

Can You Require Proof That Your Employees Have Received a COVID-19 Vaccination?



The pandemic has changed a lot about the employer/employee relationship, and the availability of vaccines is the latest compliance hurdle that employers will need to navigate. COVID-19 vaccines are expected to be available for every adult American by the beginning of May.

Can you require vaccinations?

Unfortunately, it's not a simple yes-or-no question. Whether you may require a COVID-19 vaccination is a matter of federal, state and local law. Requirements may vary depending on where your business is located. Some employers may be able to mandate vaccines – many health care organizations already do – but vaccine mandates come with numerous legal rules and requirements, as well as risks. In many workplaces, encouraging employees to get vaccinated may make more sense than requiring them to do so.

If you decide to make vaccinations a condition of employment, you must carefully balance your workplace health and safety concerns with the rights of your employees. Under the Americans with Disabilities Act, employers need to accommodate employees who remain unvaccinated due to medically protected reasons (a compromised immune system, for example). Additionally, under Title VII of the Civil Rights Act of 1964, you may need to accommodate workers who decline vaccines for religious reasons.

The Equal Employment Opportunity Commission (EEOC) recently updated its [guidance materials](#) to address the issue of mandatory COVID-19 vaccination policies. According to the EEOC, employers with a mandatory vaccine policy should provide reasonable accommodations to employees who are unable to get vaccinated on disability-related or religious grounds.

If no reasonable accommodation is possible, according to the EEOC guidance, "then it would be lawful for the employer to exclude the employee from the workplace. This does not mean the employer may automatically terminate the worker." Consultation with qualified legal counsel is strongly recommended in this situation.

Can you require proof of vaccination?

Vaccination records are considered health records under federal law. Because of this, you need to be very careful when deciding what evidence you will require for an employee to prove they have been vaccinated. You cannot require that employees provide any medical information as evidence. If you decide to require proof, be consistent. You shouldn't require proof from some employees and not from others.

Many states provide a proof of vaccination card at the time of vaccination or upon request. It may be permissible to require employees to submit a copy of this vaccination card as long as it does not contain any medical information. If you do require proof, make sure it is kept confidential. Only allow access by persons with a business need to know. Failure to comply could lead to significant legal liability.

Additionally, while the EEOC guidance says that "simply requesting proof of receipt of a COVID-19 vaccination" is not a disability-related inquiry that is likely to elicit information about a disability, asking why an employee did not get vaccinated "may elicit information about a disability" and would be subject to the ADA standard that such inquiries be "job-related and consistent with business necessity."

The EEOC says if an employer requires employees to provide proof that they have received a COVID-19 vaccination from a pharmacy or their own health care provider, "the employer may want to warn the employee not to provide any medical information as part of the proof in order to avoid implicating the ADA."

If you decide to require vaccinations or proof of vaccination, speak to legal counsel. They can provide guidance on all applicable laws and help you design a program that protects your company from legal liability.

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