



This article presents general guidelines for Ohio nonprofit organizations as of the date written and should not be construed as legal advice. Always consult an attorney to address your particular situation.

The COVID-19 Vaccine: What Nonprofit Employers Need to Know

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We are seeing the light at the end of the tunnel. As vaccine rollouts begin across the country, nonprofit employers and employees alike may begin wondering whether employees can be required to receive the vaccine. Recent [Equal Employment Opportunity Commission \("EEOC"\) guidance](#) states that employers can require their employees to receive the COVID-19 vaccine but employers (that meet a certain threshold of employees) must make exceptions for employees' religious and disability accommodations in accordance with Title VII of the Civil Rights Act of 1964 ("Title VII"), the Americans with Disabilities Act ("ADA"), and the Ohio Civil Rights Act.

Nonprofit employers considering a vaccine mandate should consider the implications of the equal employment laws to ensure compliance. If unionized, remember to consult the Collective Bargaining Agreement as it may give rise to a duty to bargain.

Providing Employees Accommodations

Employees with a sincerely held religious belief, practice, or observance that equate to that of traditional religious views may request that an employer provides a reasonable accommodation for the employee's religious practice. Political beliefs are not a sufficient reason to request an accommodation. Employees who have established a disability, as defined by the ADA and the Ohio Civil Rights Act, can request a reasonable accommodation to avoid receiving the COVID-19 vaccine.

When an employer receives a reasonable accommodation request, employers must consider all possible accommodations and engage in the interactive process on a case-by-case basis. Examples of reasonable accommodations include providing masks, gloves, and other personal protective equipment and the employee working remotely while other employees go back to the office. If remote work is not feasible, then the employee could be reassigned to a less populated worksite. Employers should also consider informing the unvaccinated employee that if the unvaccinated employee wishes to attend in-person work events such as charity galas or social outings then the unvaccinated employee will have to continue wearing a mask, remain socially distanced, and may have to eat separately from their coworkers to minimize potential exposure.

Employers who implement a vaccine mandate may prohibit unvaccinated employees from entering the workplace if all reasonable accommodations would not reduce or eliminate the risk of unvaccinated employees exposing others to the virus. For unvaccinated employees who cannot be remote, the risk of spreading COVID-19 remains due to close contact with others, touching the same surfaces, and the possibility



of improper mask wearing. Not only may these unvaccinated employees be prohibited from entering the workplace, but employers may terminate these unvaccinated employees after discussions with legal counsel.

Employers should consider creating or revisiting their standard accommodation forms and overall process to prepare for potential employee accommodation requests. When an accommodation request is received, the request and the interactive process should be documented in the employee's personnel file.

How to Implement the Vaccine Mandate

Consider designating an employee to be responsible for receiving and reviewing accommodation forms, following the policy, and communicating with higher level employees regarding any issues that may arise. This employee can also track when employees receive the vaccine.

With or without implementing a vaccine mandate, employers can ask employees to provide proof of their vaccination as long as the proof does not contain any medical information. Any information collected regarding vaccinations, whether tracking or proof of vaccinations or otherwise, should be treated as confidential and stored appropriately.

Best Practice: Strongly Encouraging Vaccination and Providing Incentives

Covering the cost of the vaccine and offering incentives to encourage employees to receive the vaccine will likely result in most, if not all, employees being vaccinated without triggering the laws, regulations, and guidance applicable to a vaccine mandate. Additionally, employers should balance employee relations and workplace culture before implementing a vaccine mandate as it might not be the right choice for every employer.

From a logistical standpoint, employers that implement a mandate will have to be lenient with employees who may not be able to receive the vaccine due to vaccine shortages or state guidelines. Additionally, employees who do receive the vaccine may experience side effects resulting in increased time-off requests. These requests should be approved to increase employee morale and encourage employees to rest and return to work when feeling better.

Employees may not want the vaccine for a variety of reasons. Employers should consider implementing an education and awareness component into the vaccine mandate program that is tailored specifically to their workplace culture. Regardless of an educational program, employees may be angered by being instructed to receive the vaccine and may still choose to remain unvaccinated, in violation of the mandate. Employers will have to make difficult decisions regarding whether to terminate these employees for not complying, but terminating a large portion of the workforce is not practical. In lieu of termination, employers can consider drafting waiver or release agreements that unvaccinated employees sign in order to add an additional liability shield. Whatever policy the employer chooses to implement, be consistent. Do not choose to keep some



employees and terminate other employees for non-compliance as this will expose the employer to further liability.

These additional practical considerations solidify that strong encouragement and providing incentives is the best way to obtain a vaccinated, protected, and safe workforce.

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