

With COVID-19 Vaccinations in Sight, In-House Counsel Ponder Employment Law Issues

“As of today, there is no federal law prohibiting employers from mandating vaccines,” said Janie Schulman, a partner at Morrison & Foerster in Los Angeles.

By Dan Clark

In-house counsel are confident that once a vaccine for COVID-19 is introduced to the market, they will be able to bring their workforces back to the office within a year, a **study** from **Morrison & Foerster** released on Wednesday shows.

But how companies interact with their employees with regard to mandating or encouraging vaccinations is raising a lot of questions that have yet to be answered.

The report states that if a vaccine were made available today, 25% of respondents indicated that they would return to work in the next three to six months. Another 25% said they would return to work in six to nine months, while 24% said they would return to the office in the next nine to 12 months.

The report is based on Morrison & Foerster’s third impact

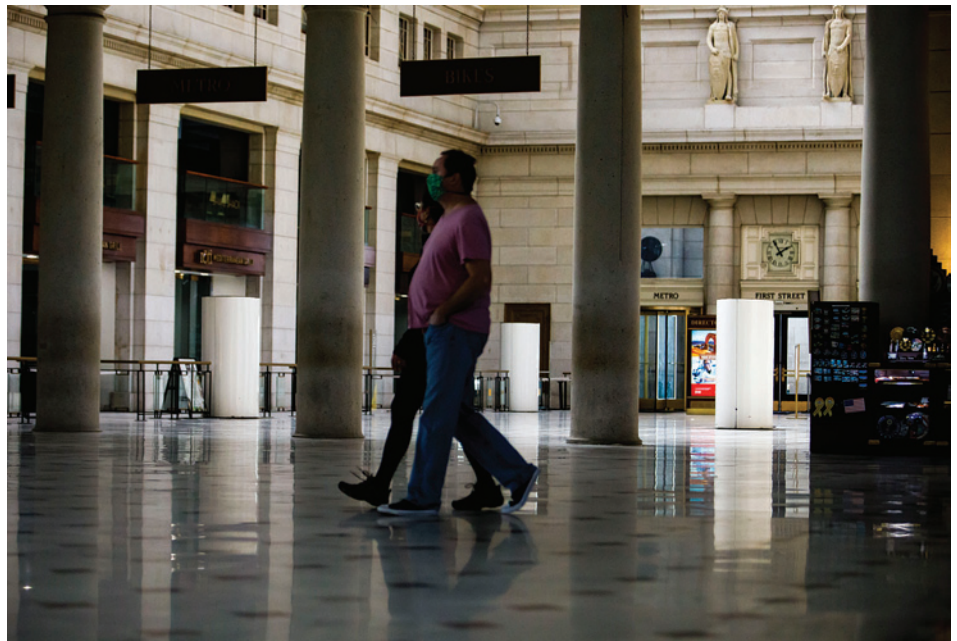


Photo: Diego M. Radzinski/ALM

A nearly empty Union Station during the coronavirus pandemic in Washington, D.C., on Sept. 30, 2020.

survey since the pandemic began. Eighty in-house counsel at companies with revenues from less than \$250 million to more than \$20 billion were surveyed between Sept. 23 and Nov. 10.

Of those 80 respondents, 56% believe the majority of employees would need to be vaccinated

before returning to the office. Just 15% of the respondents said they could return to the office with less than half of employees vaccinated.

Janie Schulman, a partner at Morrison & Foerster in Los Angeles, said whether companies can legally require employees to take a vaccine

before coming back to the office is top-of-mind for many GCs.

“As of today, there is no federal law prohibiting employers from mandating vaccines,” Schulman explained.

The Equal Opportunity Employment Commission has not told employers they are barred from requiring employees to take the vaccine. However, the EEOC’s current guidelines suggest employers highly recommend taking the vaccine.

“The EEOC has also said there is no vaccine yet and we can’t really say what will happen. I don’t know if their position will change once a vaccine is out and being distributed,” Schulman said.

Schulman also noted that any employer that wants to mandate the vaccine should study state and local rules to make sure they can do so. Also, it is likely that there are going to be employees who complain and may try to raise legal issues over it.

“Whether they have legal standing to pursue a valid claim is an entirely different question,” Schulman said.

And as businesses recover, 57% of respondents expect to see an uptick in employment litigation, the report states. Schulman said that is not surprising because of the biggest issues general counsel handle is a corporation’s employment issues.

“Employment litigation has always been a top concern

among in-house counsel because employees are a big part of a company’s expenses and they’re an important tool in the company’s success,” Schulman said.

She said most of the claims that arise out of the pandemic should be covered by workers’ compensation.

“If you go state by state, you’ll see exceptions where an employer acts in a way outside of the normal employment relationship. But that conjures in my mind some really extreme behavior,” Schulman said.

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