MANDATORY EMPLOYEE VACCINATIONS

Can Employers Require the Covid-19 Vaccination of Employees?

By: Katherine Mazaheri and Chelsi Chaffin Bonano

1. Introduction

On December 14, 2020, healthcare workers across the United States became among the first people to receive the first COVID-19 vaccination. The vaccine is believed to be a turning point in the Coronavirus Pandemic that has been ravaging the world for nearly a year. The supply of vaccines is currently limited; only healthcare workers and long-term care facility residents are getting vaccinated. However, the supply is expected to increase to the point that the vaccines will be open to the public in general. Because the vaccine is so new, the long-term effects are still unknown. Many people are worried and feeling reluctant to get vaccinated when available to the public. The more the vaccine supply becomes available, the more people will be wondering, “am I going to be required to get vaccinated?” In addition to these concerns, employers wanting to create a safe working environment will be asking a similar question: can I require my employees to be vaccinated? This article will explore current precedent and guidance for requiring vaccinations, exceptions, and other considerations employers should take into account before issuing a mandatory policy for vaccinations.

The United States has historical precedent for requiring mandatory vaccinations. In 1905, the United States Supreme Court upheld a state mandated compulsory vaccination program for smallpox in Jacobson v. Massachusetts. The Court ruled the program was constitutional; it did not violate the 14th Amendment right to liberty because it had a real and substantial relation to the protection of public safety. Over a century later, and with a whole new group of Supreme Court Justices presiding, there is no guarantee the Supreme Court would rule the same way again. However, if the Supreme Court follows precedent set by Jacobson, individual states could mandate vaccinations if the legitimate goal was the protection of public safety. States, however, may be less likely to mandate vaccines given the political challenges they could face with their constituents. Employers, on the other hand, not facing such political challenges may be very eager to require their employees to be vaccinated.

There are many similarities to this pandemic and the seasonal flu, and a comparison can be drawn regarding the flu and its vaccination in the workplace. The Centers for Disease Control (CDC) recommends that everyone over the age of six months should get the flu vaccine. Additionally, the Equal Employment Opportunity Commission (EEOC) has issued its guidance for infectious diseases, like the flu, in the workplace. The EEOC advised flu vaccines may not be mandatory for all employees. This is because certain exceptions must be made for employees with disabilities and for religious accommodation requests. Furthermore, the United States Occupational Safety and Health Administration (“OSHA” has specifically stated its allowance for employers to mandate flu vaccinations, with the same exceptions being religious and medical disability. With these guidelines in mind, many employers encourage their employees to get the flu shot, even recommending that the employer host a flu vaccine clinic for the employees to attend with relative convenience. Additionally, the Equal Employment Opportunity Commission (EEOC) has issued its guidance for infectious diseases, like the flu, in the workplace. The EEOC advised flu vaccines may not be mandatory for all employees. This is because certain exceptions must be made for employees with disabilities and for religious accommodation requests. Furthermore, the United States Occupational Safety and Health Administration (“OSHA” has specifically stated its allowance for employers to mandate flu vaccinations, with the same exceptions being religious and medical disability. With these guidelines in mind, many employers encourage their employees to get the flu shot, even recommending that the employer host a flu vaccine clinic for the employees to attend with relative convenience.
Why Bother with New Year’s Resolutions?

Hon. Don Andrews  
President, OCBA

According to The History Channel, the ancient Babylonians are said to have been the first people to make New Year’s resolutions, some 4,000 years ago. They were also the first to hold recorded celebrations in honor of the new year—for them for the year began not in January but in mid-March, when crops were planted. During a mass.,

Babylonians are said to have been the forerunners of our New Year’s resolutions. If the Babylonians kept to their word, their Pagan Gods would bestow favor on them for the coming year. If not, they would fall out of God’s favor—a place no one wanted to be.

A similar practice occurred in ancient Rome, after the reform-minded emperor Julius Caesar tinkered with the calendar and established January 1 as the beginning of the new year circa 46 B.C. Named for Janus, the two-faced god whose spirit inhabited doorways and arches, January had special significance for the Romans. Believing that Janus symbolically looked backwards into the previous year and ahead into the future, the Romans offered sacrifices to the deity and made promises of good conduct for the coming year.

For early Christians, the first day of the new year became a traditional occasion for thinking about one’s past mistakes and resolving to do and do better in the future. In 1740, the English clergyman and founder of Methodism, John Wesley, created the Covenant Renewal Service, most commonly held on New Year’s Eve or New Year’s Day. Also known as watch night services, scriptures were read and hymn were sung, all of which served as a spiritual alternative to the raucous celebrations normally held to celebrate the coming of the new year. Now popular within evangelical Protestant churches, especially African-American denominations and congregations, watch night services held on New Year’s Eve are often spent praying and making resolutions for the coming year.

Despite the tradition’s religious roots, New Year’s resolutions today are a mostly secular practice. Instead of making promises to their Deity or Deities, most people make resolutions only to themselves and focus purely on self-improvement. As many as 45% of Americans say they usually make New Year’s resolutions, but only 8% are successful in achieving their goals. I doubt the dismal record will hamper resolve—this year or next, or anytime soon.

