



Is Your Organization Developing a COVID-19 Vaccine Plan? It Should Be.

Vaccinating against COVID-19 is top of mind for individuals and organizations the world over. Not unexpected, the global vaccination effort is fraught with complexity, particularly for employers who must take into consideration issues including the health and safety of their employees; the health of their business; vaccine-related regulatory requirements, many of which are still being determined; the opinion of the public, who will be closely watching employer behaviors; some consumer resistance to vaccines; and much more. While it can reasonably be argued that there are more questions than answers at this point, this document is designed to help you consider the myriad business and employee-related factors that will intersect as vaccination efforts advance.

REGULATORY

- **Know where to turn for information.** Governing bodies and regulatory agencies with federal, state and local jurisdiction are likely to develop vaccine policies and issue vaccine-related guidance, but the law is complicated. The U.S. Equal Employment Opportunity Commission (EEOC), the Occupational Health and Safety Administration (OSHA), and the Centers of Disease Control (CDC) and their Advisory Committee on Immunization Practices (ACIP) are among the agencies developing guidance that should be consulted before your organization establishes or enforces policies of its own.
- **Expect exemptions.** Although specific policies remain forthcoming, state and local laws will continue to apply, and employers will need to provide accommodations to workers with qualifying disabilities and religious objections.
- **Consider the legal ramifications for your organization.** As you determine your approach to vaccinations, there are numerous issues to consider. For instance, will you mandate employees be vaccinated? How will you deal with employees who demand colleagues be vaccinated as a condition to returning to the workplace? How will you handle exemptions? Because your organization could be sued for its actions or inactions on a range of matters such as these, ensuring you have smart legal counsel will help you anticipate and mitigate potential challenges.
- **Appoint vaccine leadership.** Vaccine-related developments are likely to come fast and with conflicting or confusing information. Designating a vaccine lead or team including HR, Legal and Labor Relations (as appropriate) professionals can help you stay current with the latest information. Because of the specialized nature of these issues, working with outside counsel can help ensure you have the right expertise at the table.

EMPLOYEE SENTIMENT

- **Listen to your employees.** Not all of your workforce will see eye to eye on vaccinations. Understanding today how your employees feel about being vaccinated and returning to the workplace as vaccinations become more widely available can help you ready your approach. A combination of surveys, focus groups and listening sessions can provide valuable insights on the topic. Your Employee Communications function should partner with HR, Legal and Labor Relations (as appropriate) to ensure the right approach.
- **Don't overlook employees of color.** The pandemic has disproportionately affected Black, Brown and Native American populations. These groups also have less access to healthcare and are more skeptical of vaccines, so remember to seek their input and keep their preferences, motivations and needs in mind as you develop your approach.



ENCOURAGING VACCINATION

- **Determine whether you will offer/enable vaccinations.** If your organization has the ability to offer vaccinations at your facilities, will you do so? If so, how will you protect the privacy of those who opt to be vaccinated at your location, as required by the Health Insurance Portability and Accountability Act (HIPAA)? Will you consider other related benefits for employees, such as providing a transportation stipend for employees to travel to a site where the vaccine is being administered? Will your paid time-off policy accommodate employees being away from work to receive the two doses of the vaccine? Will you accommodate employees staying home if they feel ill following the shots?
- **Tell employees what's in it for them.** Understanding how being vaccinated or not will affect opportunities for employees may influence their decisions. For instance, will those who are vaccinated be allowed to return to the workplace, travel for business or be customer-facing before workers who are not? Again, work with your HR, Legal and Labor Relations (as appropriate) team to ensure your approach complies with employment laws and regulations.
- **Communicate desired behaviors.** The law may limit what you can require but promoting vaccination as a way to keep workers safe and maintain business continuity may be appropriate. This is especially true if your company has said it is following guidance from the CDC and other health authorities that recommend vaccination, which may provide a "safe harbor" of sorts for an employer's position. Think about whether and how you will communicate the benefits of vaccination to your employees. For instance:
 - Will you develop your own education campaign or opt for sharing externally produced resources from health experts or regulatory agencies?
 - Will company leaders become vaccinated in visible ways, such as during a town hall or on video, to lead by example?
 - What channels will you use for sharing this information?
 - How will you equip managers to reinforce these messages?

