



Aon Webinar: Tactical and Logistical Planning for COVID-19 Vaccinations

Q&A follow-up from February 23, 2021 Webinar

Part of the Aon COVID-19 Vaccination Webinar Series

Webinar Q&A

The following questions were submitted by attendees of Aon Webinar: Tactical and Logistical Planning for COVID-19 Vaccinations, an installment in the Aon COVID-19 Vaccination Webinar Series. All names and identifiable information have been removed to ensure full confidentiality.

The responses are provided as guidance on the applicability and impact of the COVID-19 vaccination, with an understanding this is a dynamic and fluid subject. While the information provided is current at the time of publication (March 2021), changes are expected, and determinations and decisions are evolving.

Essential Worker Status

Can you expand on applying for essential worker status?

- Decisions such as this should be made in consultation with counsel. Companies do not have to apply for essential worker status - they should already be designated based on their worker classification. To get the vaccine on-site however, you have to apply for a dose allocation and that will only be awarded if your employees are phase-eligible. Essential worker status does not mean that employees are necessarily eligible for the vaccine in the state that you're in - states have more specific designations for different types of essential workers.

Global Vaccination Supply

In what countries do employers need to take a stronger lead in buying or procuring vaccine for their employees?

- Currently, National Governments or the COVAX Facility are taking the lead in procuring vaccines and are still some ways off from procuring enough for their entire populations. We are not aware of any existing markets where employers can purchase vaccines. Though, this may change later in the year, or in 2022 as Governments begin to take a step back from actively procuring them.

Employers & On-site Vaccination Offerings

What do you see as the likelihood that employers will be able to bring vaccination to the workplace?

- Large retail pharmacies are saying end of April is optimistic. Everything depends on available supply, which should increase parabolically, and whether regulations change on how vaccines are allocated.

How are Employers getting vaccination on site?

- You have to 1) have a workforce that is currently eligible in your state and local county, 2) apply directly with the local county for dose allocation and 3) have an approved provider come on-site and administer the vaccine. The provider must have specific vaccine provider approval with the state they are in.

For the employer providing on-site vaccinations, who is providing the vaccine supply and how did they coordinate that?

- Employers work directly with their state and local county health departments to apply for dose allocations. The taskmaster is different by company but usually falls somewhere within government affairs because they have the government contacts. If employers have an on-site clinic then they may have the infrastructure and staff in place to hold an on-site clinic. Otherwise, companies have to contract with an approved vaccine distributor, who must be registered with the state.

What is an example of a "most efficient" option for vaccinating currently eligible workers and what providers/vendors are currently offering onsite vaccines?

- Most efficient is to have a hybrid approach. Educate and provide resources for people to get vaccines in their community. In parallel, work with your local state and county contacts for updates on dose allocations while also securing an approved provider. When dose allocations become available for your company you can coordinate those with employees who have not been able to get vaccinated in their local community. Aon can support identification of those vendors, as well as the vaccine tactics & communications plan for your employees.

Is this information about having the vaccine at work only in the USA?

- These remarks were geared towards US data and vaccination programs only.

What is the risk of bringing a vaccination clinic on-site?

- Decisions such as this should be made in consultation with counsel. The CDC recommends that employers considering an on-site COVID-19 vaccination program contact their local health department for guidance. The planning process for hosting an on-site vaccination program should include HR, operational and risk management engagement. Many employers in the planning phase are designating an internal or external resource as a "vaccine coordinator" to support the logistical steps that should be addressed in hosting an on-site vaccination program, including enlisting expertise from local public health authorities, occupational health providers, and pharmacies to support the program.
- There are regulatory issues an employer offering on-site vaccine clinics must be aware of, including Genetic Information Nondiscrimination (GINA), ADA and HIPAA regulations.

Tracking Employee Vaccinations

The notion of a vaccine "passport" is gaining traction. What is the legality of requiring proof of vaccination to attend an employer sponsored event; luncheon, conference, etc. Can we make an accommodation for those who can't prove vaccination to attend virtually?

- The U.S. government and big tech firms are both working on potential solutions in this vaccination status arena.

