



# Monthly Strategies

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## ***Mandatory Flu Shots***

As the flu season approaches and the COVID-19 pandemic continues, employers' mandatory vaccination policies may soon become more important than ever. For several reasons, those policies will also attract unprecedented scrutiny. First, the Centers for Disease Control (CDC) has stated that getting the flu vaccine this fall will be all the more important, both to reduce health risks for individuals and to conserve the country's potentially scarce healthcare resources, particularly for respiratory conditions like the flu and COVID-19. Second, one or more COVID-19 vaccines are expected to become available later this year or in early 2021, offering possible protection from this worldwide scourge. Third, mandatory vaccination policies sometimes spark deeply personal responses at a time when political differences and social justice issues remain at the forefront of the nation's consciousness.

As employers seek to balance their duty to maintain a workplace free of recognized dangers and the rights of individual employees, questions abound: Can you enforce mandatory vaccination policies? (In most cases, the answer is "yes") If you mandate flu shots or COVID-19 vaccinations, what specific risks and responsibilities must you consider and address? And finally, is a mandatory vaccination policy the right option for your company? As usual, the answers to these critical questions depend on a variety of factors. Before making any decisions reach out to your legal counsel or the staff of HR Strategies, LLC for guidance and best practices.

## ***Mandated Training Available***

If your organization has employees that need Harassment Prevention, Drug and Alcohol Awareness or Supervisor Reasonable Suspicion Testing training and haven't been able to attend an in person class due to COVID, contact HR Strategies to schedule your employees for an upcoming online interactive class.

HR Strategies will also develop and deliver online interactive training for your employees that will support your current and future business needs. Examples of other training programs available are: Active Shooter Response; Documentation & Termination; Effective Communication; Interviewing Do's and Don'ts; and New Supervisor Training.

## ***COVID-19 Workplace Safety***

Sixteen states now require employers to provide COVID-19 workplace safety training to employees. Even in states where training is not explicitly required, employers should consider providing COVID-19 workplace safety training to all employees that is consistent with guidelines from the U.S. Centers for Disease Control and Prevention (CDC) and the Occupational Safety and Health Administration (OSHA).

Employers that provide up-to-date training can demonstrate their concern for employee safety and minimize the risk of government enforcement actions, workers' compensation liability and employee litigation.

Here's what employers need to know about developing a workplace safety training program during the coronavirus crisis.

### **Workplace Safety Enforcement**

Even if an organization does not operate in a state that expressly requires COVID-19 workplace safety training, prudent employers should provide employee training on these critical safety matters.

The Occupational Safety and Health Act and related state laws require employers to provide a workplace free from known hazards that are likely to cause death or serious physical harm.

Workplace exposure to COVID-19 can be a considerable workplace hazard, depending on the setting and job tasks. For example, exposure to the virus is a significant hazard for workplaces or job tasks that require frequent physical interaction with the public or with other employees.

Federal and state agencies can impose significant penalties when an employer fails to implement the safety measures needed to mitigate these workplace hazards. In determining compliance, these agencies often defer to federal and state workplace safety guidelines. In fact, OSHA's COVID-19 enforcement guidance instructs compliance officers to consider CDC guidance when conducting workplace safety inspections.

Both OSHA and the CDC advise employers to provide employee training on the most current safety guidelines to minimize workplace exposure to COVID-19.

## Workers' Compensation Claims

Workers' compensation typically does not cover claims based on viral infection because it is difficult to prove the infection occurred in the workplace. The COVID-19 pandemic has challenged this widely accepted rule, prompting 14 states to extend workers' compensation coverage to cover COVID-19-related illness. Wyoming grants coverage to all employees, while many other states limit coverage to essential workers. Several states have legislation currently pending that would create a presumption of coverage for any employee who contracts a Covid-19-related illness.

COVID-19 workplace safety training can reduce the potential for COVID-19-related illness by educating employees on hygiene, face-covering and cleaning measures needed to prevent the virus from permeating the workplace.

## Training Tips

To ensure compliance, COVID-19 workplace safety training should include:

- Up-to-date CDC and OSHA workplace safety protocols.
- Complete and accurate state-mandated training elements.
- Up-to-date state-specific workplace safety protocols.
- Industry-specific workplace safety guidance, if applicable.
- Employer workplace safety policies and practices.

In all states where an employer operates, an employer should:

- Monitor legal developments for new state training mandates.
- Consistently review and update training based on new or modified CDC and OSHA guidance and state orders, rules and guidelines.
- Maintain training records.
- Consider retraining employees when legal or medical guidance substantially changes.

## Understanding Federal Contractor Equal Employment Opportunity and Affirmative Action Obligations

There are two main sources for the equal employment opportunity (EEO) and affirmative action (AA) obligations for federal contractor employers: the "EO Clause"; and the AAP requirements.

Most federal contractors are subject to the EO clause(s) included in direct federal contracts and qualifying subcontracts through the 'flow-down' provision. Depending on the size of the contract and the number of

employees, contractors might also be subject to additional AA requirements, in particular the obligation to prepare formal, written affirmative action programs (AAPs), also referred to as affirmative action plans.

The EO clause is what confers jurisdiction on the Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) to investigate complaints of employment discrimination and to review contractors' compliance with federal contractor EEO/AA obligations.

And there are three potential areas of regulation:

- Sex and race/ethnicity
- Disability status
- "Protected veteran" status

Most contractors that are subject to the sex and race/ethnicity requirements are also subject to the disability requirements, so those tend to be talked about together. Those contractors may or may not also be subject to the veteran requirements, though most contractors will go ahead and comply with all three "just in case." So here, we will assume that your organization is subject to all three regulatory areas but will call out requirements that pertain just to the veteran regulations.

Finally, there are differences in requirements depending on whether or not you hold contracts (or subcontracts) for "supply and service" (non-construction) or construction, and some differences if a construction contract is a "direct" construction contract or a "federally-assisted" construction contract.

## Maryland Bans Hairstyle Discrimination Effective 10/1/20

On October 1, 2020 under House Bill (HB) 1444/Senate Bill (SB) 531, Maryland employers are prohibited from discriminating against individuals based on "certain traits associated with race, including hair texture and certain hairstyles."

This law is of particular note to employers that have set grooming or personal appearance standards in their workplace. Employers may want to review their handbooks and relevant policies immediately to ensure they do not run afoul of this new law's protections.

**Contact HR Strategies staff at 302.376.8595 or [info@hrstrategies.org](mailto:info@hrstrategies.org) if you would like support or would like to learn more about the items in this newsletter. Please contact us if you would like to be removed from our Monthly Strategies mailing list or if you would like for us to add someone to our mailing list.**