



PROGRAM MATERIALS

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Sticking Points: What Employers Need to Know About Flu Shots And COVID-19 Vaccines

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Sticking Points: What Employers Need to Know About Flu Shots and COVID-19 Vaccines



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Vaccines and the Workplace

- These general comments are based upon current guidance and circumstances.
- Decisions regarding these issues are very fact-specific.
- Always take state and local law into account.
- This situation is very fluid and could change rapidly due to a variety of factors.
- No approved COVID-19 vaccine is currently available in the U.S.

Vaccine Issues – An Overview

- Flu Shots
 - CDC guidance
- CDC comments regarding the flu
- Possible Exemptions?
 - Medical
 - Sincerely-held religious beliefs
 - Other?
- COVID-19 vaccinations



Legal Landscape

- Employer must keep workplace free of recognized hazards while respecting employees' individual rights
- Generally, with some critical limitations, employers can enforce mandatory vaccine policies
- Always consider state and local law
- *Contrast* vaccinations with employee screenings (medical examinations)



Legal Landscape -

Screening vs. Vaccinations

- Employers' right to screen is generally more limited than the right to require vaccinations.
 - Current permissible practices of temperature checks, symptom screening, and COVID-19 testing are based on the severity of the pandemic – the significant risk of substantial harm that someone with the virus or symptoms of it would present in the workplace.



OSHA General Duty Clause

- Describes the employer's duty to maintain a workplace free of recognized hazards



ADA – American with Disabilities Act

- Prohibits discrimination
- Requires “reasonable accommodation”
- Limits employer’s rights to inquire/conduct medical exams
 - Must be job related, consistent with business necessity
 - Significant risk of substantial harm
 - Reliable, objective information must support employers’ concern
- Protects privacy of each employee’s medical information
- Similarly, **Title VII** may require accommodation of an employee’s sincerely-held religious beliefs or practices.

What Does the EEOC Have to Say?

Pandemic Preparedness in the Workplace and the Americans with Disabilities Act (Issued in 2009, *updated* in response to the COVID-19 pandemic – March 21, 2020)

Excerpt from response to Question No. 13, regarding whether employers covered by the ADA and Title VII may require flu shots:

“Generally, ADA-covered employers should consider simply encouraging employees to get the influenza vaccine rather than requiring them to take it. ***As of the date this document is being issued, there is no vaccine available for COVID-19.**”

Policy Addressing Vaccine Expectations

- Consider *required* v. *strongly encouraged*
- Any requirement should be based on objective facts; tied to employee's job duties/job descriptions; and consistently administered.
 - Clearly describe expectations and rationale
 - Explain how to seek an exemption as an accommodation
 - Follow the *individualized* accommodation process diligently
 - Ensure no retaliation (or appearance of retaliation)
 - Safeguard all medical information - separate from general personnel files

Mandatory *Flu Shots*

- Subject to some limitations, employers *may* require employees to get the flu vaccine.
- Some jurisdictions *require* flu shots for employees in certain positions, e.g., healthcare workers with patient contact. Others prohibit mandatory vaccines.
- CBA (collective bargaining agreements) may limit vaccine requirements; employer must communicate with the union

MANDATORY

Limitations

- EEOC (Equal Employment Opportunity Commission):
 - An employee may be entitled to an exemption from mandatory flu shots due to an ADA-covered disability or other medical circumstance
 - An employee may be exempted from a flu shot requirement based on sincerely-held religious beliefs, practices, or observances
 - In either case – engage in and document communication with employee to determine whether a reasonable accommodation is needed and feasible
 - The *process* may be as important as the final decision
- Consider potential reasonable accommodations

Anti-Vaxxers, Other Considerations?

- Some state laws expressly protect employees' rights to engage in legal outside activity, including political activity.
- Other state laws may affect employer's vaccination policies.
 - i.e., Oregon – some vaccines must be *offered*, but generally may not be *required*
- Remain mindful of employees' Section 7 rights to band together regarding terms and conditions



May Employers require a *COVID-19 Vaccine*?

- *Probably* – subject to the same exceptions as the flu vaccine.
- Policy should explain expectations, rationale, job-relatedness and availability of exemptions as a *reasonable* accommodation.
- Always consider state laws.
- Safeguard employee medical information.



Should an Employer Require Vaccinations?

- Good employee relations are vital for many reasons:
 - Clients, customers and the public notice
 - Critical to maintaining focus, productivity and community relations
 - Consider possible susceptibility to union organizing efforts
- Validate approvals and appropriate delivery of the vaccine.
- Employer pays for mandatory vaccines.
- Evaluate the likely response of your employees.
- Think through logistics (i.e., on-site?)
- Do not underestimate the importance of effective communications.

