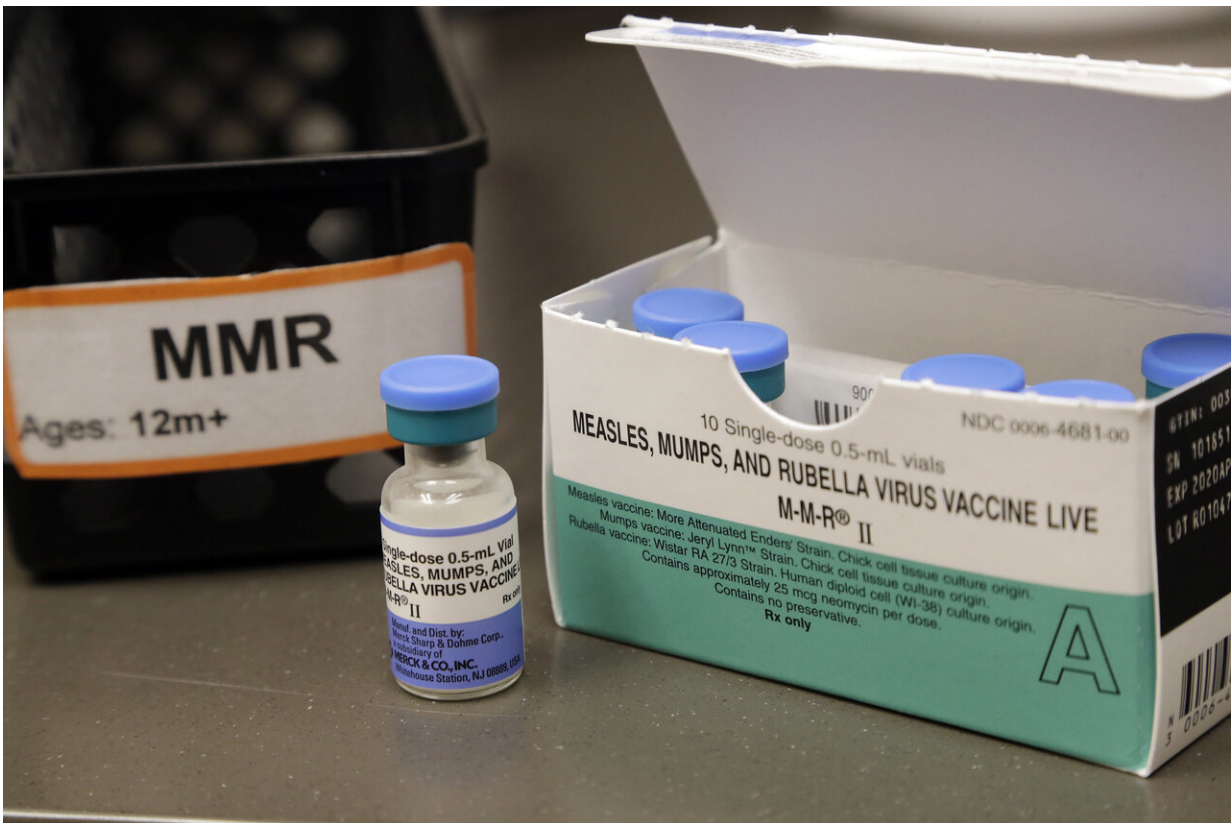


Can a business owner require staffers to get vaccinated?

May 28 2019, by Joyce M. Rosenberg



In this photo taken Wednesday, May 15, 2019, a dose of the measles, mumps and rubella vaccine is displayed at the Neighborcare Health clinics at Vashon Island High School in Vashon Island, Wash. Business owners worried about the measles may want to be sure their staffers have been vaccinated, but before issuing any orders, they should speak with labor law attorneys or human resources consultants. (AP Photo/Elaine Thompson, File)

Small business owners worried about the spread of measles may want to be sure their staffers have been vaccinated, but before issuing any orders, they should speak with a labor law attorney or human resources consultant.

An employer generally is prohibited from requiring employees to undergo [medical procedures](#) including vaccinations under the Americans with Disabilities Act; a company that tries to force staffers to be vaccinated can find itself being sued by angry workers. But there can be exceptions, especially in places where there's a [measles outbreak](#) or where [government officials](#) have ordered vaccinations to protect the public's health.

If an employer is sued for requiring vaccinations, or even firing a staffer who refuses to be vaccinated, a court is likely to defer to the judgment of the Centers for Disease Control and Prevention and other [public health officials](#), says Howard Mavity, an employment law attorney with Fisher Phillips in Atlanta. And the CDC, which has identified nearly 900 [measles cases](#) in nearly half the states, has declared outbreaks in parts of New York state and California, and in Michigan, Georgia, Maryland, Pennsylvania and Washington state. The CDC considers three or more cases to be an outbreak.

The CDC calls measles highly contagious—so much so that if one person has it, up to 90% of those around them will also get it unless they are not protected. It can have serious complications including neurological problems and blindness. The disease was declared eliminated in the U.S. in 2000, but the number of cases has been rising.

Owners who want their staffers vaccinated against measles are on the strongest ground in places where there are known outbreaks, Mavity says.

"They have a decent chance of prevailing" in the case of a lawsuit, he says.

But Mavity says judges' decisions would rest on the facts of an individual case. What isn't clear is whether a staffer who claims an exemption under law from required vaccinations because of religious or health grounds can be disciplined or fired for not getting a measles shot.

Owners are best advised not to make any requirements about vaccinations, or take any action against employees, without getting [legal advice](#) first.

Companies should also know that they may not have the same protection when it comes to annual influenza vaccinations as they might have with measles.

But health care companies where workers are in contact with patients may have more power to require vaccinations. The 8th U.S. Circuit Court of Appeals in December upheld the right of a health care company to fire a staffer who refused to be vaccinated against rubella.

At health care companies, management might decide to require unvaccinated staffers to wear masks or work in jobs where they don't have contact with patients.

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