CUSTOMER EXPERIENCE/COMPETITIVE BUSINESS ADVANTAGE

- **Determine what's needed to be customer-facing.** Customers may expect any employee they interact with has been vaccinated. HIPAA regulations may limit these disclosures, but what about employees who are willing to volunteer their vaccination history? Would you consider confirming their vaccination to customers who want this information? Will you need to segment employees into vaccinated and non-vaccinated categories in order to meet this customer need? What guidance do your HR, Legal and Labor Relations (if appropriate) teams have on the matter?
- **Assess your operations.** Consider whether having a vaccinated workforce will enable you to do the following, as well as how important these considerations are to you:
 - Better protect employees
 - More quickly return employees to the workplace (even if you do not intend to require onsite work all the time)
 - More effectively serve customers
 - More fully engage employees who have had to take care of others during the pandemic
 - Bring back furloughed or laid-off workers
 - Reduce costs associated with accommodating remote work and protecting onsite workers



- **Contemplate the competition.** If you are able to “certify” all of your workers have been vaccinated, will that give you an advantage over your competition? Conversely, what will it mean for your organization if your competitors can promote that their employees are fully vaccinated?
- **Prepare to communicate.** Employees and customers will have numerous questions for your organization about your vaccination plans and what it means for them. If your organization operates in multiple jurisdictions, nationally or internationally, different stakeholders will require unique information. Consider how you will stay on top of and share that information, including getting the right detail in the hands of managers who can help disseminate and provide context.

TRACKING VACCINATION DATA

- **Determine your tracking approach.** Will you invite employees, customers, business partners or other visitors to volunteer their vaccination or COVID-19 testing history before they enter your facilities? If yes, how will you track and protect this information? How will you respond to visitors who want to know how this information will be used? Do you have a communications plan in place if a data breach occurs? It is critical to understand the data privacy and retention guidelines that apply to your organization, as they may vary depending on where you operate. Because these guidelines can carry significant penalties if violated, consulting with an expert on these matters is advised.

WORKFORCE POLICY

- **Review, revise and revisit, as needed.** The availability of vaccines will require ongoing attention to organizational policy for months to come. Working with your HR, Legal and Labor Relations (if appropriate) experts, consider:
 - Which policies need to evolve for employees who have been working virtually and those who have remained on the front lines? Will these arrangements continue?
 - Will employees who volunteer confirmation of vaccination be allowed access to certain facilities or stakeholders?
 - If you are an international or national organization, how will you reconcile multiple sets of federal, state and local guidelines?
 - If you have a union-represented workforce, be mindful of recent National Labor Relations Board (NLRB) decisions and pending cases, regarding whether employer vaccination policies would be considered an employer’s right to manage the workforce or a mandatory subject of bargaining. If your organization is global, consider other labor organizations you may need to consult.

CULTURE

- **Take a close look at the impact on workplace culture.** Like much about COVID-19, the topic of vaccinations has become politicized and, for some, emotionally charged. Regardless of the steps you take with respect to vaccinations, some likely are to be on board with your decisions and others are not. To reduce the chance of your approach fracturing your culture, consider the following:
 - How should your corporate values and commitments guide you through this process?
 - How will diverging opinions about vaccinations put your workplace culture and ability to collaborate at risk?
 - How will differing approaches for vaccinated and non-vaccinated employees impact culture? Opportunities for workers? The performance management process? Operations overall?
 - How will differing policies and requirements geographically impact culture? Opportunities for workers? The performance management process? Operations overall?



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- What about employees or customers who are considered vulnerable or in populations disproportionately impacted by COVID-19, such as people of color, the medically vulnerable or older employees? Are your approaches to vaccinations equitable and inclusive? Are you going above and beyond to develop solutions for these stakeholders?
- Will you take a position regarding vaccinations externally, such as through social posts or executive statements?
- What do your customers believe about vaccinations? Does this align with how you plan to manage the issue internally?

A LONG ROAD AHEAD

- **Stay flexible.** Much will change – quickly – with respect to vaccines and the implications for employers in the weeks and months ahead. Prepare for a complicated, drawn-out effort that will require quick decision-making and responses, possibly with revisions and reversals along the way. Dedicating a team to your vaccination efforts can help ensure you are properly equipped to manage your approach over the long term.
- **Avoid being pulled into combative political exchanges.** Following guidance from public health authorities is the safest approach and can help keep organizations and their leaders above the fray.
- **Anticipate and plan for the future.** This is only the first phase of vaccine distribution. As the vaccine becomes more widely available, it is important to anticipate and scenario-plan for how COVID-19 and the existence of the vaccine will continue to impact the workplace. For example, [health apps](#) are being developed that could be used to help ensure safe workplaces and gatherings. How might apps like these be applied to your organization? Also, how will you handle communications about adverse reactions, counterfeit vaccines or other developments that might slow the rate of vaccinations?
- **Ask for help.** FleishmanHillard’s employee communications, labor relations, healthcare and issues management experts have helped a variety of clients from several industries and sectors with their COVID-19 and return-to-the-workplace plans. We are at the ready to assist if you need help.