Summary

- CDC: Vaccinating now is important, to protect the workplace *and* reduce strain on nation's healthcare system.
- Flu shots should, ideally, be administered soon.
- Formalize vaccination policies now.
- Over 80% of employees get flu vaccines when *required* – almost twice the rate as when vaccines are *strongly encouraged*.
- Anticipate issues, questions and level of pushback, if and when an approved COVID-19 vaccine becomes available.

Visit **FISHER PHILLIPS** **VACCINE RESOURCE CENTER** for **Employers**

Fisher Phillips has a number of resources to aid employers with the upcoming COVID-19 vaccine that can also be used during flu season. We encourage you to check back often.

- COVID-19 Vaccine FAQs
- Sample policies and procedures
- Data Bank of templates and forms
- 50-state issues
- COVID-19 Vaccine and Flu insights
- ... and more

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Final Questions



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Legal Alert

Flu Season And Possible COVID-19 Vaccine Will Shine A Spotlight On Workplace Vaccination Policies

8.18.20

As the flu season approaches and the COVID-19 pandemic continues, employers' mandatory vaccination policies may soon become more important than ever. For several reasons, those policies will also attract unprecedented scrutiny. First, the Centers for Disease Control (CDC) has stated that getting the flu vaccine this fall will be all the more important, both to reduce health risks for individuals and to conserve the country's potentially scarce healthcare resources, particularly for respiratory conditions like the flu and COVID-19. Second, one or more COVID-19 vaccines are expected to become available later this year or in early 2021, offering possible protection from this worldwide scourge. Third, mandatory vaccination policies sometimes spark deeply personal responses at a time when political differences and social justice issues remain at the forefront of the nation's consciousness.

As employers seek to balance their duty to maintain a workplace free of recognized dangers and the rights of individual employees, questions abound: Can you enforce

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mandatory vaccination policies? (In most cases, the answer is “yes,” as discussed below.) If you mandate flu shots or COVID-19 vaccinations, what specific risks and responsibilities must you consider and address? And finally, is a mandatory vaccination policy the right option for your company? As usual, the answers to these critical questions lie in the details. This article will provide you an outline of issues to consider as you answer these questions, along with some recommended best practices guidance to lead you through these unprecedented times.

The Legal Backdrop

As you proceed under the current unique circumstances, it is important to bear in mind the distinction between mandatory *vaccinations* and employee *screenings* such as temperature-taking, symptom checklists, and actual testing, that are currently in widespread use. Under applicable law, these screenings are considered medical inquiries or examinations that must be approached differently from vaccinations, as explained below.

The federal Occupational Safety and Health Administration (OSHA), among other agencies, enforces employers’ duty to maintain a workplace that is free of recognized hazards. The Americans with Disabilities Act (ADA) prohibits discrimination on the basis of disability, while also limiting employers’ rights to make related inquiries and to conduct medical examinations of employees. Any such actions must be job-related and consistent with business necessity.

This means that you must reasonably believe that the employee’s ability to perform essential job duties will be impaired by a medical condition or that the medical condition will pose a significant risk of substantial harm to workplace health or safety that cannot be eliminated by reasonable accommodation. Your belief must be based upon factual information, not subjective perceptions or irrational fears. Therefore, your inoculation requirements should be based

upon reliable, objective criteria that supports the business need for the policy.

The ADA also protects the privacy of employees' medical information when their employers obtain it. To a less relevant extent in this context, the Privacy Rule of the Health Insurance Portability and Accountability Act (HIPAA) protects the confidentiality of individually identifiable health information held by covered entities (HIPAA, however, expressly excludes employment records from the definition of medical information that it protects). These and other laws provide a framework to guide employers in dealing with employees' private medical data.

The Question Of Mandatory Flu Shots

In the absence of a state or local law to the contrary, and with some important caveats, employers may require employees to get vaccinations to protect them from contracting and spreading influenza (the flu). Where applicable, however, collective bargaining agreements may limit an employer's right to require vaccines. On the other hand, some jurisdictions *require* flu shots for employees in certain positions, such as healthcare workers with patient contact. Healthcare, education, and retail are settings in which employers are relatively accustomed to dealing with mandatory vaccine issues. The possible availability of a COVID-19 vaccine obviously ups the ante. As this will likely be an evolving area of the law, you should stay abreast of developments where you conduct business.

Where otherwise permitted, however, your right to require flu shots is not unlimited. Specifically, the Equal Employment Opportunity Commission (EEOC) has repeatedly emphasized that, even during a pandemic, an employee may be entitled to an exemption from mandatory flu shot requirements based on an ADA-covered disability. Likewise, an employee may be exempted from the requirement if taking the shot would violate their sincerely held religious beliefs, practices or observances.

In either case, you must engage in (and document) an interactive exchange with the employee to determine whether a reasonable accommodation would enable them to perform essential job functions without compromising workplace safety. Accommodations may take many forms, including but not limited to use of additional personal protective equipment (PPE); moving the employee's workstation; a temporary reassignment; teleworking; or a leave of absence, to name a few. You are not required to provide an accommodation that would pose an undue hardship (and the evaluation of the "undue hardship" standard varies depending upon whether the requested accommodation is based upon a disability or sincerely held religious beliefs).

