



CARTER
ARNETT



Take Your Best Shot.

What Employers Should Know About the COVID-19 Vaccine

Stacey Cho Hernandez
Kimberly King Webb

1



U.S. Equal Opportunity Commission

On December 16, 2020, the U.S. Equal Employment Opportunity Commission (EEOC) released guidance stating that employers can require workers to receive a COVID-19 vaccination without violating non-discrimination laws – though they may have to provide exemptions or accommodations to employees with disabilities that may prevent them from getting vaccinated, pregnant or lactating workers, and those with religious objections to vaccines.



2

Background on the Covid-19 Vaccines

Currently, the Centers for Disease Control and Prevention ("CDC") authorizes and recommends three vaccines to prevent COVID-19:



Pfizer-BioNTech



Moderna



Janssen



3

Pfizer-BioNTech and Moderna Vaccines



Pfizer-BioNTech vaccine

Dec. 11, 2020

The FDA issued an EUA for the Pfizer-BioNTech vaccine to be used for individuals 16 years of age and older.

Moderna vaccine

Dec. 18, 2020

The FDA issued another EUA for the Moderna vaccine allowing it to be used for individuals 18 years of age and older.

Pfizer-BioNTech & Moderna

Both vaccines consist of two shots, given approximately three weeks apart.

Pfizer-BioNTech & Moderna

Both vaccines use mRNA technology which is delivered into the body with a mixture of lipids (fat droplets), salts, and sugars which help it get absorbed into cells.

4



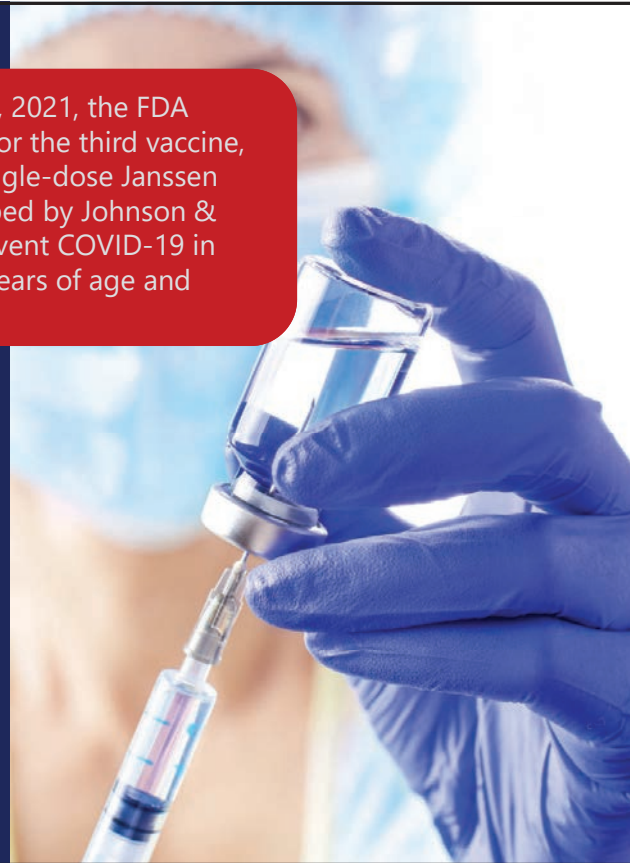
The Third Vaccine

The Janssen COVID-19 Vaccine

On February 27, 2021, the FDA issued an EUA for the third vaccine, the first ever single-dose Janssen vaccine developed by Johnson & Johnson, to prevent COVID-19 in individuals 18 years of age and older.

The Differences:

- 01** Single dose
- 02** Uses an adenovirus which has been inactivated to carry a gene from the coronavirus into human cells.
- 03** Primes the immune system to fight off later injection if the body encounters the coronavirus.



5

EUA Considerations for Employers



An EUA allows vaccines to be used before full FDA approval, during the time that COVID-19 is an emergency.



Until the vaccines receive full approval by the FDA, employers could be vulnerable to a claim of wrongful discharge in violation of public policy.



The Federal Food, Drug, and Cosmetic Act authorizes the FDA to expedite the review process for vaccines via an EUA.



No longer an issue when vaccines receive full approval by the FDA.

6

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Take Your Best Shot: What Employers Should Know about the COVID-19 Vaccine

First appeared as part of the conference materials for the
32nd Annual Health Law Conference session

"Take Your Best Shot: What Employers Should Know about the COVID-19 Vaccine"