

Vaccine policies for agencies

Issues to consider and what you can & can't do

Do you mandate,
encourage, or ignore?

Even an “ignore it” decision is a policy. It should be recorded as such.

Can we require vaccines?

The Equal Employment Opportunity Commission (EEOC) has issued guidance that allows employers to institute a policy that requires employees to be vaccinated against COVID-19.

Most state and local jurisdictions appear to be following EEOC guidance on this issue.

Must meet four criteria

1. The vaccine must be available to your employee population
2. You must allow for exceptions for health reasons
3. You must allow exceptions for employees with a real religious belief (not just avoiding the vaccine)
4. If your employees are unionized, your collective bargaining agreement may prevent this (not an issue for us)

Can we encourage vaccines?

The employer may encourage employees to get vaccinated. However, there are limitations on what enticements an employer can provide.

The main issue is that it is unclear whether a vaccination incentive plan, whether formal or informal, would be considered a “wellness program” by the EEOC.

Under the ADA, if the wellness program inquires into disability-related issues, the wellness program must be voluntary. Employers can offer small “gifts,” such as a water bottle or a sticker, to participate in a wellness program.

If your program is voluntary

1. You can ask but you can't test them to verify.
2. You can require they show you a copy or photo of their vaccination card if they don't want to show you the real card, but you can't ask for their health records if they don't have the card.
3. Seeing the card (or photo) and recording its existence is safer for you as an employer than keeping a copy of it in their employee records.

Questions to consider

- How will you articulate the agency's decision to mandate vaccinations, rather than just strongly encouraging them?
- Will you mandate that all employees be vaccinated, or only employees whose job duties cannot be performed remotely or make social distancing or preventive personal protective equipment (PPE) use during on-site work difficult or less effective?
- Do you want a work environment that always includes masks and social distancing?

Questions to consider

- How will you handle employees who must travel out of the state/country to perform their jobs? What if airlines, airport authorities and/or localities begin to require proof of vaccination?
- What impacts will employees being vaccinated (or not) have on the employer's business beyond on-site work considerations?
- How will you handle it when (not if) a client asks who on the team has been vaccinated or requires that you only send vaccinated employees to shoots, meetings, etc.?

Questions to consider

- How will you respond when a job applicant asks what percentage of the team has been vaccinated?
- How long will your program of mandating or encouraging vaccines be in effect?
- What's the timeframe (new employees – before they start, existing employee – within 30 days of being eligible?)
- How can you create a policy that protects you from discriminating against applicants based on disability, religion, pregnancy, etc.

Questions to consider

- Will you have a temporary “pass” for pregnant and breastfeeding women? Will they have to work remotely until they can get vaccinated?
- How will you handle an existing employee who refuses to get the vaccine? How long will they be allowed to stay before you dismiss them? What if its your superstar?
- If you do not mandate vaccines but bring everyone back to the office (even for a day a week or episodic meetings) what liability are you assuming?

Questions to consider

- If you're not mandating the vaccine, will you ask each employee to disclose/prove if they have been vaccinated?
- How does mandating, encouraging, or ignoring the vaccine align with your company culture?
- Agency owners tend to “survey” their staff. Is it appropriate to make this a group decision, given that the odds of 100% alignment are not very good?

Questions to consider

- If you require vaccines, how will you educate employees about the vaccines or what resource will be your go to for information?
- How will you keep records of each employee's vaccination status?
- In your heart of hearts, what is the best decision for you, your team, and your clients?
- What are you willing to lose because of this decision? (employees, clients, money, someone's life, the freedom to work in the office w/o masks and social distancing)

This is a level two decision.
Don't pass the buck or
responsibility.

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