Some employees' objections to mandatory inoculation may be grounded in the "anti-vax" movement, which could arguably form the basis for a legal claim based upon state laws that protect an employee's right to engage freely in outside political activities. California and New York are just two of the states that provide such protections. In most cases, such claims would be far less clear-cut than claims for failure to accommodate an employee's disability or religious beliefs. Other state laws may limit employers' flexibility regarding their vaccination policies.

Regardless of the setting, you should ensure that your rationale for requiring flu shots is based upon objective facts, tied to employees' job descriptions, and that your practices are administered consistently. You must develop and publish a policy explaining your expectations and clearly explaining how an employee may request an exception or accommodation. You must also ensure that employees who request an accommodation suffer no negative repercussions. In all cases, you must also safeguard the privacy of employees' medical information, including but not limited to keeping it separate from your general personnel files.

May Employers Require A COVID-19 Vaccination When One Becomes Available?

Unless and until the EEOC publishes more specific guidance, its commentary concerning mandatory flu shots, including the need to consider employees' reasonable accommodation requests, provides a good roadmap for evaluating the question of whether you will be able to require your employees to obtain a COVID-19 vaccination. Although the EEOC has advised employers to *encourage* flu shots rather than *requiring* them, it has not prohibited employers from requiring the shots, especially when the flu is severe.

Considering the scope and severity of the COVID-19 pandemic, the EEOC's guidance regarding workplace screening for COVID-19, and the Commission's position regarding mandatory flu shots, you will probably have the right to require workers to be inoculated when a reliable COVID-19 vaccine is available, *subject to the same caveats described above for mandatory flu shots*. In other words, you should be able to require approved COVID-19 vaccinations if the requirement is job-related, your policies adequately inform employees of the requirement, and you allow them to seek an exception (or accommodation) on the basis of a disability or sincerely held religious belief. The above-referenced anti-vax movement and any state laws that allow employees to opt out of vaccinations must also be taken into account. And of course, you must ensure the privacy of each employee's medical information.

Employers' Rights To Make Medical Inquiries Or Conduct Screenings Remain Far More Limited Than The Right to Require Vaccinations

In considering the above questions regarding mandatory vaccinations, you must be cautious not to conflate the concept of inoculation with the current widespread practices of daily employee screenings (i.e., medical examinations). The current permissible practices of temperature checks, symptom screening, and COVID-19 testing are very unusual and unique to this current severe pandemic. For reference, an epidemic affects a large number of people, often rapidly. A pandemic is an "epidemic that travels," occurring worldwide or over an extremely wide area. Even if very significant, however, seasonal

or pandemic flu will **not** necessarily justify screening or testing in the workplace.

The EEOC has stated that whether a pandemic influenza rises to the level of a “direct threat,” as explained above, depends upon the *severity of the illness*. The Commission determined, for example, that the COVID-19 pandemic met the direct threat standard, based on the significant risk of substantial harm that someone with the virus or symptoms of it would present in the workplace. This guidance established the rationale and need for employee medical inquiries or examinations, which may include temperature-taking, symptom screening, or actual testing.

Should An Employer Require Mandatory Vaccinations?

Considering the current CDC guidance regarding the importance of flu shots, which should be administered beginning in September or October, you should review and formalize your inoculation policies now. Historically, when employers require flu shots, the proportion of workers who get them tends to increase from less than half to well over 80%. Many employers outside of the healthcare industry have *encouraged* but not *required* flu shots. That choice has primarily been an employee relations issue.

No one knows when a reliable COVID-19 vaccine may be available, but you should be prepared to respond when that happens. Keep in mind while that mandatory vaccinations may not be appropriate for every setting, encouraging vaccinations will help bolster participation and protect your workplace, while also helping reduce demands on the nation’s healthcare system. Recognize that although it may not be feasible to offer on-site flu shots on-site this year, you may still be able to facilitate their employees’ access to inoculations.

If you do decide to make any vaccines mandatory, ensure that your policies are clear and that they inform employees of how to seek exceptions or accommodations. Additionally, keep in mind that flu shots and COVID-19 vaccines (if and when

available) are distinct inoculations for two different health threats. Finally, you should ensure that your policies encourage sick workers to stay home without fear of reprisal, especially if they have a fever. Employees who are sick should remain home until they meet applicable return to work standards.

Conclusion

Fisher Phillips will continue to monitor the rapidly developing COVID-19 situation and provide updates as appropriate. Make sure you are subscribed to Fisher Phillips' Alert System to get the most up-to-date information. For further information, contact your Fisher Phillips attorney or any member of our Post-Pandemic Strategy Group Roster. You can also review our FP BEYOND THE CURVE: Post-Pandemic Back-To-Business FAQs For Employers and our FP Resource Center For Employers.

