where maintaining production is important, those employers may worry if someone in my shop gets sick and it spreads to a number of employees it could shut me down, or shut down a shift," Brooks said. " For other employers – maybe their business is an office based environment – there's an opportunity for employees to socially distance."

As far as legalities are concerned, the vaccine policy also has to be clearly communicated to employees, Brooks said, and it can't be applied on an arbitrary basis to some employees but not others, such as a boss only telling the worker closest to his office that he must get vaccinated.

Brooks said one of the most important legal considerations when setting up an employee vaccine requirement is making special accommodations for employees who have a legitimate medical reason or a "sincerely held" religious belief keeping them from getting a COVID-19 vaccination, in keeping the U.S. Equal Employment Opportunity Commission guidance drawing from the Americans With Disabilities Act and Title VII of the Civil Rights Act.

"Different workplaces may have different ways of doing that," Brooks said. "An employee could be allowed to work remotely. When teleworking is not possible, those employers might be able to impose a combination of social distancing, mask wearing and periodic testing."

An employer has the right to ask for documentation regarding a medical restriction or a religious exemption, to make sure the reason is legitimate, Brooks said. That could be a letter from a doctor, or a copy of a religious doctrine, he said.

"We've counseled employers if what the employee is saying doesn't seem to be religious or seems manufactured in some way, they could ask for additional information from the employee about the basis of that religious belief, whether it's a teaching from their church, or is it

just something they are coming up with because they don't want to be vaccinated," Brooks said.

If an employee will not comply, and does not have a genuine exemption, they can be terminated, he said. And according to the R.I. Department of Labor and Training, that terminated employee likely is not due any unemployment checks, although each claim is evaluated on a case-by-case basis.

"Rhode Island law states that failing to comply with a company policy — so long as that policy is reasonable and clearly communicated — is not an acceptable separation reason for unemployment insurance," said DLT Director Matt Weldon. "As a result, failing to comply with a clearly and timely articulated vaccine requirement would likely, in most cases, be considered a knowing violation of a reasonable employer policy, which could disqualify an individual from receiving unemployment insurance."

Brooks said his own law office adopted a vaccine mandate for its more than 100 attorneys and support staff and it has "worked out well," with no terminations necessary, after educating holdouts about the advantages and the safety of the COVID-19 vaccines.

"We had a few employees reluctant to get the vaccination more out of fear than any other objection," said Brooks, who helped lead the office vaccination effort. "We did our best to educate them and work with them, and make sure they understood the benefits to co-workers and families. I think luckily for us we were fortunate that all employees agreed and did get vaccinated. It has allowed us during this surge with the delta variant to really become focused just on coming to work, and not worrying about how the delta variant will affect us."

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