

COVID-19 Vaccine Considerations

Employers continue to grapple with return-to-work plans and ensuring the safety and health of their employees currently working on-site. COVID-19 vaccines promise to boost those efforts, but their rollout and availability have raised as many questions as answers. Below, we address several issues that each employer should consider as it determines appropriate next steps.

MANDATING VACCINATION

May an employer institute a mandatory vaccine policy? Yes, it may, and some employers already have. But should an employer do so? The answer is highly individualized and dependent on the nature of each employer's business and its work environment. Employers must consider that exemptions may need to be made for individuals with disabilities and those with sincerely held religious beliefs, and that other restrictions may apply under state law. Employers also must evaluate their ability to accommodate employees who are unable or refuse to get vaccinated, including through minimizing their interaction with others in the workplace or by permitting them to work remotely.

INCENTIVIZING VACCINATION

Employers who choose not to mandate vaccination may wish to weigh some form of incentive program in order to encourage employee vaccination. In developing incentives, employers must consider whether employees who are unable or refuse to get vaccinated nonetheless will be eligible for incentives. They also must carefully assess the potential tax, benefit, and wage payment implications of any incentive.

UNIONIZED EMPLOYEES

Employers with unionized workforces should carefully review applicable bargaining agreements and past practices to determine whether any contemplated vaccine or incentive program must be bargained with the union.

WORKER SAFETY

Though vaccinations have begun, employers must not let their guard down. Instead, they should consider vaccinations as part of—and not a substitute for—other safety precautions. The Biden Administration made clear that worker safety will be a high priority when, days into its term, it directed OSHA to devise COVID-specific employer mandates. Simultaneously, we are seeing a wave of whistleblower claims stemming from workers' safety concerns.

PRACTICAL CONSIDERATIONS

Many employees are not yet eligible for the vaccine, and many who are eligible have been unable to obtain the vaccine. Employers also must account for the fact that a significant portion of their workforce may be reluctant to get vaccinated. Indeed, vaccination rates among health care staff now eligible for the vaccine vary widely. Additionally, communities of color have reported receiving inadequate information about the vaccines and challenges in signing up to be vaccinated due

to disparate access to enrollment portals. Employers should develop a communication and policy strategy to ensure that employees receive accurate information regarding vaccines and the employer's overall commitment to workplace safety.

The lawyers in Ballard Spahr's Labor and Employment Group have been working to address COVID-19's impact on employers since the pandemic's early days. To access many of these resources, use Ballard's COVID-19 Resource Center or reach out to the Labor and Employment attorneys with whom you work.

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