



Coffee & Conversation: Vaccinations in the Workplace

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Key Facts about the COVID-19 Vaccination

- Getting vaccinated can help prevent you from getting sick with COVID-19
- People who have already gotten sick with COVID-19 may still benefit from getting vaccinated
- COVID-19 vaccines cannot give you COVID-19
- COVID-19 vaccines will not cause you to test positive on COVID-19 viral tests*
 - [*https://www.cdc.gov/coronavirus/2019-ncov/hcp/testing-overview.html](https://www.cdc.gov/coronavirus/2019-ncov/hcp/testing-overview.html)

Special Consideration and Challenges for Vaccination

- Concerns about vaccine safety among some workers
- Need for culturally appropriate vaccination information in multiple languages
- Limited access to health care and health providers
- Methods of communication maybe different
- Rely on community leaders to serve as trusted sources for information
- Some missed days may occur due to post-vaccination side effects
- Critical infrastructure employers have an obligation to manage the continuation of work in a way that best protects the health of the workers and the general public.

Special Considerations:

- If vaccination is mandatory, there is likely coverage for injury or illness under the worker's compensation policy.

Workplace Vaccination Program

- Employers considering implementing a workplace COVID-19 vaccination program should contact DPHSS for guidance.
- The planning process should include input from management, HR, employees, and labor representatives.
- Other important preliminary steps include:
 - Obtaining senior management support
 - Identifying a vaccine coordinator
 - Enlisting expertise from DPHSS, occupational health providers and pharmacies
- Offer the vaccination at no charge and during work hours
- Offer flexible paid leave policies for those workers that may experience post-vaccination symptoms

Encourage Employees to Get Vaccinated

- If employer cannot offer COVID-19 vaccinations on-site, encourage employees to seek COVID-19 vaccination in their community and provide them with information where they can get the vaccine.
 - Be flexible with HR policies. Policies should allow employees to take paid leave to get the vaccination in the community. Support transportation to off-site vaccination clinics.
 - Use promotional posters/flyers to advertise locations offering COVID-19 vaccination in the community.
 - Post articles in company communications about the importance of COVID-19 vaccination and where to get vaccinated

EEOC GUIDANCE

Can employers implement a mandatory vaccination policy?

- Yes. Company has a duty to provide and maintain a workplace that is free from know hazards.
- Exceptions:
 - Disability – ADA
 - Sincerely held religious beliefs, practice or observance – Title VII
 - Genetic Information - GINA

Can an employer require only certain employees to be vaccinated?

- Employers must be consistent and not arbitrarily allow some workers to refuse the vaccine while requiring it for others.
- Once an employer makes judgments about who should be exempt from the vaccines for reasons other than legal protections, workers may raise potential disparate treatment claims.

Is the administration of a COVID-19 vaccine to an employee by an employer a “medical examination” for purposes of the ADA?

- **No.** If a vaccine is administered to an employee by an employer for protection against contracting COVID-19, the employer is not seeking information about an individual’s impairments or current health status and, therefore, it is not a medical examination.
- Although the administration of a vaccination is not a medical examination, *pre-screening vaccination questions may implicate the ADA’s provision on disability-related inquiries*, which are inquiries likely to elicit information about a disability. If the employer administers the vaccine, it must show that such pre-screening questions it asks employees are “job-related and consistent with business necessity.”

If the employer requires an employee get vaccinated by the employer and asks the required screenings questions, are these questions subject to ADA standards for disability related inquires?

- **Yes.** Pre-vaccination medical screening questions are likely to elicit information about a disability.
- If an employer has offered a vaccination to employees on a **voluntary basis** (i.e. employees choose whether to be vaccinated), the ADA requires that the employee's decision to answer pre-screening, disability-related questions also must be voluntary.
- If an employee receives an employer-required vaccination from a third party that does not have a contract with the employer, such as a pharmacy or other health care provider, the ADA "job-related and consistent with business necessity" restrictions on disability-related inquiries would not apply to the pre-vaccination medical screening questions.

Is asking or requiring an employee to show proof of receipt of a COVID-19 vaccination a disability related inquiry?

- **No.** There are many reasons that may explain why an employee has not been vaccinated, which may or may not be disability-related.
- Employer questions, such as *asking why an individual did not receive a vaccination, may elicit information about a disability and would be subject to the pertinent ADA* standard that they be “job-related and consistent with business necessity.”
- If an employer requires employees to provide proof that they have received a COVID-19 vaccination from a pharmacy or their own health care provider, the employer may want to warn the employee not to provide any medical information as part of the proof in order to avoid implicating the ADA.

If an employer requires vaccination when they are available, how should the employer respond to an employee who indicates that he or she is unable to receive the COVID-19 vaccination because of a disability?

- The ADA allows an employer to have a qualification standard that includes “a requirement that an individual shall not pose a **direct threat** to the health or safety of individuals in the workplace.”
- The employer must show that an unvaccinated employee would pose a direct threat due to a “significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation.”
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If an employer requires vaccinations when they are available, how should the employer respond to an employee that indicates he or she is unable to receive a COVID-19 vaccination because of a sincerely held religious practice or belief?

- Once an employer is on notice that an employee's sincerely held religious belief, practice, or observance prevents the employee from receiving the vaccination, ***the employer must provide a reasonable accommodation*** for the religious belief, practice, or observance unless it would pose an undue hardship under Title VII of the Civil Rights Act.
- EEOC guidance explains that because the definition of religion is broad and protects beliefs, practices, and observances with which the employer may be unfamiliar, the employer should ordinarily assume that an employee's request for religious accommodation is based on a sincerely held religious belief.

What happens if an employer cannot exempt or provide a reasonable accommodation to an employee who cannot comply with a mandatory vaccine policy because of a disability or sincerely held religious practice or belief?

- It is lawful for the employer to exclude the employee from the workplace. This does not mean the employer may automatically terminate the worker. Employers will need to determine if any other rights apply under the EEO laws or other federal, state, and local authorities.



Questions?

Thanks for attending.



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