

THOUGHT LEADERSHIP

LEGAL UPDATES

PUBLISHED: DECEMBER 23, 2020

Services

Labor & Employment
Workplace Safety & Health

Professionals

TIMOTHY A. HILTON
KANSAS CITY:
816.983.8294
TIM.HILTON@
HUSCHBLACKWELL.COM

JENNA BROFSKY
KANSAS CITY:
816.983.8305
JENNA.BROFSKY@
HUSCHBLACKWELL.COM

COVID-19 Vaccine Planning Checklist

As COVID-19 vaccination begins in the United States, employers should begin preparing to support vaccination and consider how workplaces will be impacted. There are still many unknowns, and plans will have to remain flexible. But here are some key issues and action items for immediate consideration, as well as a printable PDF for download.

1. Designate a vaccine point person or task force.

Whatever approach your company takes to vaccination, you need someone to lead in creating a plan and executing it. It's not too soon to Identify a vaccine coordinator and/or team with defined roles and responsibilities.

Who's right for the job?

Find someone with the right skills for a job that could have technical, logistical, organizational, and communications challenges. EHS or HR personnel may be well-suited. They should be adept at responding to employee and stakeholder questions and concerns and be well-positioned to coordinate with management, human resources, employees, and labor representatives, as appropriate. But make sure they have enough bandwidth, too. Consider whether those already leading your COVID-19 response are too busy.

What should they do?

The coordinator(s) should lead, coordinate, and/or execute on: Following vaccine developments, developing a company plan or policy, implementing the plan, coordinating among stakeholders, and overseeing vaccine communications.

2. Review your state's distribution plan.

How vaccine distribution occurs all depends on each state's plan. These plans are still in development and are likely to evolve over time. In many ways, the

state plan for states where you operate will be the starting point for determining what you may be able to do as an employer.

One significant issue that will be determined on a state-by-state basis is which industries or employees are considered essential and are part of Phase 1 of the vaccine roll-out. While many states followed the federal Cybersecurity & Infrastructure Security Agency (CISA) guidance in identifying critical infrastructure workers for stay-at-home orders earlier in the pandemic, states may make different essential worker designations now, especially with limited vaccine supplies.

Review your state plans with your counsel early and often. Find links to each state distribution plan [here](#).

3. Create a draft vaccine plan/policy.

Because so much is in flux about vaccination timelines, availability of supply, and the details of state plans, it may not be possible to create a complete and final vaccine policy today. But more will come into focus in the weeks ahead. However, it is not too soon to start considering key issues of what you'd like to do to the extent possible, as well as organizing in a policy those elements that are already clear.

Who needs a policy?

Employers who may encourage, incentivize, and/or mandate vaccination should consider adopting a policy to organize these efforts. *Note: We can help. Husch Blackwell expects to roll out affordable, customized policies for clients in the coming days.*

What should be in your policy?

Items to consider include:

a. Would you like to require vaccination?

Consider pros and cons. Will your workforce likely comply voluntarily? How high-risk is your workplace in terms of close contact? Are some or all of your workers likely to be considered essential? If unionized, will the CBA allow and union support? Is a mandate too heavy-handed for your workforce? Will this be a net plus or minus? Are the costs, logistics, and procedures worth it?

Which employees? Who would you include in the “required” group? Everyone? Essential workers? Everyone who is eligible for vaccination under the state plan when they become eligible? How would you justify including some but not others?

Visitors. Would your mandate include contractors, vendors, and/or customers on site?

Off-site. Would you limit close contact (for work) with unvaccinated people off-site?

Confirm state vaccination requirements. This may apply especially in healthcare, where 18 states already require certain mandatory vaccinations for certain healthcare workers.

Review CBA and union issues. Do you have a union and CBA that come into play? Are there any relevant CBA provisions? What has been your past practice under the CBA with flu or other vaccines? Review and address.

Set a timeline. Considering the state plan and vaccine availability, how would your mandate phase in if necessary? For example, vaccinating non-essential workers (as designated by each state) is not possible now. When would your mandate apply or be triggered? How much time would employees have to get vaccinated once they're eligible?

Review/adjust insurance coverages to determine health insurance, workers' comp, and/or liability insurance impacts if you impose a vaccine mandate.