Even though I consider myself a goal-oriented individual, I’m not much for New Year’s resolutions. Resolutions seem cliché and rather tedious. The making and keeping of resolution can be undaunting. Why bother even when the toughest of individuals buckle under the pressure of this immense task? We all comprehend some of the more valiant and well-intentioned goals, such as losing weight, getting fit through more exercise and/or eating better, quitting a bad habit like smoking, or saving money. Some people try to think outside the box when making New Year’s resolutions instead. Here are a few examples:

“Get a passport. Not to travel, just to own a passport.” (from Parenting.com).

“Turn off Tinder and try to talk to people in real life.” (from Metro News).

“Wave to fellow motorists at 4-way stops.” (from USA Today).

“Stop inserting slightly incorrect facts into Wikipedia entries.” (from Parenting.com).

“Go to work without a hangover at least twice a week.” (from Metro News).

“Collect airsick bags from every major airline.” (from USA Today).

“Just look at my bank balance—refusing to doesn’t mean I have more money.” (from Metro News).

“To randomly sew one sequin onto every piece of clothing you own.” (from Mashable.com).

“Delete the Facebook app from my phone and only log in to check it once a day.” (from Metro News).

“Finish a burrito from Chipotle.” (from Mashable.com).

“Try extreme ironing.” (from USA Today).

“Find someone to kiss besides my dog.” (from Mashable.com).

“Learn a decent party trick.” (from Real Buzz.com).

“Knit more sweaters for freezing trees.” (from USA Today).

“Never by accident walk in on my dad cleaning the shower naked.” (from USA Today).

“Stop procrastinating...starting tomorrow.” (from Twitter).

“Collect airsick bags from every major airline.” (from Metro News).

“Just look at my bank balance—refusing to doesn’t mean I have more money.” (from Metro News).

“Delete the Facebook app from my phone and only log in to check it once a day.” (from Metro News).

“Finish a burrito from Chipotle.” (from Mashable.com).

“Try extreme ironing.” (from USA Today).

“Find someone to kiss besides my dog.” (from Mashable.com).

“Learn a decent party trick.” (from Real Buzz.com).

“Knit more sweaters for freezing trees.” (from USA Today).

“Never by accident walk in on my dad cleaning the shower naked ever again.” (from Mashable.com).

“Stop procrastinating...starting tomorrow.” (from Twitter).

“Not make any New Year’s resolutions.” (from Twitter).

Hopefully, these unique resolution ideas will inspire you to think outside the box. If your box is full of cookies, candies, cakes or any other pastry, I suggest that you simply throw the box away … and purchase a box of quinoa, kale, chia seeds, or blueberries. Best of luck! Should you fail this year, there’s always 2022.
Volunteer Opportunities

Each month in 2021, we will attempt to offer places and sites for you to volunteer opportunities. Let us know if you have someone/someplace you want to add.

Volunteer at Palomar

Imagine yourself rushing into a strange building, children in tow. You are scared, hurt, and have no place to rest or find safety. Then, instead of walking into a gray, gloomy building, you open the door of Palomar to find a calm, reassuring voice and a safe space to sit and rest. Someone offers you coffee, and a volunteer offers to show your children the playroom. All of a sudden, getting help seems a little less frightening, and there is a glimpse of something you did not believe you would ever find again: HOPE.

https://palomaroke.org/volunteer

Volunteer at OKC Salvation Army

Client Choice Food Pantry – 1001 N. Pennsylvania, Oklahoma City, OK 73107
Filling shopping carts for clients
Stock pantry
Days & Hours – Monday through Friday, 8:30am to noon / 1pm to 3pm

Family Shelter – 1001 N. Pennsylvania, Oklahoma City, OK 73107
Teach educational classes
Lead craft time
Help with seasonal parties
Contact: liz.banks@uss.salvation.army

Volunteer at YWCA Oklahoma City

Through the generosity of individuals, businesses and groups, YWCA Oklahoma City is able to address the needs of families in our community. Volunteers contribute unique talents, skills and knowledge that assist YWCA OKC in achieving our mission of eliminating racism and empowering women. Volunteer opportunities include:

- Administrative Assistance
- Child Services
- Community Client Advocacy
- Court Advocacy
- Events/Special Projects
- Our Sisters’ Closet
- Outreach
- Prevention
- Sexual Assault Program Advocacy

https://www.ywcaokc.org/volunteer

Stump Roscoe

By Roscoe X. Pound

Dear Roscoe: I’ve never really noticed it before, but during the recent Christmas shopping frenzy I noticed what seemed to be an uptick in stores and restaurants to the effect of “we reserve the right to refuse service to anyone.” I figured the apparent uptick had to do with so many stores requiring masking in light of the pandemic. But how must that trick be in such signs.” S.M., Edmond, OK
Dear S.M.: Happy New Year to you and all my other OCBA pals. As to your question, you may be surprised. Not only does the answer vary from state to state but also from city to city in some States. In addition, you will also find a disparity among businesses. Take, for example, restaurants and diners. The Civil Rights Act of 1964 explicitly prohibits restaurants from refusing service to patrons based on race, color, religion, or national origin. In other words, restaurants do not have a constitutional right to refuse service. However, as we have seen recently, bakeries and event venues may refuse to do business in terms of same-sex marriages as per recent SCOTUS decisions. Sexual orientation and gender identity issues are not specifically enumerated in the Civil Rights laws. On the other hand, you may recall a couple of years back when Presidential press secretary Sarah Huckabee Sanders and her party were denied entry at a Virginia restaurant. The owner said the denial stemmed from Ms. Sanders’ support for Trump’s policies. Had Ms. Sanders been refused service a short distance away in D.C., because of her political affiliation, that would have been illegal in the nation’s capital. DC has a list of protected classes including political affiliation. Virginia has a similar list, but it doesn’t include political affiliation.

