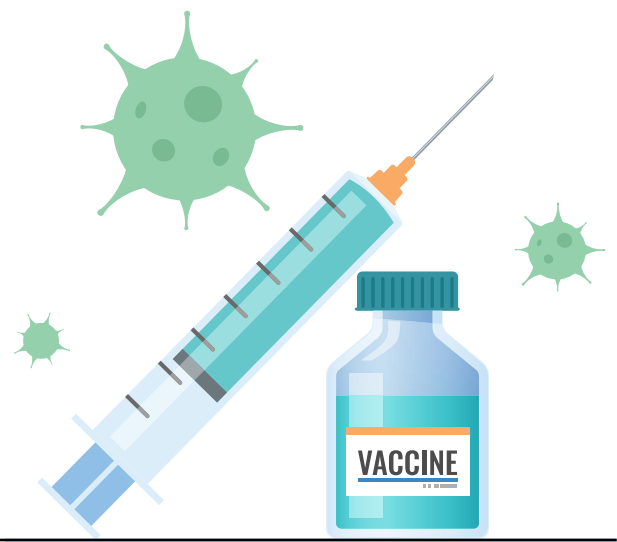


TOP COVID-19 VACCINATION QUESTIONS FOR SCHOOLS



This resource addresses federal law; state legislatures and state regulatory bodies may issue or enact laws, rules, directives, etc. that limit what your school can do. We recommend you ask legal counsel to review your written policies prior to implementation.

Can schools mandate employees be vaccinated for COVID-19?

Yes, with exceptions. Title VII of the Civil Rights Act of 1964 (Title VII) and the Americans with Disabilities Act (ADA) provide for exemptions from mandatory vaccination and require reasonable accommodations for employees with disabilities (including any medical contraindication for the vaccine) or religious objections. Employee requests for medical exemptions should be treated like any other ADA request for accommodation. State laws may require additional steps.

The ADA allows employers to have safety-based qualification standards for employees, such as requiring vaccinations where an unvaccinated employee presents a “significant risk of substantial harm to the health or safety of an individual or others that cannot be eliminated or reduced by a reasonable accommodation.” 29 C.F.R. 1630.2(r).

NOTES:

- On December 16, 2020, the Equal Employment Opportunity Commission (EEOC) updated its COVID-19 guidance to address the release of the COVID-19 vaccine and provide direction to employers for determining if their employees may be required to be vaccinated: [What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws | U.S. Equal Employment Opportunity Commission \(eoc.gov\)](#).
- The Occupational Safety and Health Administration (OSHA) recently issued [updated guidance on COVID-19 in the workplace](#). The recommendations are advisory in nature and informational in content, and are

intended to assist employers in providing a safe and healthful workplace.

- Particularly where the COVID threat has been minimal, some districts are opting for voluntary vaccination programs involving educating employees on the risks and benefits of vaccination in lieu of making vaccination mandatory.

What strategies can be used for encouraging employees to voluntarily be vaccinated for COVID-19?

Consider offering incentives for employees to get the vaccine. For example, you could provide all employees an additional day of paid time off once your district reaches a certain vaccination goal.

Cover employee-based costs, if any, for vaccination and provide paid time off for any employee who misses work due to side effects from the vaccine.

NOTES:

- Work with your solicitor to ensure any incentive complies with EEOC regulations and does not serve to identify, stigmatize or discriminate against employees based on disability or religion.

Should schools have written policies regarding COVID-19 vaccination for employees and contractors/vendors?

Yes. It is recommended schools, at a minimum, review CDC recommendations regarding vaccination; consult with state or local health care departments; consult with providers experienced in infection control; consider issues such as staffing levels and the presence of union employees (if any); and perform an assessment based upon the risks of COVID-19 infection for staff.

If we have a vaccination policy, should it include how exceptions or exemptions from any vaccine requirement will be addressed?

Yes. It is recommended a COVID-19 vaccination policy include a process for addressing any medical

contraindications or requests for accommodation due to religious beliefs.

Should we require employees to sign a consent and waiver of liability when accepting or receiving the COVID-19 vaccine at work?

Yes. A consent and waiver of liability is recommended to assist schools with managing potential legal liability for any side effects of the COVID-19 vaccine. The waiver of liability might also include helpful tools such as an agreement to arbitrate any legal disputes arising out of or related to receiving or refusing the COVID-19 vaccine. A refusal of the vaccine can be included within the same waiver of liability. It is recommended the waiver briefly address the risks and benefits of the COVID-19 vaccine. You should consult with your solicitor for assistance with drafting a form that meets your state's laws.

When may we ask prospective employees if they have had COVID-19 or the COVID-19 vaccine?

The ADA permits employers to make limited medical inquiries ***after a conditional offer of employment has been made***, provided that all entering employees in the same job category are also subject to the same inquiries.

May we ask existing employees if they have had COVID-19 or the COVID-19 vaccine?

Yes. Schools are permitted to make medical-related inquiries if the inquiries are job-related and consistent with business necessity based upon objective evidence that an employee's essential job functions will be impaired by a medical condition or that an employee will pose a direct threat due to a medical condition. However, an employer cannot exclude an employee from the workplace – or take any other action – unless there is no way to provide a reasonable accommodation (absent undue hardship) that would eliminate or reduce this risk so the unvaccinated employee does not pose a direct threat to health and safety.

If an employee has *already* had COVID-19, should we still offer or require vaccination?

Yes. Many health experts are recommending COVID-19 vaccination even for people who have already tested positive for COVID-19.

What do we do if an employee or prospective employee refuses vaccination and states the refusal is because of medical reasons or a medical contraindication?

Under the ADA, employers are required to ***engage in the "interactive process" and attempt to reach a "reasonable accommodation"*** which does not impose an "undue hardship" on the employee. The interactive process may include requiring the employee to provide documentation

from their health care providers to support any medical contraindications. Reasonable accommodations may include allowing an employee whose work may be done off-site to telecommute. They should be assessed on a case-by-case basis. It is always advisable to make a contemporaneous written record of discussions with the employee regarding reasonable accommodations. If you require an employee to submit supporting documentation from a health care provider, provide the request to the employee in writing and provide a reasonable deadline for the employee to provide the documentation.

What do I do if an employee or prospective employee refuses vaccination and states it is because of religious beliefs?

Under Title VII, employers are required to provide a "reasonable accommodation" for sincerely held religious beliefs. Compared to medical exemptions, employees may establish the "sincerity" of their beliefs with little documentation, but the reasonable accommodations under Title VII only need to be provided if they would impose a "de minimis" burden on an employer.

Can schools require third-party contractors or vendors be immunized prior to providing services in their facility?

Yes, schools may require visitors such as volunteers, outside vendors, guest speakers and others be vaccinated prior to entering the facility.

If you have any further questions about requiring vaccinations in your schools, please contact your solicitor.

