Vaccination Policy Recommendations

A Guide for Your Organization-Wide Vaccine Policy
March 2021
About These Recommendations

This set of recommendations is intended to help guide you in the creation of your organization’s vaccination policy in preparation for a “return-to-office” plan. TSNE recommends these strategies, and is providing this advice to the nonprofit sector on creating a policy that balances legal compliance with the health and safety of your staff. This is not legal advice, and should not be construed as such. Please consult with your attorney when creating and implementing your own vaccination policy and return to office plan.

In addition to a vaccination policy, you should also:

- Follow federal/state public health guidelines regarding any office return plan
- Determine what your employee return plan would look like
Can Employers Mandate Employee Vaccination?¹²

Employers may be able to legally mandate that most of your employees, depending on your organization’s work, be vaccinated before any return to in-office work, but EEOC recommends strongly recommending, rather than mandating, vaccination for employers.

Some Additional Potential Risk and Liability Considerations of Mandating Vaccinations

Potential for Increased Workers’ Compensation Liability
Under existing law, if an employee received a vaccine mandated by their employer and the employee has an adverse reaction (ranging from minor to significant), the employee can make a workers’ compensation claim for the injury¹.

May Create Obligation for Compensable Time and Expense Reimbursement
If vaccination is mandated, you may need to compensate employees for time and/or expenses (e.g. travel) incurred as part of vaccination, depending on your employment structure¹².

Opens the Door to other Potential Employment Issues¹
A vaccine mandate could open the employer up to more employment issues specifically:

► If an employee refuses to take a vaccine
► Responding to and vetting more ADA accommodations request
► Responding to and vetting Civil Rights Act exception claims
► If you make a decision an employee disagrees with, you may be sued. Currently, there is limited guidance to follow in making these decisions regarding COVID-19

Returning Too Soon
Requiring non-essential employees to return before the vaccine is easily available to the general public could open the door to potential “unsafe work environment” claims, especially if your organization has operated virtually for the last year¹.

What are Other Employers Doing?
Littler conducted a survey of 1800 employers regarding their vaccination and return to on-site work plans. The results of the survey are available at: https://www.littler.com/files/littler_vaccine_employer_survey_report.pdf

Vaccination Policy Recommendations

RECOMMENDATION 1:
Follow the EEOC recommendation to strongly encourage, rather than mandate, vaccination of employees.

RECOMMENDATION 2:
Wait until the vaccine is widely available and administered before returning to the office.

RECOMMENDATION 3:
Consider allowing those non-essential employees who have been vaccinated to return to on-site work first.

RECOMMENDATION 4:
Follow all federal/state public health guidelines and recommendations for returning to on-site work.

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Appendix

Best Practices for Returning to On-site Work
TSNE has also created a guide to our recommended policies and practices for returning to on-site work. Read the guide here.