



Vaccinate The Natural State

Businesses Fighting COVID-19

IMPORTANT POINTS FOR EMPLOYERS



RIGHTS & RESPONSIBILITIES

LEGAL INSIGHT FOR THE COVID-19 VACCINE ROLLOUT

Can I require my employees to get the COVID-19 vaccine?

Yes, you can - with some very specific exceptions - require employees to be vaccinated against COVID-19.

Should I require my employees to get the COVID-19 vaccine?

Whether you require the vaccine should depend on the nature of your business.

If your employees work remotely or can social distance, you may not need to require the vaccine.

If your employees must work closely for long periods of time, requiring the vaccine makes sense, and will provide protection your employees don't have the option to get by social distancing or wearing a mask.

Instead of requiring the COVID-19 vaccine, consider incentivizing it.

Possible incentive options include:

- Paid time off for the actual time it takes to get the vaccine
- Additional paid time off if an employee gets the vaccine yet still catches COVID-19 or has adverse effects from the vaccine
- A non-cash gift, such as a gift card
- A drawing for a prize





You can also indirectly incentivize employees to get their COVID-19 vaccine by having your leadership team set an example by getting their vaccinations publicly.

What exceptions should I make to a COVID-19 mandate?

If you require the vaccine, you do need make a few exceptions.

1. You must make an exception for those who should not receive the vaccine due to a health or medical condition under the Americans with Disabilities Act.
2. You must try to accommodate those with a sincerely held religious belief that prohibits them from receiving the vaccination under Title VII of the Civil Rights Act of 1964.
3. You should also consider making exceptions for pregnant employees who request one. Although a normal pregnancy is technically not a disability under the ADA, pregnant employees who have the backing of a medical professional are in some situations entitled to an accommodation.

How can I accommodate a COVID-19 vaccine exception?

If an employee has a medical or religious reason for not taking the vaccine that is legitimate, be ready to discuss possible accommodations with the employee under the guidance of an HR professional or employment lawyer.

Here are a few to consider:

1. Require the non-vaccinated employee to work remotely, if feasible, for some period of time.
2. Require the employee to transfer to another job that allows remote work.
3. If remote work is not an option, take steps at work to ensure the safety of others, such as the continued use of masks by all, enforcing a social distancing policy or installing physical barriers, such as plexiglass. You could also create an isolated work area or alternate schedule for the non-vaccinated employee.
4. Give some type of leave from work, although this option should be a last resort.



Am I liable if I require the COVID-19 vaccine and an employee has a negative reaction?

As an Arkansas employer, the only real type of liability you might have by requiring the vaccine would be through the workers' compensation system. Apart from that, if you fail to accommodate an employee who might be entitled to an exception under the law, you could face an EEOC charge or lawsuit. If you don't require vaccinations and don't do enough to protect your employees, you might face an OSHA complaint. You don't take on any liability by simply encouraging employees to be vaccinated.

Source: Stuart Jackson, Partner, Wright Lindsey Jennings