



What's Legal:

Vaccinations, Masks, and
Return to Work Policies

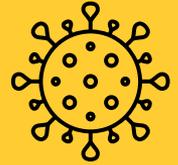
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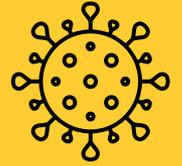
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What We'll Cover (briefly and not in order)



- COVID-19 Vaccination Overview /Update
- The Key Question: To Mandate or To Recommend?
- Workplace Accommodation
- Federal Guidance, Workplace Safety, Workers Compensation
- Vaccine Incentives, Privacy Concerns, Returning to Work



COVID-19 Vaccination: Overview and Update

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- US – 39.6% fully vaccinated.
- Texas – 34.2% fully vaccinated
- Poll in April – 25% nationwide refusing vaccination
- Who are the rest?

COVID-19 Vaccination: Overview and Update

- Not going away anytime soon
- Different variants emerging
- “Herd Immunity”

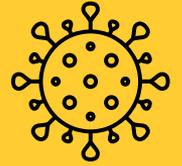
American Rescue Act Plan of 2021

Added 2 more reasons that employees can qualify for FFCRA (if employer opts in):

1. employees who can't work because they're getting the vaccine or recovering from illness, injury or condition related to the vaccine (side effects): and
2. employees who can't work because they're seeking or waiting on results of medical test or diagnosis.

American Rescue Act Plan of 2021

3. Increased number of weeks of paid sick/family leave from 10 to 12 weeks. Employee now has 14 weeks of paid leave: 2 weeks of sick and 12 weeks of family.
4. Resets employees' FFCRA sick leave rights to zero on April 1, 2021. Employees who took FFCRA sick leave before 4/1/21 does not count against their future leave rights.



The Key Question:
To Mandate or To Recommend?

To Mandate or Recommend?

Employers have right to regulate the workplace and set safety standards.

Masks

- March 10 – Gov. Abbot lifted mask mandate Texas-wide.
- May 13 – CDC guidance (does not have force of law)– vaccinated people don't have to wear masks indoors. Doesn't trump local, state or federal regulations.
- May 21 (5 days ago!) – Gov. Abbott bans local governments from mandating mask-wearing

Masks

Rule of thumb:

Whenever there is conflicting guidance between federal, state and local regulators, employers should follow the highest-level guidance.

Masks

Q: Should I require masks at work?

A: It's up to the employer (you).

- CDC recommends wearing a mask at work.
- CDC – employers should require anyone else, including visitors and volunteers, to wear a mask
- Treat mask wearing like any other safety rule.

Vaccines – Employer Mandates

Q: Can I require all employees to be vaccinated?

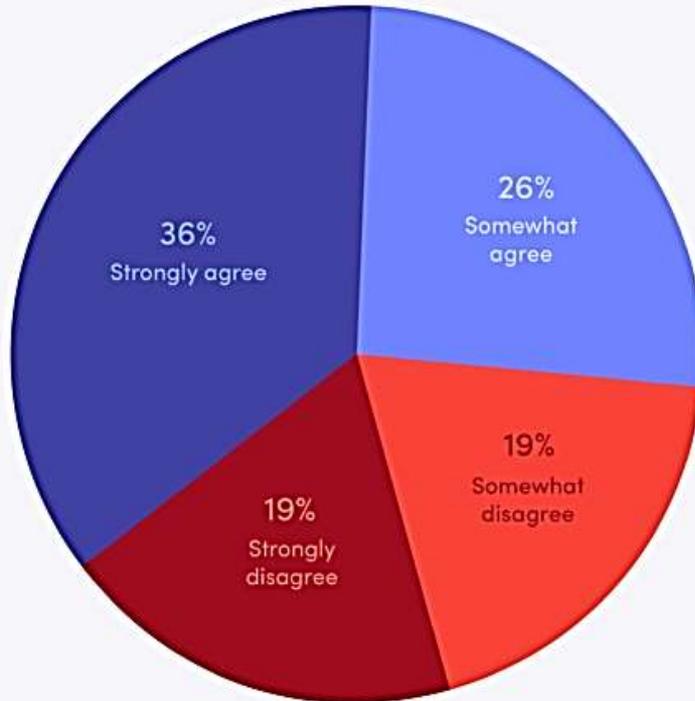
A: Yes, with some exceptions

Q: Can I require volunteers to be vaccinated?

A: Yes, with some exceptions.

62% of workers believe their employer should mandate a vaccine for employees

Source: Envoy Return to the Workplace Report



Vaccines

Recent poll (April 2021) by Envoy, a workplace tech firm.

Another poll said >50% did not believe vaccines should be mandated

Vaccines

Q: Can you require employees to prove that they've been vaccinated?