Establish a system to track compliance. How will employees prove vaccination? How will you track who's had each dose? How will you protect privacy and data? What data retention is in place? The EEOC recently advised that requesting proof of vaccination is permitted but reminded employers that vaccination records are medical records that must be kept confidential and separate from regular personnel files.

Implement a system for follow-up and enforcement. How will you encourage employees toward compliance? How will you follow up with reminders? What will you do if someone ultimately refuses but has no recognized exemption?

b. If you mandate, how will you handle employee requests for exemptions?

You may not be able to require everyone to get vaccinated. There are some required and optional exemptions to consider:

Disability and religion. EEOC guidance indicates that employers who mandate COVID-19 vaccines will have to respect exemptions for disabilities under the Americans with Disabilities Act (ADA) and sincerely held religious beliefs under Title VII of the Civil Rights Act. Those statutes also protect against retaliation for requesting reasonable accommodations.

State and local rules. Your state and local authorities may have additional restrictions.

Health. OSHA further protects employees against retaliation in case of certain health concerns.

Optional. Some employees may also claim exemption for reasons that are not protected by law but that you may consider accepting, such as fear or political or ideological belief.

In your plan or policy, consider:

Process. How will your employees claim exemptions? What will be the process? What information will you request and in what form? Remember that you can request documentation to establish non-obvious disabilities and to determine effective reasonable accommodations. However, you should assume requests for religious accommodations are based on sincerely held beliefs unless you have an objective basis to question the religious nature of the request or whether the belief is sincerely held.

People. Who will handle requests? What criteria will they apply?

Accommodations. What kind of reasonable accommodations can you offer (such as isolated work, telework, masked work + social distancing, and/or masked work + routine testing)? (Note: These precautions may be in place for everyone anyway. Experts now advise we should expect these at least until mass vaccination has occurred, which could take until summer 2021 or later.)

Follow EEOC guidance. The EEOC's guidance on COVID-19 vaccine mandates explains that employers will need to evaluate each exemption request to make a case-by-case determination considering a number of factors and issues in deciding whether the exemption is justified, whether the employee poses a direct threat to the workplace based on certain elements, and whether accommodation is possible. See the guidance for more detail.

Ensure no retaliation. Put in place mechanisms to ensure no retaliation against employees who refuse vaccination based on reasonable beliefs that their medical conditions create a real danger of serious illness (potential OSHA whistleblower violation and/or ADA retaliation claim) and employees who object on religious grounds (potential Title VII retaliation claim).

c. Would you like to incentivize vaccines to the extent allowable?

One alternative or sweetener to mandating vaccines is an incentive program to drive employee vaccination. At the most basic end of the spectrum, key options would **remove obstacles** and **make it easier** for employees to get the vaccine, including:

Covering the cost (if not already covered by the federal government or health insurance).

Arranging on-site or off-site vaccination with a third party (if your state plan allows it).

Providing paid time to get vaccinated.

Some employers may consider even further incentives, including providing refreshments at a vaccination clinic, holding a contest for the department with the highest percentage of vaccinated employees, or even offering a small bonus for vaccination.

Be careful, however. Any incentive programs should be designed so as not to discriminate against employees exempt from vaccination. In addition, some behavioral scientists have suggested that employees may be suspicious of the vaccine if they perceive that strong incentives are necessary to convince them to get it. Consider the culture of your own workforce – and seek input from team members – about what is likely to work best in your company.

d. If possible, would you like to provide vaccines?

Vaccine distribution will occur on a state-by-state basis, guided by each state's distribution plan. Some states may ask or incentivize employers to assist in vaccinations; other states may handle vaccination centrally. In the short term, it's likely that only healthcare and long-term care employers are likely to even have the option of providing vaccinations. But as more supply becomes available, employers of other essential workers and eventually non-essential employers may have opportunities to provide vaccines.

Considerations

If at some point you can provide vaccinations to employees, do you want to? You should consider the logistics, pros, and cons, including:

Employee convenience.

Boost to morale.

Cost.

Acquisition challenges.

Deep-freeze storage and transportation.

Trained clinical staff to administer or contracting with a third-party to administer.

Consent forms and pre-screening questionnaires, depending on which vaccines.

