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# Legal Matters®

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## COVID-19 vaccines can pose traps for unwary employers

**T**he rollout of the Pfizer and Moderna COVID-19 vaccines provides hope for employers that they will soon return to normal operations and profitability.

Many employers may be considering mandating that their workers get vaccinated. But before mandating such a policy, it's important to talk to an attorney about the potential legal traps.

For one thing, a broad mandate could create issues for an employer under the Americans with Disabilities Act, which requires employers to make "reasonable accommodations" for employees with a medical condition that substantially limits at least one major life activity. If there's a legitimate medical reason why a particular worker cannot take the vaccine, you may need to offer a medical exemption.

It's also important to note that under the ADA, employers must show that any medical exam or disability inquiry is "job related and consistent with business necessity," so you need to be careful about asking your workers any pre-vaccination questions if you plan on making the vaccine mandatory. If the vaccination is voluntary, on the other hand, pre-vaccination questions will not be considered disability-related inquiries.

A related consideration is pregnancy-related medical conditions. Not only might these constitute disabilities under the ADA, but the federal Pregnancy Discrimination Act also requires employers to



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accommodate pregnant women. If an employee cannot be vaccinated safely due to pregnancy, you may be required to consider measures that will enable the employee to continue working for you.

You could also have employees who don't want to take the vaccine for religious reasons. This is an area where you need to act with particular care. That's because Title VII of the federal Civil Rights Act of 1964, which prohibits workplace discrimination based on race, nation-

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**HASSELBERG, ROCK,  
BELL & KUPPLER LLP**

4600 N. Brandywine Drive, Suite 200  
Peoria, IL 61614  
Phone: (309) 688-9400 • Fax: (309) 688-9430  
www.hrbklaw.com

Julie L. Galassi • Danny L. Schroeder • Marci M. Shoff • Michael S. McKinley  
Peter J. Lynch • Colt W. Johnson • Melinda L. Mannlein • Siobhan L. Smith

## Mobile home park liable for slip-and-fall in pool



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In many states, if you get hurt as a result of an “open and obvious danger,” you’re generally out of luck because whoever owns the property has no duty to warn you about or protect you from such a hazard. Instead, it’s your responsibility to protect yourself.

But if you’ve been hurt by a condition that, in retrospect, seems like it was open and obvious, you should still talk to an attorney because you may have rights.

Take, for example, a recent case from Michigan, where Debra Sedlecky slipped and fell entering a pool in her residential mobile home community.

Sedlecky sought to hold the community responsible for her harm, arguing that the stairs were unreasonably dangerous. In making her case, she pointed out that the steps she slipped on did not

have slip-resistant treads. She also noted that the steps did not have contrasting colors on their front edges to make them more visible in the water or a handrail that was up to code and extended the length of the stairs.

The community said the slippery nature of the stairs was open and obvious and that they were fit for their intended use. It also argued that video footage showed that Sedlecky slipped because of her own physical limitations and not because of any problem with the stairs, which had passed a state inspection two weeks earlier.

A trial judge agreed with the community and dismissed the case.

But the Michigan Court of Appeals reversed the decision, concluding that Sedlecky had provided enough proof that the stairs violated state safety laws and codes regardless of the results of the inspection. The court stressed that the stairs may have become noncompliant by the time of Sedlecky’s fall.

The court also said the video didn’t make it clear if the plaintiff’s knee gave out, as the community argued, or if she slipped. Now Sedlecky will get a chance to have a jury determine whether the community should compensate her for her harm.

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## *COVID-19 vaccines pose traps for unwary employers*

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al origin, sex and religion, appears to allow workers to opt out of vaccinations on religious grounds. In fact, the U.S. Equal Employment Opportunity Commission, which enforces federal antidiscrimination laws, has fined employers over this very issue.

In 2018, for example, the EEOC levied an \$89,000 fine on a North Carolina hospital that fired three employees for refusing to take the flu vaccine on religious grounds. There’s no reason to believe the same reasoning wouldn’t apply to COVID.

The COVID vaccine may also cause physical side effects. If a worker suffers such side effects after being vaccinated due to an employer mandate, he or she could potentially file for worker’s compensation.

A mandate may cause morale problems within the workforce. So, if your workplace is one where there’s a lower risk of spread (for example, your employees do mostly outside work or they work in spread-out office space), you might consider whether a mandate



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is worth the resentment it might spark.

