



**Art Caplan** is the Head, Division of Medical Ethics at NYU Langone Medical Center.

These are key highlights from his discussion with Ken Banta about COVID-19 vaccination:

1. Companies should consider their obligation to vaccinate their workforce when, globally, vaccines are being used under emergency use authorizations and not fully approved.
2. Ex-U.S. especially, they should define who is an employee and decide how they will interact with corrupt governments.
3. We will eventually reach a middle ground about vaccine requirements, but not unless there is a lot of education.
4. Mandates for other vaccines have been imposed already, so the roadmaps for navigating exemptions are known and can help.

### What are you seeing as the top things that General Counsels should be thinking about?

**Four issues come to mind, though there's probably a list of 21.**

First, what is our obligation to vaccinate our workforce? How do we authenticate that we've vaccinated our workforce? Can we demand proof? If we do, how do we do that? We vaccinate partly for workforce safety. This matters in terms of sending out a sales force or when companies have in-person requirements. What can our customers ask of us in terms of authentication, sometimes called a vaccine passport, or my preferred term "vaccine authentication", for that role?

Second, what can we do when vaccines around the world are licensed under emergency use authorization? We've never seen such widespread use of vaccines that are not licensed. We never seen the FDA give such early approval to vaccinate, 100 million or more people, with something that's preliminary in terms of its approval.

Third, *how do you define an employee?* I've been asked, "If I operate in the Philippines or India, for example, and we say we're going to do X, Y and Z, am I bound to provide vaccine medical care, ICU access and insurance coverage to drivers, household helpers, nannies?" How do you? How should we think about our duties in a pandemic, as opposed to what we might have done when we just paid people to provide services and, remember, many of these overseas workers are living with these people. They don't come in to cook or provide another service. The pandemic poses infectious disease risks that are very, very different for that type of setting.

Fourth, how do you deal with corruption? There are countries that will request corporate help. When they do, to what extent must the company vet the government's plans to use the company's help? Think about this in vaccine-specific terms. What if a company sends or buys 500,000 doses to give to country X, and it's suspicious that country X doesn't have the most ethical government? Should the company insist that the distribution follow public health standards, or does it provide the 500,000 units and allow government officials to vaccinate all their friends?

### **Will mandated vaccination become valid and necessary? Or is there a middle ground?**

First, we need to look ahead toward education and try to beat down misbelief and misperception with education. People learn a lot about health issues from a cousin's friends, who once heard a nurse say something. That's why I'd bring anybody into educational formats.

**Eventually, it will be a middle ground but we're not there yet.**

Secondly, ask them to stop social media for now until we get on the same page. We can't censor anyone, so make a request that we be sure everything's accurate. Say we're going to try and get good information out. Say we hear your concerns but try to trim that because it can be really divisive.

Third, figure out who needs be vaccinated to satisfy customers that it is safe to do business with us. That might mean not vaccinating work-from-home employees or those who are office-based but isolated. Eventually, though, some subpopulations have to agree – or maybe would agree – because they are in sales and need to make in-person visits.

There are nuances when there is a strong mandate and people get fired for not being vaccinated. That's what we do in healthcare mandates; you get fired. That's been litigated and we've won, so those precedents have been established. This is important for nursing homes, homecare programs and hospice because you don't want to cause someone to die sooner than they might otherwise.

What about weak mandates? Let's say someone claims a religious exemption. Will the company say okay? Or will it want a letter from their religious leader to prove it? Similarly, what if someone has a health reason? Will the company ask for a doctor's note? Or, maybe, a notarized doctor's note?

We've been through this with mandates for other vaccines and we know the nuances very well. We can make it easy or hard to be exempted from a vaccine and stop short of threatening someone with their job. We can make the pathway hard and let people know that if they really want to be exempt, they can go down that road. It's another nuanced area of behavior modification.

### **Art Caplan, PhD**

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**Division of Medical Ethics, NYU Langone Health Department of Population Health**

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