



Employers Should Plan for COVID-19 Vaccine

There are several promising COVID-19 vaccines moving forward and may be available in the United States soon. With that in mind, it is time for employers to start thinking about how a vaccine could impact their health plan and their workforce.

Health Plan Coverage of COVID-19 Vaccines

The Internal Revenue Service (IRS), Department of Labor (DOL) and Department of Health & Human Services (HHS) recently issued [interim final regulations](#) regarding health plan coverage of COVID-19 vaccines and testing. These regulations are effective immediately and continue until the end of the COVID-19 public health emergency.

Fully insured and self-funded health plans will need to provide coverage for a vaccine with no cost sharing to the plan member. Even if the cost of the vaccine itself is paid by a third party, such as the state or federal government, the health plan must cover the cost of the administration of the vaccine.

CDC Playbook for COVID-19 Vaccination Program

The Centers for Disease Control and Prevention (CDC) issued a [detailed playbook](#) describing how states, territories, tribal nations and communities and local public health districts can plan for the distribution of the vaccines when they become available. It is expected that even when a vaccine is approved for use in the US, initially there will be relatively few doses available and it will take time to mass produce the vaccine. The playbook includes information on developing different phases of a vaccination program, essentially identifying those that will be eligible for the vaccine first and then later when there is a larger number of doses available.

Can Employers Require Employees to Obtain a Vaccine?

Maybe. In some industries, such as the health care field, employers can require employees to be vaccinated. In most industries, the better approach may be to encourage employees to get the vaccine.

Several federal laws limit whether an employer can require employees to be vaccinated.

- The Americans with Disability Act (ADA) allows an employee to request a reasonable accommodation from a vaccination requirement due to a disability.
- Title VII of the Civil Rights Act of 1964 would allow employees to request a reasonable accommodation for their deeply held religious beliefs, observances, and practices. This requires employers to ask three questions: 1) is the belief religious? 2) is the belief sincerely held? and 3) would providing a reasonable accommodation create an undue hardship on the employer?
- The Pregnancy Discrimination Act offers protections like the ADA for employees that are pregnant.

Employers that do want to put in a mandatory vaccination requirement should plan now for dealing with requests for accommodations. Be prepared that some employees who do not want to be vaccinated may submit for fraudulent waivers. Plan now for how to deal with those situations.

Employers may want to consider ways to encourage or incentivize employees to get vaccinated. A gift card or entry into a raffle could be effective ways to encourage employees.

Other Employer Concerns

If an employee were to suffer an adverse reaction due to a mandatory vaccination, employers could be subject to workers compensation claims in most jurisdictions.

Unfortunately, a sort of Catch-22 is created because employers are also required to provide a safe workplace under the federal Occupation Safety and Health Act (OSHA) and under state and local laws. If an employee were to contract COVID-19 and worked for an employer that did not require vaccination, the employee could claim it was an unsafe workplace. If they have not already done it, employers should implement robust workplace safety policies to limit this risk.



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