

# Returning to the workplace: How to handle vaccination status



As of this writing, nearly half of Americans eligible for a COVID-19 vaccination have received one.<sup>1</sup> This opens up doors for those who have rolled up their sleeves to do things like gather indoors without masks—including at the workplace, if local law and the organization allow.

It also raises questions about how to handle a workforce with mixed vaccination status. Regulations continue to evolve, but agencies such as the Occupational Safety and Health Administration and the Equal Employment Opportunity Commission have established some return-to-work guidelines that can help business decision-makers navigate these new waters. Read on to learn what organizations can and can't do regarding vaccination.

*All of the information below applies to federal law. While most state laws are in accord with federal guidelines, a handful of states are considering legislation that would offer additional protections to people who choose not to be vaccinated. Review your state's guidance before taking action.*

## **Can employers require that employees receive the COVID-19 vaccine?**

Yes, under certain conditions, including providing accommodations for employees who are unvaccinated for specific reasons. Employers can require vaccination if they can demonstrate that it's necessary to do the job safely. Given that COVID-19 mostly spreads among people who are in close contact with one another, vaccinations are considered a key part of a multi-layered approach to protecting worker safety.<sup>2</sup> But it's harder for an employer to justify requiring a remote worker who is not going into a shared workspace to be vaccinated.<sup>3</sup>

## **Can we ask for proof of vaccination?**

Yes—but that's all you should ask for. Asking for more details about an employee's vaccination status could violate the Americans with Disabilities Act (ADA), which restricts employers from making medical inquiries that could reveal personal medical information. But asking an employee to present a vaccination card is permissible.

## **If we mandate vaccinations, are there exceptions or exemptions?**

Yes. People who have a medical condition preventing them from being vaccinated are protected by the ADA, and people who refuse vaccinations for sincerely held religious beliefs are exempt from the mandate. However, that doesn't mean that unvaccinated people are exempt from other requirements that are established to help protect workplace safety.<sup>4</sup>



### **Can employees who are not vaccinated keep working?**

Yes, under certain conditions. As with any medical issue, employers have a legal obligation to provide reasonable accommodations that enable all employees to do their jobs. For COVID-19, that could mean that employees who are unvaccinated are required to wear masks and maintain social distancing at work.<sup>3</sup>

### **Can we fire someone for not getting vaccinated?**

No—but unvaccinated employees who do not comply with reasonable accommodations that are established by employers can be fired.<sup>3</sup> For example, employees who are not vaccinated but who agree to take measures to help protect their colleagues (such as wearing a mask and maintaining social distancing, assuming that the job can be performed within those guidelines) would be protected from being fired because of their vaccination status. But employees who are not vaccinated and who refuse to comply with employer-provided accommodations (such as mask-wearing), could be fired.

### **Should we update staffers on who is and isn't vaccinated?**

No. The U.S. Equal Employment Opportunity Commission (EEOC) does not consider vaccination status to be legally protected information, but human resources experts advise that businesses treat vaccination status like any other personal medical information—confidentially.<sup>4</sup>

### **Do we have a legal obligation to encourage staff members to get vaccinated?**

No. But remember that public health experts agree that vaccines are safe and effective—and that they're our collective ticket to a return to normalcy.<sup>5</sup> And discouraging employees from getting vaccinated does have legal ramifications: OSHA clearly states that employers must provide a workplace that's free from recognized hazards that are causing or are likely to cause death or serious physical harm.<sup>6</sup> In today's world, that's about more than rickety ladders and exposed electrical sockets—it's about public health.

<sup>1</sup> Associated Press. "Big gaps in vaccine rates across the US worry health experts." Published 5.20.2021. [Accessed 5.21.2021.](#)

<sup>2</sup> OSHA. "Protecting Workers: Guidance on Mitigating and Preventing the Spread of COVID-19 in the Workplace." [Accessed 6.29.2021.](#)

<sup>3</sup> ABC News. "5 things to know about COVID protections as Americans head back to work." Published 5.17.2021. [Accessed 5.21.2021.](#)

<sup>4</sup> Society for Human Resource Management. "Employers Should Be Cautious When Asking About Vaccination Status." Published 5.20.2021. [Accessed 5.21.2021.](#)

<sup>5</sup> Centers for Disease Control and Prevention. "Benefits of Getting Vaccinated." Updated 4.12.2021. [Accessed 5.21.2021.](#)

<sup>6</sup> The National Institute for Occupational Safety and Health. "OSHA's General Duty Clause." Last reviewed 2.7.2020. [Accessed 5.21.2021.](#)

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**Aflac | WWHQ | 1932 Wynnton Road | Columbus, GA 31999**