

Developing a COVID-19 Workplace Vaccination Campaign: Common Questions and Answers

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To date, two COVID-19 vaccines have been authorized under an “emergency use authorization” issued by the U.S. Food and Drug Administration (FDA), and several other vaccine candidates are being evaluated. These advances are very important, positive steps forward in curbing the pandemic — and helping employees and employers get back to “business as usual” — COVID-style, of course.

Though not yet widely available, federal authorities expect the COVID-19 vaccine to be accessible to all who wish to receive it by late spring to early summer 2021. In the meantime, federal agencies like the Centers for Disease Control and Prevention (CDC), the U.S. Equal Employment Opportunity Commission (EEOC), and others have added guidance on how to navigate some of the practical and compliance-related issues that are expected to arise now that COVID-19 vaccinations are on the horizon. [[See our recent client alerts on the EEOC’s guidance and vaccine issues.](#)]

Many employers look to the vaccine as a possible sign of being able to fully resume pre-pandemic business operations and are contemplating the development and implementation of workplace vaccination programs in which employees are either required, or strongly encouraged, to get vaccinated. Those efforts necessarily will require work — to educate staff about its benefits, train managers on dealing with vaccine-related questions and workplace issues, and message the vaccination campaign in a way that ensures maximum effectiveness and minimizes legal risk.

The following are a series of common questions and answers relating to the COVID-19 vaccine that may be helpful in crafting a [messaging strategy](#) to accompany your workplace vaccination campaign.

Taking into account disability- or religion-based special circumstances, can and should we require our employees to receive the COVID-19 vaccine when it is available to them?

The short answer is that, in general, employers may impose vaccination requirements as long as they allow for appropriate exceptions. Whether they should will depend on a number of different factors and circumstances.

First, not all employers will find it necessary. A company with a “virtual” workforce, for instance, may not see an immediate need to mandate vaccinations and instead may roll out an aggressive campaign to encourage workers to get the vaccine when one becomes more widely available. In contrast, organizations that employ teachers, service workers, or other essential employees who interact regularly with others may be especially anxious to mandate vaccines, for their own employees’, as well as their customers’, protection.

Second, companies may be wary, from both an employee relations standpoint and a risk management perspective, of mandating a vaccine, given general concerns over its efficacy, potential serious side effects, and other objections that many people have raised to forced vaccination programs.

That said, states have broad authority to enact laws to protect the health and safety of their citizens. For example, in response to the U.S. measles outbreak in 2019, both California and New York stripped “conscience” exemptions from their mandatory measles vaccination requirements, and other states, like Connecticut, have considered following suit. While no state legislature to date has enacted a law requiring its citizens to get the COVID-19 vaccine, we may see some movement in that direction, once a vaccine obtains final FDA approval (an emergency use authorization is not the same as an FDA approval) and is readily available to the general public.

When will a vaccine be available for general use?

As of this writing, two COVID-19 vaccines (Pfizer/BioNTech (BNT162b2) and Moderna (mRNA-1273)) have received emergency use authorization (EUA) from the FDA, meaning that the U.S. Department of Health and Human Services (HHS) has determined that “circumstances exist to justify the emergency use of drugs and biological products during the COVID-19 pandemic” and that the two vaccines under current EUAs have met certain criteria clearing their use. As noted above, no COVID-19 vaccine to date — including the Pfizer and Moderna vaccines — has received FDA approval, which involves a much lengthier process.

Although there are a number of additional vaccines in various stages of testing and approval, only the Pfizer and Moderna vaccines have been authorized for immediate use on an emergency basis, and only a limited number of vaccine doses are currently available. However, the CDC expects that the vaccine supply will increase significantly in the next few months, raising the possibility that everyone who wants a vaccine will be able to receive it.

Who should get it first?

At this point, given the limited availability of the COVID-19 vaccine, the CDC has established a phased implementation plan that places health care workers and residents of long-term care facilities at the front of the line (“Phase 1a”), followed by people ages 75 or older and other frontline workers — including, for example, first responders and teachers (“Phase 1b”), then people ages 65 to 74, people ages 16 to 64 with high-risk medical conditions, and non-frontline essential workers, such as those working in the transportation and logistics, water and wastewater, food service, construction, finance, information technology and communications, energy, legal, media, public safety (e.g., engineers), and public health sectors (“Phase 1c”).

This approach is generally consistent with how the CDC recommends prioritizing flu vaccinations generally when supplies are limited:

When vaccine supply is limited, vaccination efforts should focus on delivering vaccination to persons at higher risk for medical complications attributable to severe influenza who do not have contraindications. These persons include (no hierarchy is implied by order of listing):

- All children aged 6 through 59 months;
- All persons aged ≥ 50 years;
- Adults and children who have chronic pulmonary (including asthma), cardiovascular (excluding isolated hypertension), renal, hepatic, neurologic, hematologic, or metabolic disorders (including diabetes mellitus);
- Persons who are immunocompromised due to any cause (including but not limited to immunosuppression caused by medications or human immunodeficiency virus [HIV] infection);
- Women who are or will be pregnant during the influenza season;
- Children and adolescents (aged 6 months through 18 years) who are receiving aspirin- or salicylate-containing medications and who might be at risk for experiencing Reye syndrome after influenza virus infection;
- Residents of nursing homes and other long-term care facilities;

- American Indians/Alaska Natives; and
- Persons who are extremely obese (body mass index ≥ 40 for adults).