How do you recommend a company track the vaccination of their employees? Require submission of vaccine certificates? Any risks or concerns to do this?

- Currently, there is no directive or requirement for employers to maintain a record of employee vaccinations. However, employers should closely monitor developments, including those at the federal, state, and local level. Records and documents related to an employee's medical history or vaccination must be maintained as confidential medical records in separate files/records from the usual personnel files and in conformance with confidentiality requirements under the federal ADA, Genetic Information Nondiscrimination Act of 2008 (GINA), and HIPPA privacy requirements.
- Employers can require employees provide proof of their vaccinations however, employers should avoid asking employees why they did not receive a vaccine, because those questions could prompt information about a medical condition, and therefore implicate the ADA and/or Title VII.

Vaccination Communications

How would the communications strategy be adjusted if COVID immunizations are needed annually or every few years (if the shot proves not to provide permanent immunity)?

- The communication approach for ongoing immunizations could be similar to that for annual flu vaccines with more robust communications around it since it will be new. We will apply our learnings from this initial vaccine rollout to the approach going forward.

Vaccination Statistics

Where does this hesitancy data come from? Is it done by Aon? Or sourced from 3rd parties?

- https://www.kff.org/coronavirus-covid-19/dashboard/kff-covid-19-vaccine-monitor-dashboard/?gclid=EAlaIqObChMlz-HU9-WH7wIVovzjBx0c1QT1EAAYAiAAEgJoUPD_BwE

Vaccination Mandates & Employer Liability Exposure

What are the legal risks if companies DO NOT offer or encourage employees to get vaccinated? Our Company is considering a 'hands off" approach by referring employees to their medical providers.

- Neither federal nor state law has mandated the vaccine. The Equal Employment Opportunity Commission (EEOC) issued guidance on December 16, 2020 indicating that requiring vaccination of employees is generally permissible. However, the EEOC also says that employer must consider accommodation of disabilities and sincerely held religious beliefs that are inconsistent with vaccination.
- OSHA has recently released updated guidance seeking to assist employers identify COVID-19 related risks and to operate a prevention program. Essentially, vaccinated workers must continue to follow the same exact protection measures and protocols as non-vaccinated workers. In the guidance, OSHA states that vaccinated workers must continue to follow the same protective measures and in the same way as non-vaccinated workers for the time being. This is because at present, there is “not evidence that COVID-19 vaccines prevent the transmission of the virus from person to person.” Experts are currently seeking to better understand the degree of protection offered by the vaccines, and the guidance may be updated at a later date if/when non-transmission is shown.
- As more and more workers become vaccinated against the virus, employers will need to consider how vaccinations may affect their safety protocol. The OSHA guidance is likely the first of many new recommendations to be issued concerning this topic. At present, however, employers should continue to require all workers (whether vaccinated or not) to comply with their COVID-19 safety and prevention plans.

Are companies creating a vaccination policy or any mandating vaccines?

- Decisions such as this should be made in consultation with counsel. The Equal Employment Opportunity Commission (EEOC) issued guidance on December 16, 2020 indicating that requiring vaccination of employees is generally permissible. However, the EEOC also says that employer must consider accommodation of disabilities and sincerely held religious beliefs that are inconsistent with vaccination.
- If you make any vaccine mandatory, you should ensure that your policies fully inform employee of how to seek an exception as an accommodation. You must also be prepared with a full accommodation procedure. We anticipate that many employers will likely encourage, but not require, the COVID-19 vaccine, when it becomes readily available.

Vaccine Efficacy & Safety

Can you please expand on what we know about efficacy with the variants?

- Per the CDC, full coverage of the coronavirus outbreak evidence so far suggests that the two COVID-19 vaccines authorized in the U.S., from Moderna and Pfizer-BioNTech, appear to offer good protection against new variants.

You mentioned that the vaccines are safe. What data supports the safety of the vaccines? How do we know it is safe, when the long-term effects have not been studied?