This Legal Alert provides an overview of a specific development. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.



Newsletter

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Is it The Flu Or COVID-19? 4 Key Steps To Address New Workplace Challenges At The Start Of Flu Season

9.28.20

The COVID-19 pandemic has brought more workplace law challenges over the past six months or so than many employers will see in a lifetime. From changing directives on wearing masks, determining what to do when an employee is ill with COVID-19, and tracking the hours of employees working at home, employers have faced myriad issues never before addressed. Making matters worse, the start of fall, which typically brings the joys of football, foliage, and falling temperatures, will present likely the greatest COVID-19 pandemic challenge yet: the onset of flu season.

Most of the pandemic has taken place during warmer weather. Since mid-March, COVID-19 has been the primary illness to consider when screening employees prior to their shift, determining if they should be isolated at home, or removing them from the workplace because of potential exposure. During flu season, however, you will be faced with the difficult task of determining if a sick employee has the flu or COVID-19, and what to do once that determination is made. To meet this

unprecedented challenge, you will need to develop skills in several new areas:

- > Understanding the differences between the two illnesses;
- > Knowing what CDC guidelines and legal requirements are triggered if an employee has either illness; and
- > Determining the four key steps to take to minimize the presence of either illness in the workplace.

What Are the Differences Between COVID-19 And The Flu?

Distinguishing the symptoms of COVID-19 and the flu is a difficult task. Even the Centers for Disease Control and Prevention (CDC) concedes that there's not much difference amongst the physical signs of the two illnesses. In its guidance on this issue, the CDC outlines the few differences between the illnesses, which are summarized below and will be helpful to understand when developing policies regarding screening for symptoms and requiring employees to remain at home if sick.

Symptoms

COVID-19 symptoms are largely the same as the flu, other than a change in or loss of taste or smell.

Spread Of Illness

The flu can spread from person-to-person between people who are in close contact with one another (within about six feet). It is spread mainly by droplets made when people with the illness cough, sneeze or talk. These droplets can land in the mouths or noses of people who are nearby or possibly be inhaled into the lungs. It may also be possible that a person can get infected by physical human contact (e.g. shaking hands) or by touching a surface or object that has virus on it and then touching their own mouth, nose, or possibly their eyes.

COVID-19 spreads the same as the flu. However, COVID-19 is more contagious among certain populations and age groups

than flu. Also, it has been observed to have more superspreading events than the flu. This means the virus that causes COVID-19 can quickly and easily spread to a lot of people and result in continuous spreading among people as time progresses.

Both flu virus and the virus that causes COVID-19 may be spread to others by people before they begin showing symptoms, with very mild symptoms or who never developed symptoms (asymptomatic).

When Symptoms Begin To Develop

Typically, a person develops flu symptoms anywhere from one to four days after infection. A person develops typically develops COVID-19 symptoms about five days after being infected, but symptoms can appear as early as two days after infection or as late as 14 days.

When It Can Be Spread By An Infected Person

Most people with flu are contagious for about one day before they show symptoms. Older children and adults with flu appear to be most contagious during the initial three to four days of their illness but many remain contagious for about seven days. Infants and people with weakened immune systems can be contagious for even longer.

How long someone can spread the virus that causes COVID-19 is still under investigation. It's possible for people to spread the COVID-19 virus for about two days before experiencing signs or symptoms and remain contagious for at least 10 days after signs or symptoms first appeared. If someone is asymptomatic or their symptoms go away, it's possible to remain contagious for at least 10 days after testing positive for COVID-19.

What Legal Requirements Are Triggered By Either Illness?

Both CDC directives and a host of legal obligations kick in when you determine that a worker may have either the flu or COVID-19. They mainly require you to consider isolating and

quarantining the worker in question (although some local requirements may also call for mandatory workforce notifications or state reporting; check with your legal counsel).

Isolating Sick Employees

Unlike the directives available for workplace cases of COVID-19, there are no specific CDC guidelines for screening employees to determine if they have the flu or for quarantining employees sick with the flu. The challenge for employers, given the similarities in symptoms between the illnesses, will be determining if an employee in fact has COVID-19 (and not the flu), and thus must be self-isolated for 10 days, or directly exposed to COVID-19 (and not the flu), and thus must be quarantined for 14 days.

As noted in our previous guidance, employees who are or are suspected to be sick with COVID-19 should be self-isolated at home. A confirmed case is an employee who tests positive for COVID-19. The CDC defines a probable case of COVID-19 as:

- > A person meeting the clinical criteria **AND** epidemiologic evidence of COVID-19 with no confirmatory laboratory testing performed for COVID-19; or
- > A person meeting presumptive laboratory evidence **AND** either a positive COVID-19 test **OR** epidemiologic evidence of COVID-19.