The “refuse service to anyone” signs became popular in the 1960s when segregation remained in bloom, certain people needed to learn their place, and respectable businesses didn’t want no long-haired, pinko hippies scaring decent folks like you and me. Some have argued that such signs remain with us as vestigial reminders of yesterday’s universe. Unfairness and gender identification issues are not specifically enumerated in the Civil Rights laws. What does the Supreme Court say I’m 100% satisfied with this ruling. Stay tuned for further developments.

**Dear S.M.:** I pulled into a visitor’s space in front of the office. Ordinarily, I’d use my own dedicated slot. Today, however, I found it, and the spaces on either side, occupied by a gleaming aircraft carrier length “76 Cadi Fleetwood the color of eggnog way beyond its “use by” date. Only one person drove a car like that, probably the one person around here who could get away with it. For all its age and kitiness, it remained in cherry condition, other than its upholstery carrying the redolence of 40 years of Macanudos. Tony Segar sat in my office, his feet propped up on the desk. Rae jerked her thumb in that direction, as if I needed a warning. An aging but still hard thug named Donato parked himself lengthwise across the visitors’ couch in my waiting area, half-ass reading a folded New York Daily News. I nodded to him as I passed by. He removed a toothpick from his mouth and raised it to me in something like a salute. He didn’t look up, but he didn’t miss much either.

“Roscoe,” Tony greeted me amiably. He didn’t get up from my chair. “Coffee?” he asked.

I looked at the shallow puddle and droplets in the bottom of pot. “I’ll pass, thanks,” I said, and took a seat.

“Word is someone tried to pull your teeth,” he said, making a pistol with his left thumb and index finger.

“I’m like a shark,” I told him. “Take one tooth out and another grows in its place.”

He nodded approvingly. “Yeah, I guess so. I was gonna try and help you out but I found out you was already re-heeled.”

“I appreciate the thought.”

He waved it off like it was no big deal.

“Stay you’re dealing with Paddy Hughes’ crew.”

“How’s he a good mobster-wise as he as a County Freeholder I’ll probably be OK. If he’ll put a short leash on the toady shaking down delis and meat markets around town, problem solved.”

“Frankie Basile. Paddy gives him cover but he don’t hold his leash.”

“Who does?”

“Frankie went rogue a long time ago. A lot of people owe him for various and sundry. People who believe in paying their debts in cash or in kind.”

“You?”

“Nah. His prices were too high. I hear he needs money now, some kinda big score scam having something to do with doing The Shore. Some say if he knocked over Fort Knox he might not have enough to do whatever it is he’s wanting to do.”

“No help?”

The old man shrugged. “Roscoe, I keep telling you I’m retired. Oh, and Ernie’s out of this one as well.”

“For a retired guy I think you know a lot.”

“Roger Staubach retired from football but he still reads the sports pages.”

He fired up a new cigar from the butt of the old one, clapped me on the shoulder and walked put. People sometimes get the wrong impression of Tony. He comes across as jovial and avuncular, but in reality he’s quite scary. My takeaway from this conversation was that when someone frightened scary people, you should always take heed.
Handling Stress in a New Year

By Miles Pringle

2020 is gone and there is hope for better days ahead. Vaccines are starting to be distributed widely and a tumultuous election is over. That does not mean the stress caused by the pandemic is relieved. To the contrary, transmission and death rates in Oklahoma and the nation are at all-time highs, so vigilance continues to be the watchword. Moreover, the stress caused by political division does not appear to have subsided as demonstrated by the storming of the U.S. Capitol (a sentence I never thought I’d be writing about our country).

You are not alone in feeling the stress. According to the American Psychological Association, “nearly 8 in 10 adults (78%) say the coronavirus pandemic is a significant source of stress in their lives, while 3 in 5 (60%) say the number of issues America faces is overwhelming to them.” The number of issues America faces is overwhelming to them.

The American Psychological Association (APA) found that 34% of Gen Z adults reported having worse mental health now than a year ago, followed closely by Gen X (21%), with millennials (19%), baby boomers (12%) and older adults (8%). Additionally, “Gen Z adults are the most likely to report experiencing common symptoms of depression, with more than 7 in 10 noting that in the prior two weeks they felt so tired that they sat around and did nothing (75%), felt very restless (74%), found it hard to think properly or concentrate (73%), felt lonely (73%), or felt miserable or unhappy (71%).”

Even when these omnipresent tensions subside, attorneys will still be afflicted with some of the highest levels of stress. You may be familiar with some of these statistics, but it is important to remember in our profession. More than 45% of attorneys experience depression during their career, well above the American average of 6.7%, with nearly 12% reporting suicidal thoughts. In fact, an old, but nevertheless alarming, report from 1997 suggested that lawyers comprise 10.8% of national suicides.