Who are considered non-health care frontline workers?

The CDC's Advisory Committee on Immunization Practices (ACIP) has classified the following non-health care essential workers as "frontline workers" encouraged to receive the COVID-19 vaccine during Phase 1b:

- First responders (e.g., firefighters and police officers)
- Corrections officers
- Food and agricultural workers
- U.S. Postal Service workers
- Manufacturing workers
- Grocery store workers
- Public transit workers
- Those who work in the education sector (teachers and support staff members)
- Child care workers

Which workers are urged to get vaccinated as part of Phase 1c?

Essential workers recommended for vaccination in Phase 1c "include those in transportation and logistics, water and wastewater, food service, shelter and housing (e.g., construction), finance (e.g., bank tellers), information technology and communications, energy, legal, media, public safety (e.g., engineers), and public health workers."

We already have an annual flu vaccination program/campaign. How should it be modified to address COVID-19?

To the extent that an organization already has a program in place for encouraging workers to get their annual flu vaccination, that program can serve as a model for rolling out a COVID-19 vaccination campaign – including how best to communicate and distribute safety and other vaccine-related

information to staff, such as when, and under what circumstances, individuals should consider getting both vaccines.

For instance, the CDC advises against administering the flu vaccine to persons with COVID-19 infection, as it is unclear what, if any, adverse complications may result. According to the CDC, “anyone currently infected with COVID-19 should wait to get vaccinated until after their illness has resolved and after they have met the criteria to discontinue isolation.” In addition, “current evidence suggests that reinfection with the virus that causes COVID-19 is uncommon in the 90 days after initial infection. Therefore, people with a recent infection may delay vaccination until the end of that 90-day period if desired.”

However, the CDC also makes clear that just because someone has recovered from COVID-19 does not mean that he or she cannot become re-infected. Accordingly, those seeking to receive the vaccine should not be required to get an antibody test or otherwise be discouraged from being inoculated based on past infection.

If incorporating COVID-19 content into an existing vaccine program, workers should be encouraged to stay in close contact with their health care provider regarding what to expect immediately after receiving the vaccine, as well as information about follow-up inoculations (both the Pfizer and Moderna vaccines are administered in two doses), potential side effects, and what to do in the event of a serious health reaction. Employers also may wish to consider describing what kinds of employer-provided leave may be available to workers dealing with vaccine-related complications.

How do we balance the benefits of inoculation against the risk (the extent to which is still unknown) of severe reactions?

- **Educate Employees.** To date, federal health authorities, including the CDC and the FDA, have concluded that the benefits of receiving a COVID-19 vaccine far outweigh any potential health risks, including preventing possible COVID-19 infection entirely, or helping prevent serious illness resulting from infection, as well as protecting others — especially those in high-risk categories.
- **Follow the Lead of Health Authorities.** As has been the case throughout the pandemic, federal, state, and local health authorities continue to issue, update, and refine their COVID-19 guidance, and we should expect to see additional tweaks to published information on available vaccines.

For example, the CDC has issued (and recently updated) specific COVID-19 vaccine guidance, including a “frequently asked questions” document that responds to issues such as whether the COVID-19 vaccine can cause someone to become infected (the answer is no), and whether people

who have had, and recovered from, the COVID-19 infection should be encouraged to get vaccinated (the answer is yes).

The CDC's website also contains a number of fact sheets and other resources that employers can use to educate workers on the benefits of receiving the COVID-19 vaccine. For instance, the agency's "[benefits of getting a COVID-19 vaccine](#)" page, which was updated on December 28, 2020, explains that the COVID-19 vaccination:

- Is safe, and will help those who receive it to minimize the severity of the infection or avoid it entirely;
- Is a safer way to help build protection from the virus; and
- Will be an important tool, along with wearing masks and physical distancing, in helping to slow the spread of the disease and eventually "stop the pandemic."

In addition, both the [Pfizer](#) and [Moderna](#) EUAs contain helpful patient information sheets that describe how each vaccine works, who should and should not get vaccinated, and how to report side effects or vaccination complications.

Sharing such information with employees may help considerably to allay their concerns and apprehension around getting the vaccine.

Provide a Means for Workers to Ask Questions About the Program. Assign a point of contact within human resources or the occupational health department who can direct employees to the appropriate internal or external [resources](#) such as information about any available leave or time off for getting the vaccine or dealing with side effects or unexpected complications.

Lead by Example. Demonstrate company leadership's commitment to the vaccination promotion program by sharing their vaccination stories and reasons why they felt it important to get the vaccine.

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