

Covid-19 Vaccination

Policy Considerations

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Introduction

Since the early days of the Covid-19 Pandemic we have been asked by employers what they should be thinking about when it comes to vaccination policies in the workplace. At the time, a vaccination seemed a lifetime away and most suggested that following the guidance for flu vaccination policy was a prudent approach. To date there have been announcements by 3 pharmaceuticals that they have a vaccination with greater than 90% efficacy ready for FDA consideration: AstraZeneca, Moderna and Pfizer. Great Britain has approved the Pfizer vaccine and expects to begin administering the vaccine within days. With the first doses of the vaccines expected to be administered to healthcare workers and more vulnerable populations here in the U.S. by years end, policy consideration remains little changed since those initial conversations.

We continue recommending that employers focus on educating employees and their family members about the importance of getting flu shots as soon as possible. In terms of the COVID 19 vaccine, the federal government will be purchasing all supplies of the vaccine and for at least the next 6-12 months, employers will not be able to purchase doses of the vaccine for employees or family members. Governors, on a state by state basis, will determine who gets the first vaccines, but for most if not all states, the vaccines will be prioritized for frontline healthcare workers and the most vulnerable (in most states, long term care residents).

In terms of cost, the federal government will be purchasing and distributing the vaccine through state and local health departments, so employers will only be responsible for administrative fees which can be covered through the medical or pharmacy benefit.

When the vaccine is available for a broader audience, good communications will be critical for the employee population. In addition to thinking through a vaccination policy (details below), employers should consider providing some flexibility to employees to ensure that they have sufficient time away from the office to receive their vaccine, and in many cases (depending on the vaccine) employees will need to receive 2 doses of the vaccine, generally 3-4 weeks apart.



At this stage, a COVID-19 vaccination policy is still going to be challenging,

but here are some areas to consider in terms of whether to implement a vaccination mandate policy:

LEGAL AND REGULATORY CONSIDERATIONS

Technically, there is no legal prohibition against the implementation of a vaccination mandate, clearly a number of vaccinations are already mandated here in the U.S. There are however some key legal issues employers need to give special consideration to when addressing vaccination policy in the workplace.

Both the ADA and Civil Rights Act of 1964, administered by the EEOC, provide exemptions that apply to mandating vaccinations in the workforce. The ADA provides for exemptions for individuals with disabilities, for whom vaccinations may not be appropriate and sets a relatively high bar as it relates to workplace accommodations. Under ADA guidelines, the accommodation must present the employer with an undue hardship. The Civil Rights Act provides for exemptions due to religious beliefs under Title VII.

The EEOC has, in the past, provided guidance relative to vaccination policies in the workplace. Under the current guidance they suggest employers take an approach of “encouragement” as opposed to “requirement” when it comes to addressing vaccinations in the workplace. Although we can presume that the EEOC will issue similar guidance when a COVID-19 vaccine is approved, the threat imposed by COVID-19 to the health and safety of others may make employers more inclined to require vaccination. Moreover, this threat and the necessary safety measures required of employers with unvaccinated employees may render exemptions to the COVID-19 vaccine more burdensome.

While it may be legally possible for there to be a state or corporate mandate, it is unlikely that we will see this happen broadly. It is also possible that due to the nature of the pandemic we may see the adoption of more stringent guidelines put in place to address Covid-19 specifically.

Suggested Resources:

[Pandemic Preparedness in the Workplace and the Americans with Disabilities Act | U.S. Equal Employment Opportunity Commission \(eeoc.gov\)](https://www.eeoc.gov/pandemic-preparedness-workplace-and-americans-disabilities-act)

[What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws | U.S. Equal Employment Opportunity Commission \(eeoc.gov\)](https://www.eeoc.gov/what-you-should-know-about-covid-19-and-the-ada-the-rehabilitation-act-and-other-eeo-laws)

[Emergency Preparedness and Response \(ada.gov\)](https://www.ada.gov/emergency-preparedness-and-response)

[Coronavirus Information and Resources | U.S. Department of Labor \(dol.gov\)](https://www.dol.gov/coronavirus)

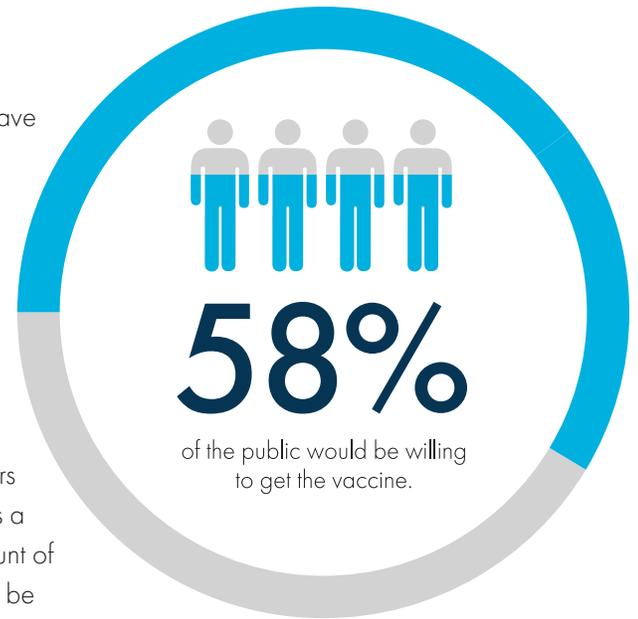
Accordingly, employers contemplating any policy mandating a COVID-19 vaccine should be prepared to carefully consider the threat posed to the health and safety of their employees and the risk of future claims.