So how should we deal with stress? There are many methods and we will address a few here, but first it might be helpful to understand what stress is exactly. “Stress is the body’s reaction to any change that requires an adjustment or response. The body reacts to these changes with physical, mental, and emotional responses.” There are two main systems involved: 1) the ‘fight-or-flight’ response, in which your body releases hormones that speed up blood circulation, breathing and has “profound effects on attention, working memory and long-term memory;” and, 2) following the fight-or-flight response, involves the production of cortisol which enters the brain to affect cognition and behavior.

This physical response is the body’s natural reaction to help us navigate and respond to difficult situations. It is not a bad thing in and of itself and can be very helpful; however, it is not intended to be a constant state. Consequences of chronic stress include “diseases of heart and circulation, of stomach and gut, problems with sexuality, weakening of immune-system, psychiatric disorders.” All of these conditions likely create even more stress for us to deal with and can cause a feedback loop with dreadful consequences. What causes stress? Well a lot of it depends on the person. What is stressful to one person might not be for another. With that said, there are some common stress triggers. Common examples include: a) living through a natural or manmade disaster; b) living with chronic illness; c) experiencing familial stressors such as an abusive relationship, an unhappy marriage or prolonged divorce proceedings; or, d) having little work-life balance, working long hours, or having a job you hate.

Regarding what is causing the stress in your life (or if you are just looking to improve your quality of life) here are some tips from the APA.

Try to eliminate the stress triggers. This obvious tip might be difficult to implement, but where possible try and cut out unnecessary stressors. For example, you can drop some responsibility, relax your standards or learn how to ask for help.

Cultivate a positive social network. Strong social support can improve resilience to stressors. You can reach out strategically to friends or family members you believe will be good at listening and sympathizing. Giving support can also increase positive emotions and decrease negative emotions. Just make sure your relationships stay in balance.

Healthy eating. While some hormones can kill appetite, conversely, these same hormones can also cause fat and sugar cravings. You do not need a dramatic change. Just aim to consume a variety of fruits and vegetables as part of your daily diet. Avoid using substances such as alcohol to dampen the stress response since substances do not solve the root of the problem and can have serious health effects.

Meditate. This is a personal favorite. Research shows that mindfulness meditation can reduce psychological stress and anxiety. These meditation sessions do not even need to take more than 5-10 minutes a day to show improvement. All you have to do is get started is sit and breathe. Focus on the present moment; if stray thoughts intrude, acknowledge them and then let them go. Don’t judge yourself for any mental wandering, currently refocus and bring your attention back to the present moment. There are lots of audiobooks, apps, and podcasts to help you get started on your meditation journey.

Get good sleep. Stress affects sleep, which in turn affects our ability to handle stress. Tips on better sleeping include: i) a consistent sleep routine that allows time to wind down before lights out; ii) meditation and relaxation; iii) avoiding caffeine and alcohol in the late afternoon and evening; iv) avoiding screens (the blue light can suppress the sleep hormone melatonin, and checking social media may ramp up your emotions); and, v) exercise – a large body of research suggests that physical activity can improve sleep, especially for middle-aged and older adults.

Exercise. Movement can not only improve sleep, it can directly combat stress. In one study, working adults who participated in moderate physical activity had half the perceived stress as working adults who did not participate. Physical activity may also cancel out some of the negative effects of stress, including the impact of stress on the immune system.

Make time for fun! When we get busy we tend to drop our leisure activities, but that can be a mistake. Participating in fun activities is strictly confidential. For help with stress, depression or addiction, call the Lawyers Helping Lawyers (LHL) hotline (800-364-7886) to be referred to a counselor in your area. The hotline is available 24 hours a day/7 days a week. Identifying participant information is not made available to the OBA and services are provided through a separate, contracted organization. If you have a question or request that is not urgent, another option in addition to the hotline is to email oklah@lhl.com. Responses to email will take place during regular Monday-Friday business hours.

Endnotes
2. Id.
4. Sue Schiff, Ph.D., Sarah Davis, J.D., M.P.A, Lane Hanson, M.S.W., The Jury in: Low Schools Foster Students’ Final Mindsets, 42 Law & Psyloc. Rev. 1 (4) (2018); citing Brian S. Clarke, Coming Out in the Classroom: Law Professors, Law Students and Depression, 64 J. Legal Educ. 401 (2015).
6. Id.
7. Id.
8. Id.

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In Memoriam

Mathew M. Dowling

November 25, 1931 – December 11, 2020

Mathew M. (Matt) Dowling passed away peacefully on December 11, 2020 in Oklahoma City. Matt was born to John Wesley Dowling and Mary Elizabeth “Mayme” Hall Dowling in Oklahoma City on Thanksgiving Day, November 25, 1931. He graduated from Putnam City High School in 1950. During his senior year, he enlisted in the Marines where he planned to play the Cornet in the USMC Band. His first assignment came in February when he and several other recruits were called out of high school to hunt for “Leapy” the leopard, who had escaped from the Oklahoma City Zoo and was loose in the city. His photo on the front page of the paper came as a great surprise to his mother who did not know he had enlisted! Matt completed basic training and sniper training at Camp Pendleton. On his way to Korea during the conflict, he was taken off the ill-fated ship due to a heart defect that was never again detected. Upon return, he spent six weeks in a naval hospital where his complete colorblindness was analyzed and studied for use in camouflage development. He then received an honorable medical discharge.

