

You Can Require It, But It'll Cost You: COVID Vaccinations and Mandatory Pay

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On April 21, 2021, Chicago became the latest locale to require employers that mandate COVID-19 vaccinations to compensate certain employees for time spent getting vaccinated. While the new ordinance does not go as far as legislation in other parts of the country, it does create new obligations for employers, whether vaccinations are mandated or merely encouraged.

Mandated Vaccines

Under the new ordinance, employers that require their Chicago employees to receive the COVID-19 vaccine must compensate those employees at their regular rates of pay, up to four hours per dose, *if* the vaccination takes place during an employee's regular working hours. Employers also are prohibited from requiring employees to receive vaccinations outside working hours, or requiring employees to use any available paid sick leave or vacation time toward those hours.

While the ordinance does not require employers mandating vaccinations to pay employees for the time spent being vaccinated *outside* working hours, employers should be mindful of the Illinois Department of Labor's position that employees who are required to obtain a vaccination must be compensated for their time spent being vaccinated, regardless of whether that is during or outside of working hours.

Non-Mandated Vaccines

The ordinance also creates some new obligations for employers that merely encourage (but don't mandate) COVID-19 vaccinations. These employers also cannot require that employees choosing to receive a vaccination do so outside of working hours, and employees who choose to use any available paid sick leave or paid time off must be allowed to do so.

Notably, the ordinance does *not* create a new bank of paid time off for employees to receive their vaccinations. Therefore, employees who obtain their vaccinations during working hours but do not have any available paid sick leave or paid time off can be required to take the time off as unpaid. The ordinance also prohibits all employers from retaliating against any employee who chooses to be

vaccinated during working hours.

Other Locales

The relative restraint of the Chicago ordinance is a marked difference from the approach in other parts of the country. For example, last month the state of New York enacted a new law requiring all employers to provide employees with a "sufficient period" of paid time off to receive their COVID-19 vaccinations, not to exceed four hours per injection, through the end of 2021. In Colorado, the state's new Public Health Emergency Leave provides employees with up to 80 hours of paid sick leave for, among other uses, "preventative care concerning a communicable illness that is the cause" of the applicable public health emergency – at the moment, COVID-19.

And then there's California, which requires employers with 26 or more employees to provide supplemental paid sick leave, *retroactive* to January 1, 2021, for uses that include attending a vaccine appointment and for periods an employee cannot work or telework due to vaccine-related side effects.

More state and local laws of this nature likely are on the way. However, employers operating in places without leave laws specific to COVID-19 vaccinations should still be mindful that already-existing leave laws may apply to time spent obtaining vaccinations. Most state and local paid sick leave laws allow the use of sick leave for preventative care and for the recovery from illness – which likely would apply to obtaining a vaccination and recovering from the side effects of that vaccination.

Tax Credits

That said, keep in mind that with the enactment of the [American Rescue Plan Act of 2021 \(ARPA\)](#), employers with fewer than 500 employees that voluntarily choose to extend paid sick leave under the Families First Coronavirus Response Act (FFCRA) beyond its original December 31, 2020 expiration date can claim a payroll tax credit for any FFCRA paid sick leave used by employees to obtain or recover from COVID-19 vaccinations. These tax credits are available to eligible employers for payments made from April 1, 2021 through September 30, 2021 in respect of such leave.

As employers decide whether to mandate vaccinations now or down the road, they should keep these evolving requirements in mind, and they should consult with experienced legal counsel to ensure compliance with applicable laws.

Legal vs. Practical

Of course, putting aside legalities, there is a practical aspect of these types of decisions. While vaccine availability continues to expand, many people in many parts of the country are still struggling to get vaccine appointments. If those appointments happen to fall during working hours, employers should remember that a little understanding may go a long way, and the benefits of a more fully vaccinated workforce – and populace – will far outweigh any short-term effects of an employee's absence from the workplace for a brief period.

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