

The Elements of Your COVID-19 Voluntary Vaccine Policy

Article By:

About half of the U.S. working age, vaccine-eligible population has now been vaccinated, according to [Centers for Disease Control and Prevention \(“CDC”\) tracking data](#). New [CDC guidelines](#) allow the fully vaccinated to unmask, except where applicable law or private businesses and workplaces [say otherwise](#).

If that was supposed to be an incentive, it has yet to kick in. COVID-19 vaccination rates are [slowing considerably](#). There is growing concern for getting everyone safely back to work—and soon—especially among small- to mid-size employers still emerging from the pandemic.

Making vaccinations mandatory [is technically an option](#), but [many employers](#) don’t want to go there, and [an increasing number of states](#) are in the process of banning it anyway. Thus, there is no shortage of ideas for [incentivizing employees](#) to get the shot—from on-site opportunities to extra vacation days, and employers are ardent for knowledge about [which employees have already been vaccinated](#).

Nondiscriminatory incentives for getting the shot and a valid mechanism for learning who got it—those points and more can be deployed in a voluntary vaccine policy. Here are the key elements:

Education:

Anti-vaccine messaging is all over the internet, but the case for the safety and effectiveness of the COVID-19 vaccines gets better every day. Employers, especially small- to mid-size employers, can leverage both public and private resources to make the case to their employees. For example, the CDC has done its job in addressing [vaccine safety](#), [vaccine benefits](#), and perhaps most importantly, [vaccine myths and facts](#). But one of its best educational contributions to date is [this video](#) that directly addresses, in compelling fashion, the most common concerns about how the vaccines were safely developed in such a short time, and whether the new mRNA technology is known to be safe. Beyond public sources, holding private sessions for employees with local professors or doctors of epidemiology can not only make a compelling case for vaccination, but also debunk in real time the growing list of [anti-vaccine myths about COVID-19](#) vaccination.

Voluntary Policy:

With limited exceptions for certain disabilities and religious observances, under current Equal Employment Opportunity Commission (EEOC) guidance (and subject to state law), it is legally permissible for employers [to mandate that employees receive a COVID-19 vaccine](#) as a condition of employment. A voluntary policy should explain that, and state that the employer has opted **not** to make vaccination a condition of employment. Instead, the employer strongly encourages all eligible employees to be vaccinated against COVID-19 on a voluntary basis, subject to the individual advice of the employee's doctor and the recommendations of the CDC and the FDA. This explanation that the program could be made mandatory but is not will itself be an incentive for some.

Incentives:

As cited above, there are many types of incentives for vaccination—transportation reimbursement, one-day on-site shot clinics, additional days of vacation or other paid leave (a popular option), extra sick days off specific to the aftereffects of vaccination, monetary payments, merchandise or gift card perks, and entertainment events. Usually any such incentives come with an eligibility time limit—for example, for all employees fully vaccinated by August 1. The policy should also address proof of eligibility, such as submission of a copy of the vaccination card, or a print screen of the provider's online record of the vaccination. *Caveat:* Last week, the EEOC issued [updated guidance allowing vaccine incentives](#)—so long as such incentives [do not unduly pressure](#) employees to disclose protected medical information.

Legal Compliance:

For any of these incentives to pass legal muster, they should be made subject to existing employer policies, such as advance notice for use of PTO, and separate maintenance of medical records. In addition, incentive policies should provide for “exception awards” for those employees with a medical condition and/or [disability that conflicts with getting vaccinated](#); and employees with [sincerely held religious beliefs](#), observances, or practices that conflict with getting vaccinated. Eligibility rules for such awards must be carefully crafted and allow for the employer to engage in the interactive process to seek out accommodations that will enable the employee to be vaccinated. In addition, the policy should prohibit disclosure of certain information unnecessary to the eligibility for the program—such as genetic information.

Additional Elements:

Other considerations for a voluntary vaccine policy include the question of whether it will need to be administered annually, which seems likely enough; how time off for the vaccine and any aftereffects will be scheduled; whether employees will be put on notice that they assume the risks—of vaccination or of coming to work unvaccinated; and nondiscrimination and nonretaliation (especially by co-workers) as to those who choose to vaccinate or not vaccinate.

As COVID-19 continues to abate and, as we watch for mutations in the virus as well as in state and federal law, employers must stay up-to-date with their policy guidance and risk management.

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