A. Yes. But there are limitations.

Vaccine Refusal

“You’re discriminating against unvaccinated people”

- Willfully unvaccinated is not a protected status under federal law.

“I’ve had Covid so I’m immune”

- Unsure how long immunity lasts
- Unvaccinated people not as well protected against variants

Vaccine Refusal

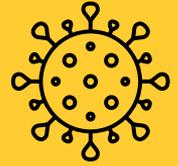
“I’m refusing the vaccination because it’s not safe”

- Personal anti-vax belief is not a legal reason for exemption (unless religious belief requires refusal)
- Employers do not have to accommodate secular or medical beliefs about vaccines.

FYI:

Unlike the flu vaccine, none of the COVID-19 vaccines contain the live virus that causes COVID-19. A COVID-19 vaccine cannot make you sick with COVID-19.

Learn more [Facts about COVID-19 Vaccines](#)



Workplace Accommodations and Leave

Exceptions to Vaccination

- **Medical Exception**

Those at risk for an adverse reaction because of an allergy or a covid-related medical condition. (ADA – 15+ ee's)

- **Religious Exception**

Individual declines vaccination based on “sincerely held” religious belief. (Title VII- 15+ ees)

Accommodation

- ADA accommodation for disability includes covid-related medical conditions
- How do you ask about the medical condition?

Questions must be “job-related and consistent with business necessity.”

Accommodation

Considerations:

- Preexisting disability
- Undue burden
- Remote work
- Indefinite leave of absence

Accommodation

If accommodation is needed:

- Work with employee to design appropriate accommodation.
- You get to choose the accommodation, not the employee.
- Examples of Covid 19 “Reasonable Accommodations” under the ADA:
 - Exception to mandatory vaccine requirement,
 - remote work,
 - leave of absence, or some combination

Religious Accommodation

- EEOC - employer must provide a reasonable accommodation if an employee's *sincerely held religious belief, practice, or observance* prevents them from receiving the vaccination

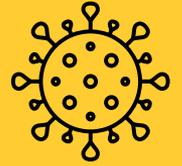
unless

- The accommodation would pose an undue hardship

Title VII of the Civil Rights Act of 1964.

FLSA

- If you mandate COVID-19 testing for the job, you have to pay employees for time spent getting tested. Same with vaccinations.
- If you don't mandate vaccinations or testing you can offer paid time off as an incentive.



Workplace Safety, Worker's Compensation

OSHA

- OSHA –States can develop their own workplace health and safety plans, if they are "at least as effective" as the federal program.
- Workplace COVID-19 incident reported to OSHA - they'll want to know about your workplace safety measures.
- Employer workplace education and safety measures are key.
- Goes without saying that your safety measures and protocols should be in writing

Federal Guidance - OSHA

OSHA's current guidance boiled down:

Employers should encourage vaccinations. Employers can:

- Provide onsite vaccination clinics,
- Provide paid leave for employees to get vaccinated,
- Use promotional posters/flyers to advertise vaccination locations
- Post articles, posters, have staff meetings re: importance of COVID-19 vaccination in protecting self and others.

Workers Compensation

CASA programs required to carry Workers Compensation.

Q: Does Workers' Compensation Cover COVID-19?

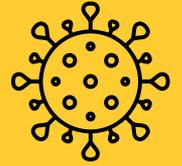
A: It depends.

Ask: Is illness tied to workplace?

Adverse Reaction Claims

Adverse reaction to vaccination as a claim:

- Vaccination Mandated: If employer mandates vaccine, employee/ claimant has better chance of coverage under workers' compensation.
- Vaccination Encouraged: If vaccine not mandated, adverse reaction probably not covered by workers comp.



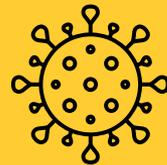
Vaccine Incentives

Vaccine Incentives

Vaccine incentives may be more powerful than "strong suggestions" or even mandates – get creative!

Considerations:

- Employees with active accommodations
- Voluntariness of participation.



Privacy Concerns

HIPPA

Businesses and nonprofits that are not in the healthcare industry are not bound by HIPAA.

Q: Can I ask my employee if they've been vaccinated/ever had covid?

A: Yes.

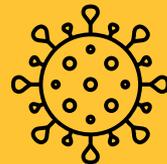
- Not a HIPAA violation for employer to ask if an employee has been vaccinated.
- Employee doesn't have to provide this info.
- Can't ask for more information. Think yes/no answer.

Keeping Info Confidential

Q: What do I need to keep confidential?

