

# Employer's Guide to COVID-19 Vaccinations in the Workplace

According to the Centers for Disease Control and Prevention (CDC), vaccination is our best protection from COVID-19 and is a vital tool for ending the pandemic.

With that in mind, this e-guide will address the key matters for employers at this time, including:

- Weighing whether to make vaccinations mandatory or non-mandatory
- Handling situations in which employees are legally exempt from vaccinations
- Educating employees about vaccinations and encouraging their participation

## EEOC Guidance on Mandatory COVID-19 Vaccines

A critical question for employers is whether they can make the COVID-19 vaccine mandatory for their employees. The short answer, based on guidance from the U.S. Equal Employment Opportunity Commission (EEOC), is **YES**. (States and municipalities may have their own laws limiting what employers can require, so be sure to check your local laws and consult with an attorney before implementing a mandatory vaccination policy.)

The longer answer is **YES, if a vaccine mandate is job-related and consistent with business necessity**. And if you do implement a mandatory vaccine policy, you must also be prepared to allow reasonable accommodations for workers who refuse the vaccination due to a medical disability or sincerely held religious belief.

When can vaccines be considered job-related and consistent with business necessity? The more likely it is that a non-vaccinated employee could endanger fellow employees, customers or the general public, the more justification you have for instituting a mandatory COVID-19 vaccine policy. This may apply to healthcare, travel, retail and hospitality businesses, as well as manufacturing facilities where employees must work closely together in an enclosed space.

If, however, most of your workforce is working remotely or operates in an office setting, it may be more appropriate to take a non-mandatory (but encouraging) position regarding COVID-19 vaccines.

## Handling Employee Exemptions and Other Objections to Vaccines

When considering a mandatory COVID-19 vaccination policy, it is important to recognize that certain employees are legally permitted to request an exemption as a reasonable accommodation under the Americans with Disabilities Act (ADA). This applies to employees who are disabled, pregnant, nursing or have a qualifying medical condition.

Employees are also entitled to an exemption based on a sincerely held religious belief, observance or practice under the Civil Rights Act of 1964 (Title VII).

For either medical or religious exemptions, you must grant an employee's request for reasonable accommodation as long as it does not cause an undue hardship for your business or directly threaten the health and safety of others. For example, in lieu of a vaccination, you could:

- Require a face mask at all times while on-site
- Move the employee's workstation to a more isolated location

- Temporarily reassign the employee (if, for example, the employee typically interacts with customers in person)
- Approve a remote working arrangement
- Offer a leave of absence

Reasonable accommodations should be determined on a case-by-case basis, and all related medical information should be kept strictly confidential under applicable federal, state and local laws.

What if an employee raises personal concerns beyond a medical condition or religious belief? Perhaps they're not comfortable with the accelerated development of the vaccine, or they have social or political positions against the vaccine.

Several federal laws could come into play to protect employees from retaliation for refusing a vaccination, including the Occupational Safety and Health Act (OSHA) and the National Labor Relations Act (NLRA). This is tricky legal territory that continues to unfold as the pandemic progresses, so employers must tread carefully.

A non-mandatory policy may be your best defense against such issues, assuming the risk of spread is minimal for your workplace. Rather than make vaccines a requirement for continued employment, consider allowing employees

to determine the best course of action for themselves. And in the meantime, continue to enforce other preventive measures, such as wearing masks, washing hands and maintaining distance.

## Developing a COVID-19 Vaccination Policy

Whether you make COVID-19 vaccines mandatory or non-mandatory, you should have a written workplace policy in place.

The purpose of a non-mandatory policy is to state that, while vaccinations are not being required by the employer, they are strongly encouraged for everyone's protection. Even when vaccinations are not mandated, an employer can instruct employees who do get vaccinated to share written proof of their vaccination. Employers may offer financial incentives or other rewards in exchange for providing proof of vaccination.

When implementing a mandatory COVID-19 vaccine policy, follow these additional pointers:

- Clearly state that employees are required to get the COVID-19 vaccine
- Outline the reasons a vaccination is job-related and consistent with business necessity (such as direct contact with customers or patients)
- Explain how the policy adheres to current public health guidance and complies with all laws
- Before setting deadlines, consult the vaccine distribution plans in all states in which you operate, as they can affect an employee's eligibility and vaccination timeline
- Include a statement that reasonable accommodations will be made in accordance with applicable laws
- Store vaccine-related medical information separate from employee personnel files, in a medical file
- Never disclose a particular employee's vaccination status

## Paying Nonexempt Hourly Employees for Their Vaccination Time

Don't overlook time and pay issues that can arise with mandatory vaccinations, particularly with nonexempt (hourly) employees.

If you require vaccinations, employees should be paid their hourly rate (plus applicable overtime) for time spent waiting for and receiving the COVID-19 vaccine, as well as for the time monitoring any adverse effects after the vaccination.

An employee who receives a vaccine at a non-work location should also receive compensation for the time traveling to and from the administering site.

## Encouraging Employees to Get Vaccinated

To encourage and support employees to get the vaccine, it might be beneficial to host a vaccination clinic at your workplace, either independently or through a third-party healthcare provider.

For onsite vaccinations, you'll need to consider cold storage requirements, administration by trained medical personnel and access to appropriate personal protective equipment (PPE).

If this is not possible, you can take certain steps to facilitate and encourage off-site vaccinations, such as:

- Posting factual information about the safety and availability of COVID-19 vaccines in break rooms, lunchrooms and other high-traffic areas
- Allowing salaried employees to take paid leave to seek COVID-19 vaccinations at community locations
- Organizing transportation to vaccination clinics
- Publishing information in company communications (such as newsletters, intranet websites or emails) regarding the vaccine and where to obtain it