SAFETY, EFFICACY AND THE WORKPLACE

As I prepare this overview, I received an article in the Modern Healthcare journal with the headline “Hospitals Mixed on Imposing Staff Covid-19 Vaccination Mandates Siting Efficacy and Safety Concerns”. Another aspect that employers must consider are potential adverse reactions to the vaccine which could lead to workers’ compensation claims.

ATTRACTION, RETENTION AND VACCINATION

While the health and safety of the workplace is of paramount importance to employers they should also consider the impact a vaccination mandate may have on both the attraction and retention of talent. Early polling data showed that fewer than 35% of the public would agree to receive a Covid-19 vaccination when it became available. More recent polling data from Gallop indicates that the public has grown more comfortable with the idea of a vaccination with 58% indicating a willingness to receive the vaccination as news was released of the positive trial results for the Pfizer vaccine. While 6 in 10 is a significant improvement from early attitudes, the results are significantly different among various demographics, with older adults among the most accepting of a vaccine. It is possible, especially in the near term, that employers could experience a challenge with turnover as a result of a policy that requires a vaccine. Some have suggested that employers may want to consider the amount of in person contact with a workforce when considering whether vaccines should be mandated. Occupations involving healthcare, retail and food service are areas where additional safety concerns may be more prevalent due to the high degree of face-to-face contact. Alternatives to mandates may include accommodations for those who are hesitant or refuse inoculation. This might include a mask mandate, access to additional PPE or work from home arrangements.



Additional Resources:

[More Americans Now Willing to Get COVID-19 Vaccine \(gallup.com\)](https://www.gallup.com)

WHAT SHOULD EMPLOYERS BE DOING NOW? EDUCATION!

As part of communications, employees should be made aware that while getting the vaccine is going to be extremely important, that for some period of time even after vaccination, that they will also be required to wear masks when in public places and that maintaining basic hygiene practices (hand washing, etc) will be critical for the foreseeable future.

The general view seems to be focusing employees on the facts now, not just about a COVID-19 vaccine when they become available in the coming weeks and months, but also about other preventive vaccines, particularly the flu vaccine. Given that so many workers are remote, the communications are going to need to focus on local access (whether on site facility or in the community) and ensuring that employers make access to the flu vaccine as easy as possible and then address the COVID-19 vaccine when we know more and better understand the availability for the broader population.

HOW SHOULD EMPLOYERS THINK ABOUT ACCESS?

Based on the conversations with several employers, the thought seems to be similar to what we are hearing from the CDC. Employers should consider focusing on those who are most at risk such as older workers, those with co-morbidities and those who are essential to have in the office (including those who perform basic, but essential services). Young, healthy workers are most likely to be the last group, particularly those who have jobs that can be done remotely.



Judith Verhave is founder and CEO of Next Chapter Solutions LLC, an independent advisory/consulting practice established in August, 2018. Until her retirement in April, 2018 she was an executive vice president and Global Head of Compensation and Benefits for BNY Mellon. She was responsible for the design and delivery of compensation and benefits for BNY Mellon's 50,000+ person global workforce. She was also responsible for Board of Director's support and Corporate Governance/Regulatory Affairs in addition to Global Mobility. She was a member of BNY Mellon's Senior Leadership Team.

She joined BNY Mellon in February, 2008 from Fidelity Investments where she was an executive vice president and was responsible for the delivery of HR services including compensation, benefits (health, welfare and retirement), worklife programs and expatriate services for Fidelity's 50,000 employees. She was also actively involved in Fidelity's Research Institute where she played a key role in developing Fidelity's health care policy expertise. Prior to assuming this role, she was Senior Vice President for Human Resources responsible for Fidelity's global investment business including talent management, succession planning, workforce planning, compensation and employee relations.

She was a member of the Senior HR Leadership Group. In addition, she spent several years supporting the development of Fidelity's retail business in Japan.

Before joining Fidelity in 1989, Ms. Verhave was vice president and Chief Human Resources Officer for DDS, a start up health care company. Prior to joining DDS, Ms. Verhave was a consultant and research associate for Braxton Associates, a strategy consulting firm.

She holds a B.A. from Carleton College in Northfield, Minnesota. She is a member of the Board of Directors at Castlight Health where she is a member of the Compensation and Talent Committee and the Nominating and Governance Committee. In addition, she is a member of the Advisory Boards of Vertus, Big Health, Quantum, and Ginger IO, as well as an Advisor to Maven, Mt. Sinai, and Fertility IQ. She retired in July 2018 as Chairman of the Board of the National Business Group on Health. She is also an Officer of the Handel and Haydn Society, Chair of the Personnel Committee and on the Executive Committee.

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