

Vaccine Policies: What Can Employers Do?



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OSHA Requirements

- Kansas and Missouri follow federal OSHA standards
 - OSHA's [current guidance](#) revised August 13, 2021
 - Focuses on protection of unvaccinated and at-risk employees
 - Face coverings, social distancing, facilitating/encouraging vaccination, training, visitor policies, ventilation, cleaning, contact tracing
 - Added in most recent revision: “OSHA suggests that employers consider adopting policies that require workers to get vaccinated or to undergo regular COVID-19 testing – in addition to mask wearing and physical distancing – if they remain unvaccinated.”

Legally Permissible to Inquire About Vaccination Status?

- YES!
- Employers can ask employees if they are vaccinated and can seek proof of vaccination.
- Accomplished through workplace surveys or self disclosure in HR information systems.
- Should keep information confidential.
- Should not implement rules distinguishing between vaccinated and unvaccinated in a way that makes vaccination status obvious.

Is Mandatory Vaccination Legally Permissible?

- YES!
- Employers can require COVID-19 vaccinations with certain exceptions
- Must provide reasonable accommodation for anyone with a qualified disability under the ADA or a sincerely held religious belief unless it would pose an undue hardship

Reasonable Accommodation

ADA Disability

- Can seek physician certification if the disability is not known or obvious
- Undue hardship?: nature and extent of accommodation, financial resources of organization, type of employer, etc.

Title VII Religious Objection

- Should assume the belief is sincere unless “employer has an objective basis for questioning either the religious nature or the sincerity of a particular belief, practice, or observance.”
- Employer is justified in requesting additional support.
- Undue hardship?: More than a *de minimis* cost

Reasonable Accommodations

- Wear a mask
- Weekly or twice weekly COVID testing
- Remote work
- Changing schedule to reduce exposure

Does not have to be the employee's *preferred* accommodation.

Logistics?

- Confidential: Treat vaccination information confidentially per ADA
- Form: Attestation, view vaccine card, copy vaccine card
- Substance: Name, vaccine type, vaccine date
- Implementing policies:
 - Document retention requirements
 - Procedure for reviewing vaccine status

Vaccine Mandate: *Should* Employers Require Vaccination?

- Purely legal liability perspective - yes
- Reasons why you may not want to:
 - Employee morale
 - Worker shortage
- Compromise: soft vaccine mandates – exemptions for ADA disability, religious objection, or personal preference

Incentives and Penalties

- Weekly drawings
- Discounted rate on insurance premiums
- Health insurance surcharge
- Additional PTO for vaccinated; require use of normal PTO or unpaid leave for unvaccinated

Vaccine Passports

- Neither Kansas nor Missouri prohibit private employers from issuing vaccine mandates
- Other states may have limits on private employers' abilities to mandate vaccines:
 - [Montana](#): It is an unlawful discriminatory act for an employer to refuse employment to a person, to bar a person from employment, or to discriminate against a person in compensation or in a term, condition, or privilege of employment based on the person's vaccination status or whether the person has an immunity passport
 - [Texas](#): Prohibits private entities receiving public funds through any means from requiring a consumer to provide proof of vaccine status as a condition of receiving any service or entering any place

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