LOOKING AHEAD

Need-to-Know COVID-19 Employment Issues for the New Year
Today's Presenters
Audience Poll:
The COVID-19 vaccine is here!
Do you plan to get it?

Yes
I’ll wait and see
No
Overview

- COVID-19 Vaccine
- Remote Work
- Families First Coronavirus Response Act (FFCRA) and alternatives
Vaccines

The vaccine is here!!
The First Vaccine: Pfizer

- 2 doses
- 21 days apart
- Rigorous storage requirements. Very cold.
The Second Vaccine: Moderna

- 2 doses
- 28 days apart
- Less rigorous storage requirements. Very cold.
Other Vaccines

• As of December 28, 2020, large-scale (Phase 3) clinical trials are in progress or being planned for three COVID-19 vaccines in the United States:
  – AstraZeneca
  – Janssen
  – Novavax
Vaccines in Missouri

- Missouri is currently in phase 1A and 1B Tier 1 & Tier 2
- Approximately 3.2 million Missourians are in these tiers.

Source: Missouri Department of Health and Senior Services
Vaccines and Employees

Can an organization require an employee to get the vaccine once it is available? Generally, yes.

Vaccines

Will OSHA require employees to get the COVID-19 vaccine?

Not likely, but will generally recognize employer’s right to do so.
Vaccine Exemptions

What are the exceptions to an employer’s right to require employees to get vaccinated?

– Medical exemption
  • pregnant women,
  children under 16,
  others with certain medical conditions

– Religious exemption
Vaccines and New Hires

What about new hires? Can organizations make getting a vaccine a condition of initial employment?

– Generally, yes, with some caveats.
  • Beware medical screening questions.
  • Make accommodations available.
  • Use the same requirements as those for existing employees.
Would a unionized employer have to bargain over whether it could require unionized employees to get the COVID-19 vaccine?

Most likely, yes.
Vaccines

You generally **CAN** require employees to get the vaccine, but **SHOULD** you?

Maybe not.
Vaccines

Considerations:

- Vaccine approved through EUA
- Side effects: fever, flu-like symptoms, allergic reactions
- 2-shot series
- High performers or large group may refuse
- Employee expectations
Vaccines

Legal Considerations:

• Non-discrimination; equal application of policy
• National Labor Relations Act
• Collective Bargaining Agreements
• Workers’ Compensation Claims
Vaccines

Options:

– Lead by Example
– Incentives:
  • Pay for cost
  • Gift cards for those who complete the 2-shot cycle
  • Discounts on health insurance premiums
  • Paid day or days off for after completion of each of 2 shots
The limits of vaccines

• Vaccination does not signal the end of the pandemic.
• The CDC recommends that individuals who have received two doses of the vaccine should still wear masks and practice social distancing and safe hygiene.
• Dr. Fauci estimates that mask wearing may continue through 2021 and into 2022.
• We may not return to “normal” until winter 2021.
Audiences, patrons, visitors

What safety precautions can an organization require?

• Require Proof of Vaccination? – You shouldn’t
• Require masks
• Test for COVID-19? – Not recommended
• Conduct health checks
• Require social distancing
• Offer flexible refund policies!
Vaccines and Volunteers

Can an organization require a volunteer to get the vaccine once it is available?

• Generally, yes, with some caveats.
  – Volunteers are not protected under state and federal nondiscrimination laws.
  – The relationship is voluntary.
  – Requirements for volunteers may affect the reasonableness of requirements for employees.
  – Consider the impact on operations and morale.
Outreach programs

What safety precautions can an organization require for outreach programs or visits to third parties?

- Collaboration and communication are key
- Ask the important questions
- Understand their protocols
- Ask for notice
- Create a back-up plan
Vaccines and Independent Contractors

Can an organization require an independent contractor to get the vaccine once it is available?

Yes, generally.

Remember, it’s a contractual relationship.
Children and youth programs

What about programs for children and youth?

• Require masks (ages 2 and older)
• Do not conduct health checks/symptom screening
• Require caregivers to screen at home
• Provide virtual/remote program options
Safety precautions in the workplace

What precautions should organizations be taking?

• Keep doing what you’re doing – don’t relax your safety measures just yet
• Review and update your Safety Plans
• Know and follow your state and local health department orders
Remote Work
Remote Work

Considerations
- Employee perk
- Recruiting/retention
- Performance
- Supervision
- Confidential information
Remote Work & the ADA

Is remote work now a reasonable accommodation under the ADA?

Pre-pandemic: Employers won 70% of rulings on telework as an accommodation for disability

EEOC’s current position: Remote work likely to be a routine accommodation
Remote Work & Wage & Hour

- Working off the clock
- State business expense laws
- State meal and rest break laws
- State wage and hour laws
- State and local taxation
Working off the Clock

- Log On and Off Times
- Calls and texts
- Emails
- Electronic Uploads
- Remote connections.
What can you do?

Include accurate recording in Telework policy.

Acknowledgement of duty to record all hours to telework.

Self audit/review
## State Business Expense Laws

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<th>Business expense statute</th>
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State Income Tax Implications

If an employee works remotely from his residence in a state other than the state where he regularly works because of the pandemic, you may need to withhold income tax in the state of residence.
State Income Tax Implications - AICPA

KS, KS City & MO

• Pandemic guidance of withholding income tax to the state/city where employee is telecommuting (employee’s home state)

IL & STL City

• Temporary safe harbor or waiver for state/city withholdings and tax liability for remote work during pandemic
Families First Coronavirus Response Act (FFCRA)

Two types of paid leave to eligible employees of covered employers:

- Emergency paid sick leave
- Leave for parents
Families First Coronavirus Response Act (FFCRA)

- Mandatory leave requirement expired 12/31/20
- Extended tax credit into 2021
FFCRA Expansion

- FFCRA leave not mandatory.
- Employers who offer leave can use payroll tax credits through March 31, 2021.
- No change to qualifying reasons, amount of leave, or documentation requirements.
What’s on the horizon?

• President Biden’s “American Rescue Plan” proposes expanding paid leave for COVID-related reasons, including:
  – Expanding employer and employee coverage
  – Expanding amount of leave available
  – Increasing weekly maximum paid leave benefit to $1,400
  – Continuing payroll tax reimbursement for some employers

Available through September 30, 2021
Other options

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<th>What other options might employers consider?</th>
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<td>3. Temporary flexible work policy</td>
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Questions?
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More Resources

For updates, visit:

• Greensfelder COVID-19 Resources page: https://www.greensfelder.com/covid-19-resources.html

• SimplyHR Blog: https://www.greensfelder.com/employment-and-labor-blog
THANK YOU!

Legal Disclaimer: This document is not intended to give legal advice. It is comprised of general information. Employers facing specific issues should seek the assistance of an attorney.