Finally, if you have a unionized workplace, be aware that a vaccination mandate may be subject to bargaining as opposed to something you can hand down by fiat. Even if the existing contract is one that allows you to implement a vaccination program without further bargaining, you may be better off involving the union in such a decision. Doing so could maximize employee buy-in, which could help you avoid costly grievance and arbitration proceedings.

## When sellers leave their junk behind

Ever toured a home and gotten a sneaking suspicion that the sellers were going to leave a lot of useless junk? If the seller intentionally leaves personal property behind, it could be considered “abandoned.” That means you now own all that stuff, and you’re on the hook for cleaning it out.

To prevent that from happening, it’s a good idea to include language requiring sellers to be out of the house by a certain period prior to closing. Stipulate that all personal property, garbage and debris not included in the sale must be removed by that deadline.

If you are concerned about particular items (like a decaying old boat, a massive console TV in the basement, or excessive paint cans), you can specify removal of those items specifically as part of the purchase agreement.

Alternatively, if you’re not worried about the time and cost of removing the seller’s property, you can add language stipulating that any items left in the house at time of closing become the buyer’s property and that you can dispose of those items as you see fit.

Depending on your contract, items left behind

are not necessarily yours. If it’s possible the seller left items by mistake, you may be required to keep that property safe until it can be picked up or delivered to the owner. But be careful of casual “I’ll get that next week” arrangements, particularly for high-value items. Agreeing to hold property after closing comes with risks and liability and should be avoided.

Consider a penalty provision in which the seller could owe you monetary damages if they’re not out in time, and recognize you may need to delay closing and/or file a small claims case for breach of contract if this occurs



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## Moving? Remember to unpack that estate plan

There’s a lot to think about when you move. In all the hustle and work of a relocation, certain things can get forgotten. Once you have the utilities on and the boxes unpacked, it’s time to have your estate planning documents reviewed by an attorney in your new home state.

Here’s a list of updates that might be needed:

**Estate taxes:** Currently, 12 states and the District of Columbia have state-specific inheritance or estate taxes. Your estate plans may have been drafted to address local taxes which no longer apply. You could wind up with an unexpected tax bill or miss out on the full benefits your new state provides.

**Your executor:** An executor’s role is determined by state law, and some states require your representatives to reside in the state in which your will is probated. If your executor lives out of state, they may have to post a bond to serve or appoint a local representative. Your move may make it impractical or costly for your current executor to serve.

**Communal property:** In some states, property acquired during marriage is considered community

property owned by both spouses. In other states, spouses only own what is under their own name.

These designations can have implications for how your will is carried out, including the step-up in basis for tax calculations. Review the titling of your assets to determine if additional planning is needed.

**Health care directives:** Advance medical directives, living wills and powers of attorney should always be updated when you move to ensure they are in adherence with your local laws. Every state has its own documents and forms, and differences could delay or complicate your representative’s ability to act on your behalf.

**Irrevocable trusts:** Review your named trustee and beneficiaries for an irrevocable trust anytime you or they relocate. Some states may consider the domicile of the trust creator, beneficiary or trustee in determining state income taxes.

Work with your estate planning attorney to determine if any changes are necessary to maximize your tax savings and ensure your wishes can be carried out efficiently and effectively.

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## ‘Deathbed marriages’ vulnerable to challenges



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“Deathbed marriages” between couples where a suitor (often a much younger one) marries someone with a short life expectancy due to age or terminal illness are usually looked upon with suspicion.

However, not every deathbed marriage is an insidious case of an opportunistic con artist trying to get his or her clutches into an elderly or vulnerable person’s estate. Deathbed marriages can also be a way to secure a partner’s legal and financial rights, particularly among same-sex couples who couldn’t legally marry for years.

However, even deathbed marriages that are entered into for honorable purposes can bring legal complications, particularly where there’s no will. For example, if the dying partner has children from a prior marriage, they may resent the sudden

intrusion of a new spouse claiming a right to whatever the spouse’s share of the estate may be under state inheritance laws. They may then seek to get the marriage nullified on grounds that the dying partner was not mentally or physically competent to enter the marriage.

In some states, like Florida, it’s fairly easy to challenge such marriages, since you only need to prove fraud, duress or undue influence by a preponderance of the evidence, which is a low standard of proof. Even where there is a will, aggrieved relatives could potentially challenge that too on grounds of incapacity or undue influence.

That’s why it’s a good idea for a couple where either partner is elderly or terminally ill to consult with a good family law attorney who can help create an estate plan that will survive such challenges.

Of course, if you suspect a loved one is being lured into a deathbed marriage for fraudulent reasons, you should talk to a lawyer about your rights.