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Protecting Your Company Against COVID-19 Vaccine Suits

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Are you **requiring your staff to get the COVID-19 vaccine**? Before you start a workforce vaccination plan, make sure you're covered by the Public Readiness and Emergency Preparedness (PREP) Act.

What is the PREP Act?

It empowers the Secretary of the Department of Health and Human Services to declare a public health emergency, which brings PREP Act protections into effect. It aims to incentivize private industry to help address public health emergencies.

What protection does it offer?

It protects companies from liability for injuries arising from public health emergency countermeasures, as long as they meet the act's requirements. It offers protection from damages such as:

- Death
- Physical, mental or emotional injury
- Illness
- Disability or condition
- Fear of such harm or need for medical monitoring
- Damage to property, including business interruption

It also provides no-fault compensation for those who are hurt by the countermeasure.

Are there exceptions?

Yes. The act does not protect companies from federal enforcement actions or liability for willful misconduct.

How can you structure your vaccination program to get PREP Act protections?

1. Review these resources:

- **The COVID-19 public health emergency declaration** **and** **its amendments**
- **Advisory opinions of the General Counsel**

2. Make sure your company and program meet the four elements of the act:

- **You must be a covered person**. HHS recently expanded the meaning of covered person to include businesses, schools and places of worship. The agency made it clear that you can still be a covered person even if you're not a health care company or working with the U.S. government.
- **You must be engaged in a recommended activity**. This includes the administration of covered countermeasures. The decision-making process to address vaccination in the workplace could fall under this definition.
- **The activity must be a covered countermeasure**. COVID-19 vaccines approved by the federal government qualify as covered countermeasures.
- **You must comply with distribution limitations**. You must conduct your program in line with the guidance of an "authority having jurisdiction." This could mean state, federal or local recommendations. If they conflict, HHS recently clarified that you only need to comply with one authority to be covered under the act.

Please contact **Nathan Huff**, **Reed Russell**, or any other member of Phelps' **Health Care**, **Litigation** or **Labor and Employment teams** if you have questions or need compliance advice and guidance.