Vaccines: Mandatory or Voluntary

Most employers are encouraging employees to get COVID-19 vaccinations and some organizations are requiring it. The legal risks of this mandate are rapidly evolving and differs significantly from place to place. Employers can mandate vaccinations under federal law although they should keep in mind many jurisdictions are looking at enacting their own requirements. Be prepared for more legislative updates.

The question comes up frequently whether or not employers are allowed to require vaccinations and to ask for proof of the vaccination. Under guidance from the Equal Employment Opportunity Commission, employers are allowed to require vaccinations or ask for proof of the vaccination. Many employers should be re-evaluating their policies as COVID 19 vaccines become more widely available. If your company is mandating vaccines, some best practices may include the following:

- Once an employee is eligible based on his or her state's protocols, the employee is encouraged to get vaccinated as promptly as possible.

- Only those who have been vaccinated will be allowed to work in the office or to attend company-sponsored events. Proof of vaccination will be required.

- Those unable to be vaccinated due to a disability, advice of a medical provider or religious beliefs are to contact HR to explore reasonable accommodations.

- The company will provide for paid time off to receive the vaccine and recover from side effects, if needed.

- Until the vaccines are widely available and significant portions of the population become vaccinated, employees will continue to work from home unless work requires them to come into the office. If employees do come to the office, they are to observe all company health and safety protocols—even if the employees have been vaccinated.

If your company has a voluntary vaccine policy, some best practices may include the following:

- It is our duty to provide and maintain a workplace that is free of known hazards, we are adopting this policy to safeguard the health of our employees and their families; our customers and visitors; and the community at large from infectious diseases, such as COVID-19 or influenza, that may be reduced by vaccinations.

- All employees are encouraged to receive vaccinations as determined by our safety committee and/or leadership team.

- Employees will be notified by our safety committee and/or leadership team with the timeframe(s) for having the vaccine administered.

- We will provide either onsite access to the vaccines or a list of locations to assist employees in receiving vaccines on their own.

- We will pay for all vaccinations covered by this policy. When not received in-house, vaccinations should be run through employees' health insurance where applicable and otherwise be submitted for reimbursement.

- All employees will be paid for time taken to receive vaccinations. For offsite vaccinations, employees are to work with their managers to schedule appropriate time to comply with this policy.

Post-vaccination Considerations for Workplaces

Workplaces need strategies to appropriately evaluate and manage employees who have signs and symptoms after receiving a COVID-19 vaccine. This information is applicable for 1–3 days after an employee receives a vaccine dose. This approach minimizes the number of employees who are unnecessarily excluded from work, reducing the possibility of disruptions in workplace operations. The approach also aims to reduce the spread of COVID-19 and other infectious diseases that can happen if employees who should be excluded from

work are allowed to work. These recommendations are based on the current understanding of signs and symptoms following COVID-19 vaccination and might change as we learn more about how COVID-19 vaccines work in real-world conditions.

After COVID-19 vaccination, employees might have some side effects. It is normal for these to occur. Common side effects include pain, redness, and swelling in the arm where they received the vaccination, as well as fever, chills, tiredness, headache, nausea, and muscle pain. Clinical trials found that most signs and symptoms:

- Are mild to moderate in severity

- Occur within the first 3 days of vaccination (the day of vaccination and the following 2 days, with most occurring the day after vaccination)

- Get better within 1–2 days

- Are more frequent and severe following the second dose of an mRNA vaccine and among younger people compared to those who are 55 years or older

Cough, shortness of breath, runny nose, sore throat, or loss of taste or smell are **not** consistent with post-vaccination symptoms and instead could be symptoms of COVID-19 or another infection. Find a summary of more information on post-vaccination symptoms for Pfizer-BioNTech, Moderna, and Johnson & Johnson's Janssen COVID-19 vaccines.

It might be challenging to tell the difference between some post-vaccination signs and symptoms from signs and symptoms of COVID-19 or other infectious diseases. Employees with signs and symptoms in the first 1–3 days after vaccination could be mistakenly considered infectious; this could unnecessarily restrict them from work. This might have negative consequences for employees, customers, and workplaces.

Considerations to Minimize the Effect of Post-vaccination Signs and Symptoms on Employees and the Workplace

- Encourage employees to get vaccinated as soon as they are eligible and to consider scheduling vaccination appointments 1–2 days before planned days off from work.

- Stagger vaccination appointments so that you are not vaccinating all workers at the same time in a single department, service, or unit where continued operations are required. Staggering vaccination might be more important following receipt of the second dose of a vaccine, when symptoms after vaccination, like fever, are more likely to occur.

- Inform employees about the potential for common side effects after vaccination and provide information about what to do if they experience side effects.

- Provide or identify options for COVID-19 viral testing, so it is accessible for employees with systemic signs and symptoms after vaccination.

- Offer flexible, nonpunitive sick leave options (e.g., paid sick leave) for employees with systemic signs and symptoms after vaccination.

How to Assess and Respond to Post-vaccination Signs and Symptoms in Employees

These approaches apply to employees who have received COVID-19 vaccination in the prior 3 days (including day of vaccination, which is considered day 1) and are not known to have had an exposure to COVID-19 in the last 14 days. Employees experiencing symptoms who have had an exposure to someone with confirmed COVID-19 in the last 14 days should be excluded from work and evaluated for COVID-19.

Tailor the approaches suggested below to fit the situation of the specific case and the workplace.

Do not attribute positive viral COVID-19 test results to COVID-19 vaccination. Vaccination does not influence the results of these tests.

