



## VACCINATION POLICY QUESTIONS & ANSWERS

August 27, 2021

The Office of House Employment Counsel (OHEC) has prepared the following Q&A on vaccination-related policy questions. The following information provides general guidance only on frequently asked questions and does not constitute legal advice. **Please note this Q&A is intended to address if and how an office *can* institute certain policies based on current medical guidance and employment law. Each House employer has discretion to determine its own vaccination policy.** Employing offices are strongly encouraged to contact OHEC with specific questions as they create and implement vaccination policies, as well as any other safety and health protocols not addressed here.

### QUESTIONS AND ANSWERS

#### 1. Can our office mandate vaccinations for all employees?

Yes. [EEOC guidance](#), case law as well as the recent FDA approval of the Pfizer-BioNTech vaccine provide ample support for employers who choose to mandate vaccination of employees as a means of fulfilling their responsibilities under the Occupational Safety and Health Act (OSHA) as incorporated by the Congressional Accountability Act (CAA). Still, legal exemptions must be provided even if an office mandates vaccination of employees. In particular, exemptions to a mandatory vaccine requirement are required under the Americans with Disabilities Act (ADA) for qualified individuals with disabilities or other health conditions that make it unsafe to be vaccinated, and under Title VII of the 1964 Civil Rights Act (Title VII) for individuals who have a sincerely held religious belief that prevents them from being vaccinated. If an employee cannot be vaccinated due to one or more of these reasons, the employer must reasonably accommodate them. All medical information provided, as well as the vaccination status of specific employees, must be kept confidential and stored separately from an employee's personnel file. Please consult OHEC for further guidance regarding the reasonable accommodation analysis and individual circumstances.

*Note: New employees, interns, fellows and detailees should only be informed about, and subject to, an office's mandatory vaccination policy after an offer of employment or placement has been made.*

#### *Sample policy language:*

*The office requires all staff and interns to complete a full SARS-CoV2 vaccination course by DATE, regardless of recovery from prior coronavirus illness. This policy change is effective as of DATE. New hires will have \_\_\_ days from their start date to comply with this policy. Individuals who cannot be vaccinated due to a legal exemption (disability, medical condition or sincerely held religious belief), should contact \_\_\_, and will be asked to provide supporting documentation to evaluate the accommodation*

*request. All employees, other than those who are accommodated due to a legal exemption, will be required to provide proof of vaccination as compliance with this policy is a mandatory condition of employment. Thank you for your ongoing commitment to ensure the health and safety of our team, our colleagues, and those we serve.*

## **2. Can our office require regular testing of employees who are unvaccinated?**

Yes. Before instituting this requirement, an office should determine how such a policy would be implemented for DC and District offices. Consider the following:

- How will the office institute a regular testing schedule for each unvaccinated employee (e.g., testing before reporting for in-office work each day or selecting a certain day each week)?
- Where is the location of testing (e.g., local pharmacy, health department, doctor's office, at-home kit)?
- What type of COVID-19 testing will be accepted (e.g., antigen test v. PCR/molecular test)?
- Will the office provide administrative leave or time off for testing or require testing be completed before work hours begin?
- Who will be collecting the results of the test for the DC and District offices?

*Note: The recipient of this information must be a member of office management and all reported information on testing must be kept confidential.*

The Committee on House Administration (CHA) has determined that the cost of a COVID-19 test in connection with an office's official and representational duties is an ordinary or necessary expense that may be paid for or reimbursed from official funds. This means your office can reimburse staffers who pay out-of-pocket for regular testing and/or determine if the office wants to pay for testing up front. The office can also determine if [no-cost options for COVID-19 testing](#) are available and require unvaccinated staff to use those options.

For questions about the type of testing that is available for COVID-19, please contact the Office of the Attending Physician (OAP) at (202) 225-5421. For questions about legal issues associated with structuring a testing program, please consult with OHEC.

*Note: If your office implements a mandatory vaccination policy, employees in your office who are unvaccinated, including those who fall under a legal exemption, can be required to undergo regular testing as a reasonable accommodation to the mandatory vaccination requirement.*

## **3. Can our office require booster shots for employees who were previously vaccinated?**

At this time, the [CDC guidance](#) recommends booster shots of the mRNA COVID-19 vaccine for individuals who are *moderately to severely immunocompromised* and were

previously vaccinated. Individuals who meet FDA's criteria for a booster vaccine dose, and work in the Capitol Complex, can visit the OAP's Rayburn Health Unit (G 2050) to receive this dose and should bring their COVID-19 vaccination card.