A: All health- related info of employee

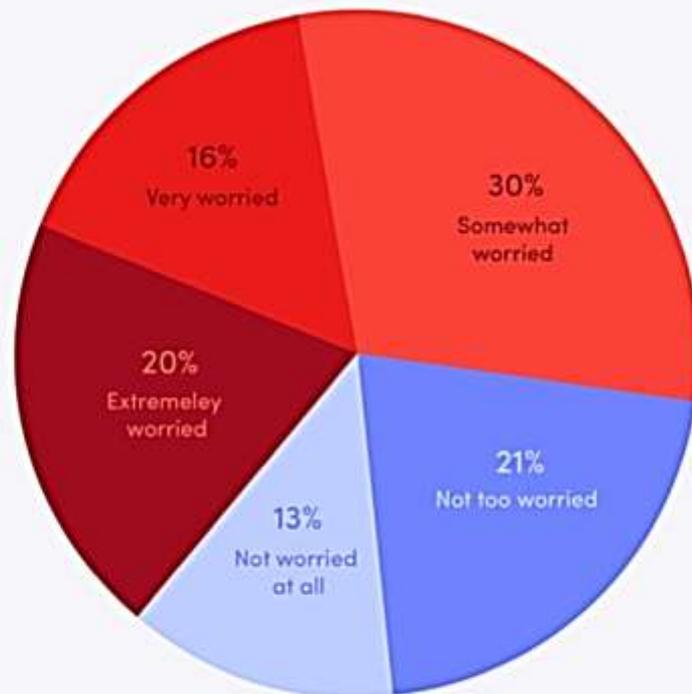
- Disability-related inquiry or medical examination (such as temperature screening)
- Work-related symptom questionnaires;
- Employee statements regarding exposure;
- Health care provider notes,



Returning to Work

66% of employees worry about returning to the workplace

Source: Envy Return to the Workplace Report



Hybrid Work Models

The work environment will never be like the “before times”.

Scenarios:

- Everyone reports to the office, like in the before times (almost).
- Some employees assigned to work on-site and others work remotely indefinitely.
- All employees work on-site for part of the week and remotely for part of the week
- All employees continue to work remotely.

Mental Health

- Lockdown-related issues may have created a whole new set of conditions that might be disabilities under ADA
- Be aware. Remember, employee doesn't have to ask for a "reasonable accommodation" per se.
- The interactive process.

Physical Health

- High risk employees.
- Employees who regularly interact with vulnerable people.
- Employees who've never had covid and fear getting it the first time
- Employees who've had covid and fear getting it again

Volunteers – in person child visits

- Standards require that each volunteer meet in-person with the child once every 30 days at a minimum.
- Standards allow exceptions
- Engage volunteers in decisions about in-person visits.
- Consider joint training sessions with DFPS to address volunteer concerns

Resistance to Return

- There are rational fears about catching the virus, but also irrational fears.
- We're wired toward caution and tend over-estimating potential risks when stressed.
- Don't assume employees share your enthusiasm for returning.
- For every employee who felt isolated working from home, there's another who never wants to return to the office.

Materials for Communicating with Your Employees

- **Introductory letter:** Send this letter to encourage your branches, offices, or units to review and use the toolkit materials.
- **Letter to your employees:** Customize this letter about COVID-19 vaccination to send to your staff.
- **Newsletter content:** This short newsletter-style blurb can be widely distributed to share information on COVID-19 vaccines.
- **COVID-19 Vaccine Basics (Slide Deck)**  [4 MB, 16 pages] (also available in **Spanish**  [4 MB, 16 pages]); These basic slides about COVID-19 vaccines are for informational meetings within your organizations. You can use all or part of the set or also include your own organization's information.
- **Key messages:** Use these key messages about COVID-19 vaccine to educate your employees.
 - [Printable Key Message](#)  [401 KB, 2 pages]
 - [Spanish Printable Key Messages](#)  [401 KB, 2 pages]
- **Address myths and promote facts:** Proactively address and mitigate the spread and harm of misinformation by sharing credible and accurate information.
- **V-safe:** Encourage your employees who are vaccinated to enroll in **v-safe** and get answers to the frequently asked questions about V-safe.

Information and Frequently Asked Questions

Use information on these websites to help answer questions about COVID-19 vaccine in your workplace. You can also download the FAQs.

[Information for Employers](#)

- Download [FAQs for employers](#)  [621 KB, 7 pages]
- Download [Spanish FAQs for employers](#)  [261 KB, 8 pages]

[Information for Employees](#)

- Download [FAQs for employees](#)  [365 KB, 4 pages]

CDC
has
tools
and
info!

https://www.cdc.gov/coronavirus/2019-ncov/vaccines/toolkits/essential-workers.html#anchor_1612717640568

THANK YOU!

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