Signs and Symptoms Not Typical after COVID-19 Vaccination: ANY signs consistent with COVID-19 (e.g., cough, shortness of breath, runny nose, sore throat, loss of taste or smell)

Suggested Approach: Exclude from work pending evaluation by a healthcare provider for potential causes, including SARS-CoV-2 infection, as appropriate. Criteria for return to work depend on the suspected or confirmed diagnosis.

Employees with confirmed or suspected COVID-19 should isolate at home, follow CDC-recommended steps, and not return to work until they meet criteria to discontinue home isolation, (or return to work, if healthcare personnel) in consultation with healthcare providers. Unvaccinated workplace contacts should be notified and advised to quarantine and self-monitor for symptoms.

Signs and Symptoms Could Be from COVID-19 Vaccination, Infection with the Virus That Causes COVID-19, or Another Infection (e.g., Influenza): ANY general symptoms (e.g., fever (100°F/ 37.8°C or higher), fatigue, headache, chills, and body aches)

Suggested Approach: Employees who meet the following criteria may be considered for return to work without testing for COVID-19:

- Feel well enough and are willing to work, **and**
- Do NOT have fever, **and**
- Do NOT have other signs and symptoms of COVID-19, including cough, shortness of breath, sore throat, or change in smell or taste.

If symptoms do not improve in 2 days, employees should be excluded from work and COVID-19 testing should be considered.

Employees with fever should, ideally, be excluded from work pending further evaluation, including consideration for COVID-19 testing. If an infection is not suspected or confirmed as the source of their fever, they may return to work when they feel well enough.

In critical infrastructure settings where staffing shortages are anticipated or occurring, employees with fever and **only** signs and symptoms that are typical following vaccination can be considered for work if they feel well enough and are willing. If fever does not resolve in 2 days, these employees should be re-evaluated and considered for COVID-19 testing.

Note: The following signs and symptoms alone are not consistent with COVID-19 and should be managed per usual protocols for vaccine-related side effects:

- immediate hypersensitivity reactions (e.g., urticaria [hives], anaphylaxis)
- local symptoms (e.g., pain, swelling, or redness at injection site)

Adverse events that occur in a recipient following COVID-19 vaccination should be reported to the Vaccine Adverse Event Reporting System (VAERSexternal icon). Vaccination providers are required by the Food and Drug Administration to report vaccine administration errors, serious adverse events, cases of multisystem inflammatory syndrome, and cases of COVID-19 that result in hospitalization or death following COVID-19 vaccination under Emergency Use Authorization. Reporting is encouraged for any other clinically significant adverse event even if it is uncertain whether the vaccine caused the event. Information on how to submit a report to VAERS is available at https://vaers.hhs.gov/ or by calling 1-800-822-7967.

Fully Vaccinated People Can:

- Visit with other fully vaccinated people indoors without wearing masks or physical distancing
- Visit with unvaccinated people (including children) from a single household who are at low risk for severe COVID-19 disease indoors without wearing masks or physical distancing
- Participate in outdoor activities and recreation without a mask, except in certain crowded settings and venues
- Resume domestic travel and refrain from testing before or after travel or self-quarantine after travel
- Refrain from testing before leaving the United States for international travel (unless required by the destination) and refrain from self-quarantine after arriving back in the United States
- Refrain from testing following a known exposure, if asymptomatic, with some exceptions for specific settings
- Refrain from quarantine following a known exposure if asymptomatic
- Refrain from routine screening testing if asymptomatic and feasible

For Now, Fully Vaccinated People Should Continue To:

- Take precautions in indoor public settings like wearing a well-fitted mask

- Wear well-fitted masks when visiting indoors with unvaccinated people who are at increased risk for severe COVID-19 disease or who have an unvaccinated household member who is at increased risk for severe COVID-19 disease

- Wear well-fitted masks when visiting indoors with unvaccinated people from multiple households

- Avoid indoor large-sized in-person gatherings

- Get tested if experiencing COVID-19 symptoms

- Follow guidance issued by individual employers

- Follow CDC and health department travel requirements and recommendations

Paid Leave Reminder Resulting from The American Rescue Plan Act of 2021

- While the ARPA does not require employers to provide paid leave for employee absences related to COVID-19, it does extend the tax credit allowed for voluntarily extending FFCRA-like leave from April 1, 2021, through September 30, 2021.

- The tax credits are also available for these additional qualifying reasons for paid leave:

    - The employee is obtaining a COVID-19 vaccination.

    - The employee is recovering from any illness related to receiving the vaccine.

    - The employee is seeking or waiting for test results or a medical diagnosis for COVID-19, or the employer has requested the employee to obtain the same.

- As of April 1, 2021, employers may voluntarily offer another 10 days (up to 80 hours) of paid sick leave to employees and receive a tax credit for doing so. ARPA also resets the 10-day limit for the tax credit for paid sick leave under FFCRA as of April 1. This means any days an employee took before 4/1/21 will not count toward the new cap .

- Employers may now also offer emergency FMLA leave (EFMLA) for all FFCRA-qualifying reasons for leave (i.e., those previously only offered for emergency paid sick leave), including the newly added reasons above, and receive a tax credit. Previously under the FFCRA, EFMLA was only available for leave needed to care for a child whose school was closed or whose caregiver was unavailable due to COVID-19.

- The first two weeks of EFMLA may now be paid at 2/3 the regular rate of pay (previously unpaid) and eligible for the tax credit. This raises the maximum tax credit limit for EFMLA from $10,000 to $12,000 per employee.

- The tax credit will also now only be eligible to those employers who offer this paid leave in a manner that does not discriminate in favor of those employees who are highly compensated, are full-time status or by an employee's years of service. Leave must be offered uniformly to employees.

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