You should instruct an employee who is confirmed or suspected of having COVID-19, as defined above, to remain at home until released by a physician or public health official. If a doctor's note releasing the employee is unavailable, follow the CDC guidelines on when an employee may discontinue self-isolation, which contain specific requirements dependent upon when and whether the employee exhibited symptoms. If an employee has the flu, they should remain at home until released by physician or until symptoms resolve.

Quarantine Requirements For Exposed Employees

With respect to quarantining employees who worked near the infected worker, no such isolation is required for the flu. Under CDC guidance, you should notify all non-critical infrastructure workers who were directly exposed to the infected employee that they may have been exposed and send them home for 14 days to ensure the infection does not spread. While quarantined, you should instruct employees to self-monitor for symptoms, avoid contact with high-risk individuals, and seek medical attention if symptoms develop.

Employees who fall in the “6-15-48” zone of a confirmed or suspected COVID-19 case are considered to be directly exposed: those who worked within six feet for a prolonged period of time (15 minutes or more) with the infected employee during the 48-hour period before the onset of symptoms or, if asymptomatic, the 48-hour period prior to the administration of the infected employee’s COVID-19 test.

4 Steps To Minimize Either Illness In The Workplace

You can take proactive steps to ensure you minimize the chances of either illness showing up at your workplace this coming fall and winter. Here are the four best steps you can take to protect your organization.

- 1. *Educate Workers And Screen All Employees For Signs Of Either Illness***

Continue to educate employees about the symptoms of COVID-19 and explain their similarities with the flu. Ask all workers to remain at home if they are sick. Before each shift, and in compliance with any state or local order concerning screening, have employees verify that they have not had flu or COVID-19 like symptoms in the preceding 24 hours. Send home all employees who are sick and ask them to seek medical attention.

- 2. *Clean And Disinfect Your Workplace***

Cleaning and disinfecting your workplace is never a bad thing, either during or after a pandemic. If you have

increased your facility's cleaning schedule during the pandemic, maintain the current number of cleanings. To protect your employees, ensure commonly touched surfaces, such as door knobs, buttons, restrooms, and break rooms, are frequently cleaned and sanitized. If using cleaners other than household cleaners with more frequency or at a strength greater than an employee would use at home, ensure workers are trained on the hazards of the cleaning chemicals used in the workplace and maintain a written program in accordance with OSHA's Hazard Communication standard.

3. ***Practice Social Distancing***

Throughout the pandemic, the CDC has encouraged all people to practice social or physical distancing in order to prevent spreading COVID-19. Spread of the virus occurs when droplets from an infected person are launched into the air as they cough, sneeze, or talk, and land in the mouths or noses of people nearby. Thus, staying away from other people slows the spread of the virus. Doing tasks outside, where the air is better ventilated, helps prevent contraction of the illness. However, with cooler weather arriving across the country, more people will remain inside and make social distancing more difficult to achieve.

To the extent possible, have employees work from home, and stagger shift start times, lunch breaks, and other times when employees will be in your facility in order to cut down on the number of individuals at the worksite. Limit capacity in conference rooms, break rooms, offices, and restrooms. Mark hallways and corridors as one way to limit "head-on" pedestrian traffic. Work with your landlord or HVAC contractor to increase the number of air exchanges at your facility and install air filters where possible.

4. ***Have Your Employees Take The Flu Vaccine***

To decrease the number of sick individuals in your workplace, encourage or mandate employees to have a flu shot. The CDC recommends that everyone six months and older should get a flu vaccine every season with rare exceptions. Vaccination is particularly important for people who are at high risk of serious complications from influenza.

In the absence of a state or local law to the contrary, **employers may require employees** to get vaccinations to protect them from contracting and spreading the flu (read our detailed article focusing on flu vaccines here, and visit our Vaccine Resource Center For Employers).

Where otherwise permitted, however, your right to require flu shots is not unlimited. Specifically, the Equal Employment Opportunity Commission (EEOC) has repeatedly emphasized that, even during a pandemic, an employee may be entitled to an exemption from mandatory flu shot requirements based on an ADA-covered disability. Likewise, an employee may be exempted from the requirement if taking the shot would violate their sincerely held religious beliefs, practices or observances. In either case, you must engage in and document an interactive exchange with the employee to determine whether a reasonable accommodation would enable them to perform essential job functions without compromising workplace safety.

Conclusion

This a constantly evolving area, with new guidance being issued nearly every day. Fisher Phillips will continue to monitor the rapidly developing COVID-19 situation and provide updates as appropriate. Make sure you are subscribed to Fisher Phillips' Alert System to get the most up-to-date information. For further information, contact your Fisher Phillips attorney, or any member of our Post-Pandemic Strategy Group Roster. You can also review the FP BEYOND THE CURVE: Post-

Pandemic Back-To-Business FAQs For Employers and our FP Resource Center For Employers.

For more information, contact the author here.

