



Conditions of Employment

by [Jo Ellen Whitney](#), Dentons Davis Brown PC

In response to questions received from health care workers the past several years, Iowa CareGivers is happy to provide responses to those questions thanks to the expertise of Jo Ellen Whitney, Dentons Davis Brown, PC.

Many people start work at a new company, and in the beginning, they are primarily focused on things like how they accumulate paid time off, wages, and the technical components of their job, like having the appropriate mandatory reporter training, use of gait belts, and ambulation of patients. However, as time goes on, and employees become more familiar with specific rules, requirements, and policies of any given facility, they may be told that they need to do certain kinds of things because it is a “condition of employment.”

Conditions of employment can mean a number of different things and so we would like to take this opportunity to answer some of the questions raised over the last several months regarding this issue.

What is a condition of employment?

A condition of employment is something that your employer requires you to do as part of the employer’s practices. This could be something that is mandated by law, such as having a negative TB test, completing mandatory abuse training, or similar items. It can also be something that is simply required by the company itself, such as signing a non-compete or non-solicitation agreement or receiving certain specialized training that the facility believes is important for your job.

What are some examples of conditions of employment for healthcare workers in various settings?

As noted above, some conditions of employment are required by law. This includes the completion of a background check through the SING process, a negative TB test, and periodic physicals are also mandated. Other things might include drug testing, which although it is not mandated by law, is required by many facilities; non-compete or non-solicitation agreements; specialized training; and completing mandatory overtime as assigned by an employer. Other kinds of things, like showing up to work on time, not having excessive absenteeism, and meeting facility guidelines could all technically be considered conditions of employment.

Can conditions of employment change?

Absolutely. Employers can change their conditions of employment and requirements. It is not uncommon for an employer, even if you've been there five or ten years, to add a new noncompete clause or to require a training component that did not exist when you were hired.

For many during the pandemic, COVID vaccines were made a condition of employment in the healthcare area. This was based, at least in part, on CMS requirements and regulations that employees had to receive the vaccine. CMS made the ability to obtain an exemption more limited than many employees may have been expecting. In this instance, as it relates to COVID vaccination, the actual legal rules changed which then changed the conditions of employment. There are many employers, not only in healthcare but in construction and other industries, that have also made receiving a flu vaccine or tetanus shot a condition of employment.

Can an employer fire an employee for not meeting the conditions of employment if the condition is a new requirement?

Yes. As previously indicated, conditions of employment can change, and if a condition of employment is legally required, refusal to meet that condition would create a situation where termination is likely warranted.

Iowa is an at-will state, which means that employers can fire an employee at any time for any, or no reason, so long as the reason they do have is not illegal. Illegal reasons typically include things like discrimination on the basis of race, creed, color, religion, gender identity, sexual orientation, sex, disability, and age as well as a number of other categories. It can also be wrongful termination for things such as filing a workers' compensation claim.

What happens if I quit because I don't think work is safe?

COVID created a particularly complex series of questions in relation to employers and the employee's duty of safety, not only to each other but to residents and their family members. It was extremely difficult for most long-term care and other health facilities to manage visitors, patients, residents, and workers, who all had different expectations, beliefs, and potentially vaccination statuses.

Some vaccinated workers had concerns about co-workers who were not vaccinated or who were not meeting minimum infection control such as standards masking. Many of these employees chose to leave their positions. Those workers who left their positions based on safety considerations during the COVID pandemic typically received unemployment compensation benefits. However, every unemployment compensation consideration is individualized to the facts of the case, and it is difficult to generalize any type of outcome. Certainly, after the height of the pandemic, unemployment compensation has narrowed and in Iowa, there are no additional federal funds available for enhanced payments. Iowa has also lessened the time period on which you can get unemployment compensation to 16 weeks.

OSHA was also directly involved with issues, particularly in the healthcare and manufacturing areas. OSHA has something called the general duty clause which states that employers are required and have a “general duty” to provide a safe workplace for employees. During COVID, OSHA indicated that a safe workplace would include certain sanitizing measures - including air exchange. In healthcare, this may have also included masking, double masking, or respirator programs as well as handwashing stations and following the CMS vaccination requirements. OSHA looks at each issue individually and the assessment is specific to the workplace. Many facilities, particularly long-term care, worked diligently to provide a safe workspace not only for employees but for the residents and the other people that they serve.

What about vaccines?

Early in the pandemic, there was no vaccine available. Later, a vaccine was available, but it was not yet mandated by CMS. Ultimately, when the vaccine was mandated by CMS nationally employees did have a right under the law to request an exemption from the vaccine. Under the CMS regulations, which remain in effect, the exemptions would be either medical or religious.

Medical exemptions under the CMS guidelines are **extremely** limited. The primary example is a medically documented allergy to one of the components of the vaccine. Any medical exemption requires a physician statement that falls within the CMS requirements.

Religious exemptions are somewhat broader under federal law. However, an employee would have to demonstrate a consistently held and sincere religious belief before receiving such an exemption. While the duty of care to patients or residents is a separate assessment from the conditions of employment, certain conditions of employment, like having a negative TB test, are intended to improve the safety of the resident/patients.

About the Author

Employment lawyer [Jo Ellen Whitney](#) is adept at managing the everyday chaos employers and human resource managers face. She is known for her approachable demeanor and practical approach to employment law. Her clients are employers, managers, physicians, hospital administrators, and HR professionals in the health, manufacturing, telecommunications, technology, agriculture, and finance industries as well as not-for-profit service organizations. She is described as “top notch” by clients she advises on a wide array of matters and issues relating to employment & labor law, health law, fair housing, privacy/data security compliance, and contract/policy issues.

Disclaimer:

Due to limitations and the nature of this article please understand that this is not intended to be a definitive analysis of the subjects discussed. Readers are cautioned that situations involving healthcare and employment law questions are unique to each individual circumstance, and the facts of each situation will dictate a different set of considerations and varying results. Material covered is a general review of the issues and must not be

considered as a substitute for advice from your attorney on your own independent situations.