The CDC does not recommend additional doses or booster shots for any other population at this time. While a booster-shot plan for the Pfizer and Moderna vaccine for the general public is expected to go into effect in late September, the rollout of this plan is unclear at this time since FDA review and authorization has not been completed. Booster shots must first be widely available before an employer can require them.

Therefore, mandating booster shots for employees is not recommended at this time, and instead, employees should be encouraged to contact their healthcare providers to determine their eligibility. We anticipate this guidance will change once we receive further CDC guidance regarding the recommendation for, and availability of, booster shots for the general public this fall.

**4. What measures should we take to help ensure compliance with our safety and health obligations under the CAA?**

Under the General Duty Clause of the OSHA, each employer must provide a workplace free of recognized hazards likely to cause death or serious physical harm. COVID-19 is considered a recognized hazard. Each House employer has the discretion to continue or re-institute a telework posture (or a hybrid telework/in-office presence) based on current public health information and the needs of the office. In addition, House employers should ensure their workplaces are following relevant safety and health protocols (i.e., mask-wearing, social distancing, requiring all employees to complete the [OAP Health Screening Inventory](#) before reporting to the office, etc.) if employees are reporting to work in-person. Employees cannot refuse to work in the office solely due to a generalized fear of the virus. Employers, however, should follow relevant CDC and OAP guidance(s) consistent with their obligations under OSHA. In addition, staff must be able to raise safety concerns without fear of retaliation. If there are particular circumstances, questions, or concerns raised by an employee in your office, and you are not entirely sure how to respond, please contact OHEC for assistance.

**5. Has the quarantine time period changed if an employee is exposed to or infected with the B.1.617.2 (Delta) variant?**

No, the [CDC guidance](#) remains the same. Fully vaccinated individuals are not required to quarantine after close contact with someone who has COVID-19 unless they have symptoms; however, an employer can require a negative test before an asymptomatic employee who is exposed to a known COVID case reports for in-office work. Individuals with a positive COVID-19 test should isolate from others for a minimum of 10 days as directed by their healthcare provider. Employers can also require a 14-day quarantine

during which an employee may telework if not unwell or a shortened quarantine consistent with the [CDC guidance](#).

*Note: Individuals may continue to test positive for 90 days even though they have cleared their infection, therefore, testing for a negative result in a person who has tested positive in the previous 90 days is not recommended by the CDC.*

**6. Do we still need to ask employees, including those who are fully vaccinated, to complete the health screening inventory before physically coming into the office?**

Yes. Current OAP guidance recommends offices utilize the inventory and following this guidance helps minimize potential legal liability under OSHA and the CAA. Thus, it remains important to exclude individuals from the workplace if they are exhibiting/experiencing COVID-19 symptoms (e.g., fever, cough, sneezing, vomiting, shortness of breath, loss of the ability to taste or smell, etc.). The OAP Guidance continues to recommend that offices monitor employee health using the [OAP Health Screening Inventory](#) even for employees who are fully vaccinated if they are reporting to the workplace. Each employee should measure their temperature at home and take the [OAP Health Screening Inventory](#) before they report to work each day regardless of vaccination status.

This inventory consists of a series of brief “yes or no” questions. If the employee responds “yes” to any question, they will be required to stay home and advised to consult with a healthcare provider. If an employee responds “no” to all questions, they can report to the office. Employees should not be required to turn in a written copy of the Health Screening Inventory, nor should employees identify the specific questions to which they answered yes.

**7. How should our office screen visitors in light of the new Delta variant?**

Determining your office’s policy first is a key step before implementing a set of guidelines for all visitors. An office can choose to schedule visits online or by phone or continue allowing visitors in the office. Given that individuals who have been vaccinated may still be at some risk of acquiring a breakthrough infection of the Delta variant, inquiring about vaccination status of a visitor alone may not be determinative. If visitors are permitted in the office, as a further measure to protect staff and the visitor, it is recommended, based on medical guidance, that they be required to:

- Wear a face mask regardless of vaccination status
- Complete the [OAP Health Screening Inventory](#) and answer “no” to all questions prior to their arrival at the office or before their appointment
- Use hand sanitizer upon entry and prior to departure
- Maintain social distancing during visits

***If you have questions about these Q&As or specific circumstances you wish to discuss, please contact the Office of House Employment Counsel at (202) 225-7075.***