

PARTICIPATOR

December 2013

MANDATING FLU SHOTS MAY NOT BE BEST OPTION

Q. Our company operates two assisted living facilities. For the health of our residents, we would like to require all employees to get a flu shot. Is that legal?



A. It's that time of year when employers start offering flu shots in the face of a long winter. In your case, it is easy to understand the goals of protecting residents from infected workers and keeping employees healthy and on the job to care for residents who may be more susceptible to infections.

As a general rule, most North Dakota employers may institute a mandatory vaccine policy and fire workers for not complying with the policy. That's because in North Dakota, most employment is "at will," meaning most employees can be fired for any lawful reason at any time. However, although terminating an employee for refusing to be vaccinated may be lawful, you should exercise caution before doing so. Some employees may be allergic to vaccinations or have other medical reasons for not being vaccinated. Further, there are other reasons for not implementing a mandatory vaccination policy:

- Antidiscrimination laws such as Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act (ADA), and the North Dakota Human Rights Act (NDHRA) may make mandatory vaccination policies unlawful. For example, if an employee's sincerely held religious beliefs and practices prevent her from receiving vaccines or taking medications, you may have to accommodate her religious beliefs. In that situation, you must determine if there is a reasonable accommodation that would allow the employee to continue working with residents (e.g., wearing sterile gloves and masks).
- A collective bargaining agreement (CBA) between you and a union may protect employees from a mandatory vaccination policy. For example, requiring an employee to wear a mask to be excused from receiving a flu vaccine could be deemed a change in the terms and conditions of her employment. Under many CBA's, employers can't make those types of rules without the approval of the union and its members.

Most employers take less drastic steps to combat seasonal viruses. For example, easing attendance policies, increasing sick time, encouraging ill workers to stay home, and allowing ill workers to work from home are some ways you can cut down on spreading sickness instead of forcing employees to receive vaccinations. *Reprinted courtesy of the North Dakota Employment Law Letter. For subscription information, please call 800-274-6774 or click to www.HRhero.com.* ■

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SAVE THE DATE: CONNECTING THE HR PUZZLE

The 3rd Human Resource Conference for Local Governments will be held on April 10 and 11, 2014 at the Ramkota Hotel in Bismarck. The keynote address will be given by nationally-renowned speaker and artist Bob Uppgren. Two key plenary sessions will focus on local government compliance issues with the Affordable Care Act and the constant challenges of “keeping it legal” in your organization. Breakout sessions will include the Americans with Disability Act, personnel policy development, FMLA and many more.

In addition to providing excellent training opportunities, this conference allows you to network with your peers, connect with other local and state experts in Human Resource management and have real conversations about the many changes and challenges of HR in today's environment.

Registration for the conference will be open the first week in January. ■



*The NDIRF office will
be closed Wednesday,
December 25th and
Wednesday, January
1st, 2014.*

NDIRF BOARD OF DIRECTORS ELECTION

Annually, at least two seats on the nine-member NDIRF Board of Directors are up for election. The election is held by member voting through solicitation of proxies by mail or voting in person at the NDIRF Annual Meeting. In 2014, directorships representing the member categories of “Schools” and “Others” are up for election. The incumbent board members are Burdell Johnson, Kidder County School District board member (“Schools”) and Rod Landblom, Executive Director of the Roosevelt-Custer Regional Council (“Others”). Elected officers or employees of NDIRF members, from among the respective categories electing a director in a given year (for example, “Schools” and “Others” in 2014), are eligible to serve as directors.

Any eligible person wishing to be considered by the NDIRF Nominating Committee as a director candidate must complete and submit a Candidate Application Form by January 31, 2014. To obtain a copy of the form, please contact the NDIRF office by phone at 1-800-421-1988; by mail at P.O. Box 2258, Bismarck, ND 58502; or via e-mail at steve.spilde@ndirf.com; and direct your request to the attention of the CEO. ■