Accommodation Procedure for COVID-19 Vaccine

Overview

COMPANY ("Company") allows for exemptions to COVID-19 immunization requirements as a reasonable accommodation to assist any employee who is disabled, pregnant, who is a nursing mother, who has a qualifying medical condition that is a contraindication to the vaccination, or who objects based on sincerely held religious beliefs and practices.

The following procedure should be utilized when a vaccine exemption is requested as a reasonable accommodation.

Policy

Requests for Accommodation (insert language from Company's vaccine policy here)

To assist any employee who is disabled, pregnant, who is a nursing mother, who has a qualifying medical condition that is a contraindication to the vaccination, or who objects to being vaccinated on the basis of sincerely held religious beliefs and practices, the Company will engage in an interactive process to determine whether it can provide a reasonable accommodation provided it does not create an undue hardship for the Company and/or does not pose a direct threat to the health or safety of others in the workplace and/or to the employee. If you believe that you require such an accommodation, please notify the POSITION TITLE in writing at [insert email/contact]. Once the Company is aware of the need for an accommodation, the Company will engage in an interactive process to identify possible accommodations. If you believe that you have been treated in a manner not in accordance with these policies, please notify the Company immediately by speaking to the POSITION TITLE. You may utilize this procedure without fear of retaliation.

Procedure

The employee requesting an exemption from the vaccine policy as a reasonable accommodation will be provided:

- A Request for Medical Exemption/Reasonable Accommodation Form or Request for Religious Exemption/Reasonable Accommodation Form to complete and return to the Human Resource Department. If the request for accommodation does not fall into one of these categories, please contact [POSITION TITLE] for more information.
- The Company's COVID-19 vaccine policy.
- A copy of the Job Description for their position, and/or alternative positions where appropriate.

Interactive Process

After receipt of the employee's Request for Exemption/Accommodation, the Human Resources Department will engage in an interactive process with the employee to identify a

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possible accommodation. The Company reserves the right to maintain a record of each related conversation.

The interactive process is intended to clarify the employee's request and identify the appropriate exemption/reasonable accommodation. **Human Resources** may ask the employee relevant questions that will enable the Company to make an informed decision about the request.

The exact nature of the dialogue will vary. In many instances, both the reason for the exemption/accommodation and the type of exemption/accommodation required will be obvious, and there may be limited need to engage in a detailed discussion. In other situations, **Human Resources** may need to ask questions and/or seek documentation concerning the nature of the request and to verify the validity of the exemption/accommodation request.

Granting an Exemption/Reasonable Accommodation

Human Resources will complete the Approval section of the Request for an Exemption/Reasonable Accommodation Form when an exemption/accommodation is granted. **Human Resources** will also provide the employee the specific alternative protective measures required of the employee.

Denying an Exemption/Reasonable Accommodation

Human Resources will complete the Denial section of the Request for Exemption/Reasonable Accommodation Form when an exemption/accommodation is denied with a notation of the reason for the denial. Exemption/Reasonable Accommodation denials may be reviewed for legal compliance.

Vaccination Policy

Purpose

Consistent with its duty to provide and maintain a workplace that is free of recognized hazards, the **COMPANY NAME** ("Company") has adopted this policy to safeguard the health and well-being of employees and their families, our customers and visitors, others who spend time in our facilities, and the community from infectious conditions that may be mitigated through an effective vaccination program. This policy is intended to comply with all state and local laws. It is based upon guidance provided by the Centers for Disease Control and Prevention (CDC) and public health and licensing authorities, as applicable.

Scope

This policy applies to all employees. It does not apply to customers and visitors. The policy applies to vaccinations identified by the Company's Safety Committee.

Policy

The Company's Safety Committee maintains and promulgates a list of the vaccines that this policy encompasses and the applicable deadline(s) for complying with this policy. This list of vaccines also advises employees of dates when vaccines will be made available at designated locations.

Before expiration of the corresponding deadline, all employees must either (a) establish that they have received the designated vaccine(s); or (b) obtain an approved exemption as an accommodation. The process for seeking an accommodation is explained below. Employees who do not fulfill one of these two requirements will be placed on unpaid leave and their status will be evaluated periodically.

To establish that they have received a vaccination, employees may present written evidence of immunization from the designated site or from another authorized healthcare provider.

The Company will assist employees by providing on-site access to immunizations or identifying sites where employees may receive the vaccinations. The Company will pay for the cost of the vaccination.

Requests for Exemptions as Accommodations

To assist any employee who is disabled, who is pregnant, who is a nursing mother, who has a qualifying medical condition that contraindicates the vaccination, or who objects to being vaccinated on the basis of sincerely held religious beliefs and practices, the

Commented [A1]: This policy must be tailored to the employer's circumstances, including state and local law, any applicable licensure requirements. Employers with multiple locations must be particularly sensitive to this issue. THIS POLICY MAY NOT BE USED IN OREGON.

Commented [A2]: Or identify who fulfills this function.

Commented [A3]: Consider the wage and hour law implications if the employee is paid a salary or another guarantee.

