

## REQUIRING A FLU SHOT MAY BE HAZARDOUS TO THE EMPLOYER'S HEALTH

QUESTION: I am a small employer, and when someone is out sick it really has an impact on our operations. Because the cold and flu season is upon us, I want everyone here at work to get a flu shot. A couple of the employees, Debbie and Lorena, have indicated to me that they will not get one. I feel they are blatantly working against my interests by unnecessarily risking long absences when they are stricken with the flu! Lorena did not get a shot last year and was out with the flu for over a week, but I guess she didn't learn her lesson. So, I am thinking of making it mandatory for all employees to have a flu shot, and those who refuse will be disciplined for insubordination.

When I mentioned this to Lorena she launched into a lengthy explanation about how her religion precludes her from getting vaccinations of any kind, but I cut her off, told her I don't want to hear any excuses, and reiterated that I just want her to get the shot.

I'm thinking that I will require employees to show me proof that they received a flu shot or they will not be allowed to use sick days to excuse absences. Another idea is to tell employees they have to get a shot or they will not receive a holiday bonus this year. What else can I do to force Debbie, Lorena and any other recalcitrant employees to get the flu vaccination?

ANSWER: None of the above! You may not require employees to get a flu shot; likewise you may not discipline employees who refuse to get a flu shot. Further, it would not be proper for you to manipulate accrued sick leave or bonus dollars based on an employee's refusal to obtain a flu shot, which is akin to retroactively changing employee benefits.

There are actions an employer may take in order to increase chances that employees will be vaccinated against the flu. Examples include offering the flu shot at no cost, and/or making vaccinations available at the work site or other convenient location by scheduling a flu shot clinic.

There are many reasons - with which you may or may not agree - why an employee may genuinely not want to get a flu vaccination: religious convictions (consider Lorena's explanation), concerns about infection or adverse effects from the vaccine, commitment to naturopathic practices that discourage injection of chemical compounds, or simple fear of needles, just to name a few.

Thus an employer must limit its role in vaccinations to that of a facilitator, and avoid ultimatums and other efforts to force employees to be vaccinated.

The flu and the common cold do not generally qualify as a "serious health condition" under federal and state family leave laws (FMLA and OFLA). However, if an illness results in a period of incapacity for more than three consecutive calendar days, and also involves either two or more treatments or a single treatment followed by a regimen of continuing treatment by a

health care provider, it constitutes a serious health condition. In such cases, employers must allow employees leave (although the leave may be unpaid).

In situations when an employee's child has a cold, the flu, or other health condition that requires care but does not satisfy the definition of a serious health condition, OFLA provides for "sick child leave" which entitles the employee to take time off to care for the child.

For more information on this and other important issues affecting Oregon employers, including seminars conducted by BOLI's Technical Assistance Unit, please visit our website at [www.oregon.gov/boli/ta](http://www.oregon.gov/boli/ta). You can also call us at 971-673-0824. See you at our annual employers' conference in Portland!