Growing up, Matt attended Olivet Baptist Church where he was baptized as a child. He later joined Westminster Presbyterian Church where he served for many years as a deacon and elder. He was a founding board member of Westminster School. Later, he joined Crossings Community Church where he enjoyed Sunday School and Men’s Bible Study.

Matt graduated with a Business Degree from OU, and in 1957, he graduated from the OU School of Law. He remained an avid Sooner fan all of his life. In 1956, he married Ann Davenport and they lived in OKC until her passing in February 1977. They had two daughters, Laura and Elaine. Matt and Ann were some of the early homeowners in Quail Creek where Matt became a lifelong member of Quail Creek Golf and Country Club spending many wonderful days on the golf course and in the card room. Matt married Linda Brown in 1978 and they lived happily in Oklahoma City for 42 years.

After Law School, Matt went into the family school supply business, Dowlings Inc. He also went on to found Educational Electronics Inc (EEI) and Math-U-Matic Inc. In 1975, Matt returned to the Law opening his own practice with his childhood friend, Bob Schick. Matt was truly a general practitioner taking on many different types of cases, but he always loved criminal defense law. Toward the end of his career, he became well known for his pardon and parole work and spent many hours visiting inmates in prisons across Oklahoma. He was well known throughout the hallways of many Municipal, County, Appellate and Federal Courthouses.

Matt was a recovering alcoholic for the last 38 years. He credited AA and his return to sobriety with saving his life. Matt loved the game of golf and enjoyed playing many pro-am tournaments around the country where he had the pleasure of playing with Bob Hope, Arnold Palmer, Bob Newhart and many others. On the golf course, in the courthouse, in the card room and at home, Matt is fondly remembered for his brilliant mind, photographic memory, creative ideas, fun loving sense of humor, incredible generosity and enduring charm. Matt was preceded in death by his parents, Doc and Mayme Dowling; his brothers, John and Dick Dowling; and his wife, Ann Dowling. He is survived by his wife of 42 years, Linda Dowling; his daughters Laura Dowling Feix (Terry) and Elaine Dowling (Monty Walls); his grandsons Mathew Cole Feix, Carson Feix (Rachel), and Tucker Feix (Holly); and his great granddaughter, Marigold Feix (Carson & Rachel) along with many nieces and nephews.

The Dowling family would like to thank Integris Hospice, Providence Home Health, caregivers Marsha and Marjorie and Physical Therapist, Ralph Redline for the loving care they provided. A Memorial Service was held on Thursday, December 17, 2020 at 10:00 am in the Sanctuary at Crossings Community Church. The family asks that social distancing be observed and masks be worn. Services were streamed at https://vimeo.com/490957071/2eec325ada. In lieu of flowers, please make donations to the Crossings Community Church Prison Ministry.
GEORGE WASHINGTON AND THE RELINQUISHMENT OF POWER

By Clark Musser

As we Americans look back upon an election and the inauguration of a new president who will likely have a political agenda significantly different from his predecessor’s, it seems appropriate to reflect upon the one person who, more than any other, set the precedents that when taken together form the cornerstone of modern constitutional democracies. Relinquishments of power are peaceful and the transfers thereof from one governing authority to another are orderly.

General George Washington’s relinquishment of “near ultimate power” in the immediate aftermath of the American Revolution, the restraint of power exercised by Citizen George Washington as President of the Constitutional Convention, and the refusal of President George Washington to serve a third term as chief executive of the United States established the precedents that became the foundational elements of this cornerstone. As we review each of these three episodes in Washington’s life, it is important to keep in mind that nothing in world history was comparable to what he accomplished from the time he took command of the Continental Army to the time he refused to allow his name to be placed in nomination for a third term as president of the birthplace of constitutional democracy.

As historian Edward Larson expressed it, “George Washington’s career has no parallel in American history and few, if any in world history.”

COMMANDER IN CHIEF

Two months after the battles of Lexington and Concord, which marked the outbreak of armed conflict between the kingdom of Great Britain and its thirteen colonies in America, delegates to the Second Continental Congress elected 43-year-old George Washington Commander in Chief of the Continental Army. His election was unanimous. He was charged with the responsibility of defending the thirteen colonies and waging war against Great Britain, which had the strongest economy and the mightiest military in the world. General Washington was effectively the commander in chief of an army of one; there was as yet no functioning Continental Army. Together with Congress, Washington had to create an army, supply and maintain it. Most daunting and against all odds, Washington had to lead his army to victory over an unrivaled economic and military juggernaut, which he accomplished—to the astonishment of the western world—over the course of the ensuing eight-year war, even today the longest declared war in the history of the United States.

In the estimation of leading historians, such as David McCullough, Joseph Ellis, Gordon Wood, Edward Larson, no one else could have accomplished what Washington did. Without Washington as Commander in Chief, the Continental Army could not have prevailed over Great Britain. How did His Excellency, as the general was often addressed, do it? How was Washington’s victory over Great Britain, which is described by historian Peter Manchip as “the most improbable military victory in all of Western history,” possible? If General Washington was, as Larson wrote, “an amateur general,” as the general called particular attention to the performance of the officers and soldiers of the Continental Army, “whose sacrifices would combine again.” The general called particular attention to the perseverance of the officers and soldiers of the Continental Army, “whose sacrifices would never be fully understood or appreciated.” Washington’s modesty would not allow him to give any credit to his own character and leadership.