PPE required.

Tracking and administering multiple doses per person.

Data management and security.

Insurance and liability concerns.

Staffing or providers

Would you manage vaccination with in-house personnel or contract with an experienced outside provider (such as a pharmacy or health clinic)? Your health care benefits provider and/or flu program contractor are likely following vaccination options and logistics issues closely. Consider consulting with them to explore available options.

4. Establish an education and communication plan.

Don't leave messaging to chance; develop a plan or campaign to persuade and remind employees as you may do with seasonal flu vaccines. Message the company's position on COVID-19 vaccination as a way to take care of employees and their families and as a priority for the health of the business.

Help keep expectations in check. There are many unknowns or uncertainties about how quickly vaccination will proceed and how effective it will be. It may fall to you to explain to employees these uncertainties so that everyone has reasonable expectations in mind. We don't yet know how effective the vaccines will be in mass vaccination, whether they prevent infection or just illness, how long after injection they reach full strength, how long immunity may last, whether the vaccine will help protect against virus mutations, what long-term effects may be, what state distribution plans ultimately will provide, or how soon everyone can get vaccinated.

Be a trusted source of information. Many people will be concerned and/or misinformed about vaccines. Achieving mass vaccination will require a significant education effort.

Communicate regularly in company communications (e.g., newsletters, intranet, emails, social media, portals, etc.) about the progress of the vaccine and your company planning. Early on, you can notify employees that you have designated certain people to coordinate, are reviewing state plans, and are working on options to support vaccination. Provide regular updates that give the latest information from the CDC and debunk misinformation.

Engage leadership. Ask managers to align with this effort. Highlight managers and business leaders getting vaccinated first to lead by example. Recruit validators and evangelists among the workforce to positively influence colleagues.

Invite and enable two-way communication. Make sure people have a reliable and comfortable way to raise concerns, pose questions, and get answers.

5. Maintain COVID protections.

Help employees understand that other precautions likely will continue for some time. Many epidemiologists expect precautions like social distancing, masks, remote work, and travel limits will have to continue until the population reaches mass vaccination (approximately 70% vaccinated), probably no earlier than summer 2021. You should clearly message to employees that ongoing safety measures are here to stay for the foreseeable future.

6. Stay updated and adjust plans as needed.

With so many moving parts and unanswered questions, your vaccine coordinator or team will have to keep an eye on developments in terms of new vaccine approvals, supply increases or decreases, changing state plans, and federal/state government guidance.

In the coming days, Husch Blackwell will roll out affordable, customized vaccine policies for our clients, and we will continue to publish articles and alerts to keep employers updated.

You can sign up for further updates on Husch Blackwell's Labor & Employment subscription webpage.

Additional Resources

Webinar recording | COVID-19 Vaccines for Your Workplace - What You Should Know and How to Prepare

Legal Alert | EEOC Issues COVID-19 Vaccine Guidance, Allowing Employer Mandates

Links to state vaccine distribution plans:

Alabama	Illinois	Montana	Rhode Island
Alaska	Indiana	Nebraska	South Carolina
Arizona	Iowa	Nevada	South Dakota

Arkansas	Kansas	New Hampshire	Tennessee
California	Kentucky	New Jersey	Texas
Colorado	Louisiana	New Mexico	Utah
Connecticut	Maine	New York	Vermont
Delaware	Maryland	North Carolina	Virginia
District of Columbia	Massachusetts	North Dakota	Washington
Florida	Michigan	Ohio	West Virginia
Georgia	Minnesota	Oklahoma	Wisconsin
Hawaii	Mississippi	Oregon	Wyoming
Idaho	Missouri	Pennsylvania	

[Back to the top](#)

Contact us

If you have any questions or need assistance with your planning, please contact Brittany Falkowski, Avi Meyerstein, Tim Hilton, Jenna Brofsky or your Husch Blackwell attorney.

CARES Act, COVID-19 & Return-to-Work Guidance

Husch Blackwell provides guidance regarding COVID-19 updates, the CARES Act, and rapidly changing state-by-state orders, including those that impact stay-at-home and return-to-work protocols. Contact these legal teams or your Husch Blackwell attorney to plan a way through and beyond the pandemic.