Commented [A4]: Note that this time is likely to be considered "hours worked" as well.

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Company will engage in an interactive process to determine if a reasonable accommodation can be provided so long as it does not create an undue hardship for the Company and/or does not pose a direct threat to the health or safety of others in the workplace and/or to the employee. To request an accommodation for one of the above reasons, please notify the **POSITION TITLE** in writing at **[insert email/contact]**. Once the Company is aware of the need for an accommodation, the Company will engage in an interactive process to identify possible accommodations. If you believe that you have been treated in a manner not in accordance with this policy, please notify the Company immediately by speaking to the **POSITION TITLE**. You may request an accommodation without fear of retaliation.

Vaccination Policy

Purpose

Consistent with its duty to provide and maintain a workplace that is free of recognized hazards, the **COMPANY NAME** ("Company") has adopted this policy to safeguard the health and well-being of employees and their families; our customers and visitors; others who spend time in our facilities; and the community from infectious conditions that may be mitigated through an effective vaccination program. This policy is intended to comply with all state and local laws. It is based upon guidance provided by the Centers for Disease Control and Prevention (CDC) and public health and licensing authorities, as applicable.

Scope

This policy applies to all employees. It does not apply to customers and visitors. The policy applies to vaccinations identified by the Company's Safety Committee.

Policy

The Company's Safety Committee maintains and promulgates a list of the vaccines that this policy encompasses and the applicable deadline(s) for complying with this policy. This list of vaccines also advises employees of dates when vaccines will be made available at designated locations.

The Company strongly encourages all employees to receive the designated vaccines before expiration of the corresponding deadline. Those who do not timely establish that they have received the vaccine must either (a) wear an approved face-covering at all times while in the workplace; or (b) obtain an approved exemption from the requirement to wear an approved face-covering in lieu of being vaccinated.

To establish that they have received a vaccination, employees may present written evidence of immunization from the designated site or from another authorized healthcare provider.

The Company will assist employees by providing on-site access to immunizations or identifying sites where employees may receive the vaccinations. The Company will pay for the cost of the vaccination.

Requests for Exemptions as Accommodations

To assist any employee who declines a vaccination and has a qualifying medical condition that contraindicates wearing an approved face-covering, or who objects to

Commented [1]: This policy must be tailored to the employer's circumstances, including state and local law, any applicable licensure requirements. Employers with multiple locations must be particularly sensitive to this issue.

Commented [2]: Or identify who fulfills this function.

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wearing a face-covering on the basis of sincerely held religious beliefs and practices, the Company will engage in an interactive process to determine if a reasonable accommodation can be provided, so long as it does not create an undue hardship for the Company and/or does not pose a direct threat to the health or safety of others in the workplace and/or to the employee. To request an accommodation for one of the above reasons, please notify the **POSITION TITLE** in writing at **[insert email/contact]**. Once the Company is aware of the need for an accommodation, the Company will engage in an interactive process to identify possible accommodations. If you believe that you have been treated in a manner not in accordance with this policy, please notify the Company immediately by speaking to the **POSITION TITLE**. You may request an accommodation without fear of retaliation.

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Request for Medical Exemption/Accommodation Related to COVID-19 Vaccine

COMPANY ("Company") is committed to providing equal employment opportunities without regard to any protected status and a work environment that is free of unlawful harassment, discrimination, and retaliation. As such, the Company is committed to complying with all laws protecting individuals with disabilities or medical conditions. When requested, the Company will provide an exemption/reasonable accommodation for any known medical condition or disability of a qualified individual which prevents the employee from receiving a COVID-19 vaccine, provided the requested accommodation is reasonable and does not create an undue hardship for the Company and/or pose a direct threat to the health or safety of others in the workplace and/or to the requesting employee.

To request an Exemption/Accommodation related to the Company's COVID-19 vaccination policy, please complete Part 1 of this form, have your healthcare provider complete Part 2 (the certification portion), and return them to **Human Resources**. This information will be used by **Human Resources** or other appropriate personnel to engage in an interactive process to determine whether an employee is eligible for such exemption/accommodation and if so, to determine the reasonable accommodations which can be provided that would enable the employee to perform the essential functions of their position without posing a threat of harm to self or others. If an employee refuses to provide such information, the employee's refusal may impact the Company's ability to adequately understand the employee's request or to effectively engage in the interactive process to identify possible accommodations.

Medical exemptions/accommodations for the COVID-19 vaccine will be considered if the employee provides a written certification by a licensed, treating medical provider [a physician (MD or DO), nurse practitioner (NP), or physician's assistant (PA)], of one of the following:

1. The applicable CDC contraindication for the COVID-19 vaccine, **or**
2. The applicable contraindication found in the manufacturer's package insert for the COVID-19 vaccine, **or**
3. A statement that the physical condition of the person or medical circumstances relating to the person are such that immunization is not considered safe, indicating the specific nature and probable duration of the medical condition or circumstances that contraindicate immunization with the COVID-19 vaccine.