Washington was unwavering in his belief that the military must be subject to “civilian control,” although he did not use the term. Washington was, Chernow writes, “taunted in his deference to civilian control over his actions and his army…despite innumerable frustrations in dealing with bureaucratic incompetence in Congress.” [Emphasis added.] Such deference is particularly evident in Washington’s communications to members in Congress and the provincial governments, who were responsible for providing the general with matériel and troops. Despite the political leaders’ continual dereliction, and oftentimes incompetence, Washington’s letters were in the form of requests, never demands.

In May of 1782, by which time victory over Great Britain was assured, General Washington received a seven-page letter laced with fulsome praise from a representative of his officer corps, which suggested the general should reign as America’s first monarch. Washington’s immediate reply, says Chernow, “fairly breathed with horror.” “Be assured,” Washington wrote to the offending officer, “no occurrence in the army…[that] I must view with abhorrence and reprehend with severity.” “The general, for the first and only time in the war,” Chernow writes, “demanded proof from his aides that his response was sealed and posted.”

If General Washington would not be king, no one thereafter could ever reign over the people of America.

As momentous as the victory over Great Britain was, General Washington’s actions in the immediate aftermath of the Treaty of Paris (September 1783), which formally ended the war, were more important to the preservation of independence and the individual freedoms we enjoy today. General Washington appeared before the Confederation Congress (successor to the Second Continental Congress) in December, 1783, and without equivocation surrendered his military commission with these words: “Having now finished the work assigned to me, I retire from the great theater of action; and bidding an affectionate farewell to this august body under whose orders I have so long acted, I here offer my commission and my leave of all the employments of public life.” Members of Congress and visitors in the gallery wept. Not since the great Lucius Quinctius Cincinnatus of the early Roman Republic had there been a comparable relinquishment of power, nor has there been one since General Washington’s.

Thomas Jefferson would later write to the retired general, “The moderation and virtue of a single character [General Washington’s]...probably prevented this revolution from being closed, as most others have been, by a subversion of that liberty it was intended to establish.”

Washington did what Julius Caesar, Oliver Cromwell, Napoleon, Lenin, Mao and Fidel Castro, could not: He relinquished his power—described by historian Allen Guelzo as “near ultimate power”—over both the military and the people. He returned to private life, fully intending never to reenter the public arena. General Washington’s relinquishment of power is, according to historian Thomas Fleming, his “most important event in American history.” The defeated King George III asked the American portraitist Benjamin West, “Now that Washington is victorious, will he stay on as head of the army or will he become head of state?” “I am told,” said West, “he has returned to his farm.” The thunderstruck king replied, “If that be so, he will be the greatest man on earth.” Many in the western world agreed.

“Cromwell, and later Napoleon,” Ellis writes, “made themselves synonymous with [their respective revolutions] in order to justify the assumption of dictatorial power...Washington made himself synonymous with the American Revolution in order to declare his it was incompatible with dictatorial power.”

As in war, as in peace, George Washington led by example.

Washington’s deference to Congressional authority throughout the war, and his categorical relinquishment of power after his success as Commander in Chief mark fundamental precepts that were woven into the fabric of the United States Constitution four years later: (1) civilian control over the military; and (2) the American people will never accept governance by hereditary right or military takeover.

PRESIDENT OF THE CONSTITUTIONAL CONVENTION

In 1787, four years after American independence from Great Britain had been achieved, nearly every nation on earth was ruled by a monarch. What the Framers of the United States Constitution submitted to the thirteen states for ratification was unique: It provided for the establish-
Most importantly, the people of the thirteen states would approve the delegates’ work product only if they knew Washington—the one person on earth who had proven he could be trusted with power—had overseen the process and approved the final product.
By refusing to serve a third term as president and retiring from public life, Washington declined to influence who his successor would be.

“That the delegates overcame their dread of executive power,” Chernow asserts, “and produced an energetic presidency can be traced directly to Washington’s imper- turbable presence.”

PRESIDENT OF THE UNITED STATES

Was Washington a consequential president? After all, according to Larson, Washington did not want to be president. The 57-year old Washington “made not the slightest gesture that could be con- sidered campaigning,” writes historian James Thomas Flexner. Washington simply allowed his name to be placed in nomination, and he was elected unanimously. He made it known to his circle that he did not plan to serve a full four-year term; rather, he would help organize the executive department, make sure it functioned properly, and then return to his Mount Vernon estate with his beloved wife, Martha. Early in his term, it became clear his vision of a secure and prosperous nation would require him to serve a full term, which he did reluctantly, but with an unfaltering sense of duty and degree of excellence. As his first term drew to a close, Washington informed his Secretary of the Treasury, Alexander Hamilton, and his Secretary of State, Thomas Jefferson, that he wished to retire to his Mount Vernon estate, saying: “I want to take my spade in hand...” for my bread.”

