

Protecting Liberty in the Age of COVID: What About Employer Vaccine Mandates?

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It is apparent that numerous private companies are imposing, or wish to impose, COVID vaccination and masking requirements on their employees, aligning themselves with many government pronouncements, policies, and recommendations. An initial reaction to this from a free-enterprise perspective is that private firms ought to be able to establish whatever workplace standards they wish, within the usual constraints of Constitutional and employment law. I have come to conclude that this initial reaction is not correct as it misses a good deal of the picture.

The reasoning is that many companies issuing COVID employee mandates are the cronies of government, dependent on government favors, assistance, contracts, tax breaks, and subsidies. Thus, to remain in political/regulatory favor, they are incentivized to do the government's bidding by issuing COVID directives to employees. Other firms, less ensconced as cronies, most likely feel various forms of pressure by government agencies to follow the government line and to issue employee mandates. Thus, it seems that many private firms are, in an opaque manner, acting in the government's stead. If enough firms feel thus constrained by the government in these respects, the competitive process for employees is stifled and distorted. Firms offer employment conditions biased toward vaccine mandates. Thus, the situation is not one where private firms are simply making their own choices in a market economy. Firms are acting with a tacit and invisible (to outsiders) set of regulations and incentives to follow government "recommendations."

Workers need protection of their liberties from this tacit regulatory overreach. The issue is quite pressing now since many people face either taking the vaccine against their will or losing their job. Taking a hands-off approach simply lets the tacit regulatory process continue and government agencies get their way, albeit in a murky and clumsy way.

What are some options?

- The ideal is to remove the excesses of the big spending, regulatory state that incentivizes and pressures businesses to adopt government "recommendations." This is a big project and one that will take a long time. While worthwhile, it provides no immediate relief.

Other options intervene in private businesses, so are not ideal. But they may be the least worst.

- A ban on private business vaccination mandates. This is heavy-handed and counter to free enterprise. However, its purpose is to offset the tacit inference already in place.
- Require businesses that adopt vaccine mandate to allow for broad exemptions for religious, conscience, or health reasons.
- Require business that adopt vaccine mandates to assume liability for harms caused by vaccines. This is more consonant with free enterprise since those who cause harm must accept responsibility for it
- Ban government agencies from coercing, inducing, or incentivizing private organizations to adopt mandate vaccines. This would allow businesses to adopt mandates, but not if they are pressured into it by government. This may be difficult to enforce.