

Mandating Vaccines in the Workplace: How to Implement a COVID-19 Vaccine Policy

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By Suzannah Wilson Overholt on August 26, 2021



Now that the Delta variant is surging, employers are venturing into the arena of mandating that their employees take the COVID-19 vaccine. But deciding to mandate vaccination and actually implementing such a requirement is no easy feat.

Rolling out a vaccine requirement involves a delicate balancing act. Employers are gauging the overall vaccine hesitancy in their workforce, the number of employees who may resign rather than be vaccinated, and the difficulty of filling the vacancies. Those considerations have led some employers to wait to impose a vaccine requirement until their competitors do so.

The realities of these considerations are apparent in nursing homes' response to the announcement that their facilities will be required to mandate the vaccine for their employees or risk losing federal funding. Nursing homes are now concerned that, if the rest of the health care industry is not subject to the same requirement, they will lose even more employees than they have already.

So how should an employer face this issue? Some employers have chosen to use an incremental approach. First, they ask employees to let them know if they are vaccinated or plan to get vaccinated. As we reported previously, the EEOC has authorized such inquiries, but the information regarding an employee's vaccination status must be kept confidential.

Some employers offer incentives before mandating the vaccine. As we noted in our previous blog, offering incentives for employees to be vaccinated has been approved by the EEOC. The amount of the incentive depends upon whether the

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employer is administering the vaccine (lower incentives allowed to avoid coercive effect of incentive) or whether it is being administered by an entity independent from the employer (higher incentives allowed). If the first round of incentives does not achieve the desired effect, some employers have increased the incentive.

Another approach is to implement an education campaign to increase awareness about the benefits and actual risks of the vaccine. This is generally done by directing employees to web sites and other resources with objective information about the vaccines.

Finally, if the incentives and education efforts are not sufficient, employers may mandate the vaccine. The concepts that apply to fostering positive employee relations are a good guide for how to do this.

First, employers should develop a clear policy that lays out the following:

- A definition of what constitutes being vaccinated. Generally speaking, this would be receiving both doses of a two-dose vaccine or a dose of a single-dose vaccine.
- A clear deadline for being vaccinated.
- A requirement that any booster doses also be taken and a timeline for those.
- The availability and process for requesting a disability or religious based exemption.
- Whether PTO will be allowed for time spent taking the vaccine and for any potential side effects.
- What disciplinary action will be taken for failure to comply.

Once the policy is established, communication is key. Employers should reiterate the benefits of the vaccine and explain the risk to everyone if someone is not vaccinated. A written communication should be distributed to all employees stating the basis for the policy and the expectations.

Finally, the policy must be implemented. Proof of vaccination provided by employees must be kept confidential. Requests for exemptions must be reviewed and acted upon. Employees who do not comply with the vaccine requirement or accommodations granted pursuant to an exemption must be disciplined.

Obtaining the advice of qualified counsel before embarking on this process is advisable.