Hamilton and Jefferson seldom agreed on anything, particularly matters of policy, but on the prospect of Washington’s retirement from office after four years, they had shared belief that Washington’s continued service was essential to the fledgling nation’s survival. Without Washington’s continuous unifying presence, these two remarkable polymaths feared the fifteen states which then formed the union, would disintegrate. As Jefferson said, “Mr. President, the North and South will hang together only if they have you to hang on to.” Ever the virtuous patriot, Washington once again subordinated his personal desires to the needs of the nation that he, more than any other single person, had forged. As just four years earlier, Washington made no effort to campaign; he did not even put forth a list of first term accomplishments or a pronouncement of his vision for a second term. “George Washington [had]...” three main objectives under the Constitution,” writes Larson, “respect abroad, prosperity at home, and development westward.” The president’s reelec- tion was unanimous, just as his elections for commander in chief, President of the Constitutional Convention and his first term as president had been. No other president has been elected or reelected by unanimous vote. During his eight years as president, he stabilized the American economy, in part by creating a national bank (forrenmer to today’s Federal Reserve), initially a contro- versial proposal that only Washington’s enormous prestige and credibility could overcome. He established the dollar as the sole currency and a mint for the produc- tion of currency and coinage. Washington approved a plan whereby the national gov- ernment, as opposed to the individual states, would repay the $75 million debt incurred by the Confederation Congress during the war, again a highly controversial propos- al because some states had already paid their share of the debt. Once the national government assumed liability for the entire war debt, the United States began making payments to creditors, thus attracting vast investments from Europe into the otherwise fragile United States economy. Washington secured the opening of the Mississippi River to commerce, and shipping soared. He settled disputes among the states and negotiated treaties with foreign powers. One such treaty required Great Britain to evacuate its northwestern forts, securing for settlement much of what would become the American Midwest.

Most importantly, Larson tells us, Washington was able to keep the United States out of war during the widening Anglo-French war. This war involved France, to which the United States owed allegiance for its invaluable assistance during the Revolution, and Great Britain, which was the United States’ most important trad- ing partner vital to the economy. President Washington, the most renowned warrior in the world, believed our nascent nation was ill-prepared for war. He thus resisted the demands of jingoistic patri- ots and politicians flushed with pride and power by the nation’s success in the Revolution. Had Washington allowed the United States to be drawn into the trans- atlantic war, the United States would have been acutely vulnerable to invasion and subjugation by a European nation.

According to Chernow, Washington’s “legacy as president was a towering one...” and his catalog of accomplishments is sim- ply breathtaking.”

“Washington’s presidency,” according to Larson, “lived up to the immense popular expectations.”

During his second term, President Washington did face harsh criticism in an increasingly hostile press. Nonetheless, if presidential polling had existed in Washington’s day, Wood believes his approval rating at the end of his second term would have been above 90%.

In his two terms as president, Washington presided over one of the most pivotal periods in American history. “The decade of the 1790s...” was Washington’s presidency,” according to Wood, “the most awkward, perilous and fragile of any period in our nation’s history, save only the Civil War. It was the strength of character and virtue of George Washington that proved to be the necessary cohesion to keep our experiment in republican gov- ernment from unraveling and succumb- ing to either a monarchy or anarchy in the name of self-government, the latter of which happened in France after the French Revolution.” The consequences of the Russian and Chinese revolutions of the twentieth century likewise afforded stark contrast with the aftermath of the American Revolution. The leaders of these other revolutions would not relinquish their near ultimate power; instead, they established totalitarian governments that saw the extermination of millions of noncombatants in their respective nations.

His final legacy as president, his final gift to the nation he had been so instrumen- tal in founding, was his decision, yet again, to relinquish power. President Washington refused to allow his name to be placed into nomination for a third term, establishing a precedent for relinquishing power after two terms, which was followed by all sub- sequent presidents until the 1940s when President Franklin D. Roosevelt ran and was reelected for a third and fourth term. The “two-term limit” precedent estab- lished by our first president was thereafter forever refused on. The Constitution in 1951 by the ratification of the Twenty-Second Amendment.

By refusing to serve a third term as president and retiring from public life, Washington declined to influence who his successor would be. The next president would be elected by We the People. Washington was, in effect, telling all future generations of Americans, all future pres- idents and all the people of the world: We the People of the United States are sover- eign; the president is their servant.

CONCLUSION

Washington’s relinquishments and restraints of power are the precedents for what would become the cornerstone of modern constitutional democracies: Relinquishments and transfers of power can and must be peaceful and orderly, devoid of blood, bullets and guillotines. Yet, we must be ever mindful that this foundational principle is not inviolable; it is vulnerable to attack and diminu- tion by the anarchist and the demagogue. Accordingly, We the People must zeal- ously guard this cornerstone with wisdom and humility, as personified by George Washington.
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Bar Observer

Jared joined Hall Estill in 2017 and represents clients in the areas of commercial real estate, taxation, corporate and securities law, and business services. He is active in the community and currently serves on the board of directors for the Tulsa Region of Junior Achievement of Oklahoma. Jared earned his J.D. from the University of Oklahoma College of Law. He is a member of the Oklahoma, Texas and New Mexico Business Associations and is an active participant in the Oklahoma City chapters of the Urban Land Institute and Commercial Real Estate Council.

Fenton, Fenton, Smith, Reneau & Moon Elects New President and Announces New Partner

The shareholders of Fenton, Fenton, Smith, Reneau & Moon recently elected John A. McCaleb to serve as the law firm’s new president and chairman, effective January 1, 2021. McCaleb has been with the firm since 2003 and has been a partner since 2006.