Commented [1]: This framework is applicable to flu shots and other employer-mandated vaccines. Thus, the references to COVID-19 may be revised to encompass any other vaccinations that the employer requires.

Part 1 – To Be Completed by Employee:

Name: _____

Date of Request: _____

Verification and Accuracy

I verify that the information I am submitting in support of my request for an accommodation is complete and accurate to the best of my knowledge, and I understand that any intentional misrepresentation contained in this request may result in disciplinary action.

I also understand that my request for an accommodation may not be granted if it is not reasonable, if it poses a direct threat to the health and/or safety of others in the workplace and/or to me, or if it creates an undue hardship on the Company.

Signature: _____

Date: _____

Print Name: _____

Part 2 – To be completed by Employee's Medical Provider:

Company Name: _____

Employee Name: _____

Attention Medical Provider: _____

COMPANY requires a COVID-19 vaccination as a condition of employment. The above-named employee is requesting an exemption from this vaccination requirement. A medical exemption from the COVID-19 vaccination may be allowed for certain recognized contraindications.

Please complete the form below. Should you have any questions, please contact _____ at _____. Thank you.

The above person should not be immunized for COVID-19 for the following reasons (Please check all that apply.):

- ☐ History of previous allergic reaction to indicate an immediate hypersensitivity reaction to a component of the vaccine.
- ☐ The physical condition of the person or medical circumstances relating to the person are such that immunization is not considered safe. Please indicate the specific nature and probable duration of the medical condition or circumstances that contraindicate immunization with the COVID-19 vaccine.
- ☐ Other – Please provide this information in a separate narrative that describes the exemption in detail.

I certify that _____ has the above contraindication and request a medical exemption from the COVID-19 vaccination.

Medical Provider Signature: _____

Date: _____

Print Name: _____

Address: _____

Phone number: _____

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Part 3 – To be completed by Human Resources Representative

Date this Request Form Received in **Human Resources**:

Interactive Discussion Date(s) if applicable:

Exemption/Accommodation granted? _____ Yes _____ No

Describe Exemption/Accommodation:

If Exemption/Accommodation granted, list required alternative safety precautions required:

If Exemption/Accommodation not granted, explain why:

Name of Representative: _____

Signature of Representative: _____

Date: _____

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Request for Religious Exemption/Accommodation Related to COVID-19 Vaccine

COMPANY ("Company") is committed to providing equal employment opportunities without regard to any protected status and a work environment that is free of unlawful harassment, discrimination, and retaliation. As such, the Company is committed to complying with all laws protecting employees' religious beliefs and practices. When requested, the Company will provide an exemption/reasonable accommodation for employees' religious beliefs and practices which prohibit the employee from receiving a COVID-19 vaccine, provided the requested accommodation is reasonable and does not create an undue hardship for the Company or pose a direct threat to the health and/or safety of others in the workplace and/or to the requesting employee.

To request an Exemption/Accommodation related to the Company's COVID-19 vaccination policy, please complete this form and return it to **Human Resources**. This information will be used by **Human Resources** or other appropriate personnel to engage in an interactive process to determine eligibility for and to identify possible accommodations. If an employee refuses to provide such information, the employee's refusal may impact the Company's ability to adequately understand the employee's request or effectively engage in the interactive process to identify possible accommodations.

Commented [1]: This framework is applicable to flu shots and other employer-mandated vaccines. Thus, the references to COVID-19 may be revised to encompass any other vaccinations that the employer requires.

Part 1 – To Be Completed by Employee:

Name: _____

Date of Request: _____

Please explain below why you are requesting an Exemption/Accommodation:

In some cases, the Company will need to obtain additional information and/or documentation about your religious practice(s) or belief(s). We may need to discuss the nature of your religious belief(s), practice(s) and accommodation with your religion's spiritual leader (if applicable) or religious scholars to address your request for an exception.

If requested, can you provide documentation to support your belief(s) and need for an accommodation? _____ Yes _____ No

If no, please explain why:

Verification and Accuracy

I verify that the information I am submitting in support of my request for an accommodation is complete and accurate to the best of my knowledge, and I understand that any intentional misrepresentation contained in this request may result in disciplinary action.

I also understand that my request for an accommodation may not be granted if it is not reasonable, if it poses a direct threat to the health and/or safety of others in the workplace and/or to me, or if it creates an undue hardship on the Company.

Signature: _____

Date: _____

Print Name: _____

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Part 2 – To be completed by Human Resources Representative

Date this Request Form Received in Human Resources:

Interactive Discussion Date(s) if applicable:

Exemption/Accommodation granted? _____ Yes _____ No

Describe Exemption/Accommodation:

If Exemption/Accommodation granted, list required alternative safety precautions required:

If Exemption/Accommodation not granted, explain why:

Name of Representative: _____

Signature of Representative: _____

Date: _____