Before becoming president, McCaleb served as the firm’s managing partner for the past four years. He is a native Oklahoman and graduated from the University of Oklahoma in 1976. While in college, he was a member of Alpha Delta Pi, Phi Delta Theta, and Eliot House. McCaleb graduated from the University of Oklahoma College of Law in 1979. While in law school, he was a member of the National Moot Court Team and the Oklahoma Law Review. He has been named to the Oklahoma Super Lawyers list and has been named a Best Lawyers: One to Watch for the last three years.

McCaleb has been involved in numerous community service activities throughout his career, including serving on the boards of directors for Junior Achievement of Oklahoma, Junior Achievement of Tulsa, and Alpha Delta Pi. He is also a member of the Oklahoma City Bar Association and the American Bar Association. McCaleb has been named to the Oklahoma Super Lawyers list and has been named a Best Lawyers: One to Watch for the last three years.

He has been named to the Oklahoma Super Lawyers list and has been named a Best Lawyers: One to Watch for the last three years.
Get vaccinated – Stuart Diamond: Authorised by one of the world’s leading experts on negotiation, Getting More provides a fresh perspective on the often misplaced strategy of “getting to yes” in negotiations. Rather, Getting More is about finding the deeper emotional wants & needs which drive your counterpart and incorporating them to obtain the best result for you. For a better, more practical, example, Getting More provides as follows:

“You may say that I am crazy, but I am really not. I have a passion for negotiation and I have spent my life studying and practicing it. I have learned that there are certain universal principles that apply to all negotiations, regardless of the context or the parties involved.”

Never Split the Difference: Negotiating as if Your Life Depended on It – Chris Voss with Tahl Raz: In contrast to the academic approach of Getting More, Never Split the Difference provides a more direct look at the entire spectrum of negotiation tactics. Despite being written by a former hostage negotiator for the FBI, this book thus emphasizes not only the skills that may be applicable when negotiating with someone who has a gun to your head, but also the skills that may be applicable to everyday life situations where you may want to negotiate in a way that benefits both parties.

B. Policies
Commentary on this topic suggests that if the employer is going to require mandatory COVID-19 vaccinations as a condition of employment, then it is “best practice” and “in the employer’s best interest” that the employer pay all costs associated with getting the employee vaccinated. 55 It is also extremely important for employers to apply their mandatory vaccinations in a uniform manner, so as not to risk appearing discriminatory, ultimately resulting in lawsuits brought against the employer.56

C. Title II of the Genetic Information Nondiscrimination Act
Title II of the Genetic Information Nondiscrimination Act (GINA) prohibits the use of genetic information in employment decisions. The EEOC has made it clear that requiring employees to receive the vaccine or asking for proof of the vaccine does not result in the acquisition or disclosure of genetic information as prohibited by GINA. 57 Because some of the COVID-19 vaccines use mRNA technology, there is a question about whether that modifies the gene and therefore violates GINA. 58 However, the CDC has said that the mRNA does not interact with the DNA in any way. 59 Therefore, there is no violation of GINA by requiring employees to get vaccinated.60

V. Conclusion
As the Covid-19 vaccinations slowly become more available, the laws on mandatory vaccinations become very relevant. Americans are less likely to see state mandated vaccinations, and instead, are more likely to see the mandate from their employers. Employers can mandate the Covid-19 vaccination of their employees. However, they will be subject to the laws of the Americans with Disabilities Act and Title VII of the Civil Rights Act, which will mean that exemptions will be required for those employees with disabilities and for those employees with sincerely held religious beliefs against vaccinations. The employer will need to make reasonable accommodations for the employee to remain unvaccinated. Reasonable accommodations must not cause an undue hardship on the employer. In some fields, it will be very difficult to provide a reasonable accommodation for that employee. Termination may be more justifiable. However, for employers who can have the unvaccinated employee segregated from the other employees, possibly through remote work or in an area located away from the other staff, termination is not going to be as justifiable. The analysis will always require a balancing of the employee’s rights with the employer’s desire to create a safe workplace.

There is also the option that employers simply strongly encourage or incentivize employees to get vaccinated, rather than making it mandatory. This choice provides an alternative to dealing with the exemptions and reasonable accommodations and may be the best plan while the vaccine is currently lacking official FDA approval. Either way, employers will be encouraged to work with their employees in this difficult time to make the reasonable accommodations necessary to ensure that everyone stays safe, feels secure in their rights, and maintains a happy working environment, in person or remotely.

Endnotes


3. Id.


5. Id.


7. Id.


9. Id.


12. Id.

13. Id.

14. Id.

15. Id.

16. Id.

17. Id.

18. Id.

19. Id.


21. Id.


23. Id.

24. Id.

25. Id.


27. Id.

28. Id.

29. Id.

30. Id.

31. Id.

32. Id.

33. Id.

34. Id.

35. Id.

36. Id.

37. Id.

38. Id.

39. Id.

40. Id.

41. Id.

42. Id.


44. Id.

45. Id.


48. Id.

49. Id.

50. Id.

51. Id.

52. Id.

53. Id.

54. Id.

55. Id.

56. Id.

57. Id.
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