- More than 160 million people have received at least 1 dose of the vaccine. This has yielded an enormous amount of safety data. As of two weeks ago, no deaths had been attributed to COVID vaccination within the US. More than 10,000 pregnant women have also received the vaccine and tolerated it well. The long-term effects of the vaccine are not understood, and it will take years to discern the full safety profile.

Where are you finding the data that supports getting the vaccine protects others? At this time, I don't believe we have this information, that the vaccine prevents the spread, we only know it protects the individual getting the vaccine.

- According to the best available published material, the vaccine appears to reduce likelihood of developing COVID-19 disease and reducing transmission of virus. It does not entirely stop infection or transmission.

Vaccine Registration & Eligibility Resources

What is the best way to register for a vaccine appointment? i have people signing up with their doctor's electronic system, CVS, Rite-Aid, locally, etc.

- With the lack of centralized appointment system, you want to encourage employees to register at all possible places. 1) Sign up for your county and state notification systems if those are available. 2) Like you mentioned, ensure your receiving communications from your provider. and 3) sign up for local pharmacy communications so you know when you become eligible. There will be some legwork needed on the individual's side to monitor all the options in their community.
- Solutions are emerging in this market and Aon is continuing to track and vet them.

Vaccine Supply

Will the government give vaccine supply directly to employers?

- The Biden administration has said they will not be doing this for the time being.

Has Australia started with their vaccination program or just reserved for them?

- Yes - Australia has just this past week started to administer the Pfizer vaccine to its population.

Vaccines & Adverse Reactions

Do you have best practices for employers for those that have a reaction to the vaccine?

- An adverse medical reaction to the COVID-19 vaccine could be deemed compensable under workers compensation in scenarios where the vaccine is mandated by an employer, as well as scenarios where the vaccine is recommended or encouraged or if the state recognizes that the vaccine benefits an employer's business offering. Because compensability determinations will vary based on the jurisdiction and individual claim facts, we suggest Employers report any COVID vaccine reaction to their workers' compensation claims administrator. Like a COVID illness claim, the adverse medical reaction should be investigated to determine compensability. We suggest you work closely with your claims administrator and carrier.

Since vaccines are considered experimental under FDA emergency approval for now, do companies have potential legal exposure if mandating and or providing a vaccine onsite and an employee has a negative reaction to the vaccine? Healthcare providers and pharma companies are not legally liable per release signed by patients voluntarily agreeing to take the experimental vaccine, but would the company be legally protected?

- We suggest reviewing the terms of your policy. Recognizing that specific claim facts and jurisdictional state laws govern compensability determinations, most opinions indicate that an adverse medical reaction from a mandated vaccine will likely be deemed compensable under workers' compensation. However, opinions regarding potential compensability are more jurisdictionally varied in situations where the vaccine is not mandated. Compensability in these non-mandated scenarios might be contingent on if the employer pays for the vaccine or if the employer is highly marketing or promoting participation. So, the level of encouragement and benefit to the employer beyond simply having healthy employees may be relevant in the compensability determination.

Vaccines & COVID Testing Necessity

Are your clients continuing to test their employees who have been vaccinated as part of their regular testing program?

- Currently, the CDC recommends that those who receive the vaccine continue to test.

Our company tests weekly. If our staff receive both doses of the vaccination, and the two weeks has passed, is it recommended for them to test less frequently, or the same? We're in LA County and will continue to wear masks and social distance.

- In general, until we understand how vaccination reduces transmission, a company's establish COVID safety protocols should continue to be followed - remember that vaccines are not 100% effective in eliminating the virus (but they are very good). Also, important to understand what percent of your workforce has been vaccinated. Because if not all employees get a vaccine then there is still potential for outbreaks.

We are struggling with interpreting the guidance on vaccinated employees. We know that once they are fully vaccinated, we can follow CDC guidelines for close contact, but what about symptoms?

- Anyone with known or suspected COVID, regardless of vaccination status must be removed from worksite. ALL CDC guidelines must continue to be followed. Vaccinated individuals can still get COVID and employees exposed should be quarantined, per CDC guidelines.

Vaccines & Incentives

Should employers offer incentives for vaccines?

- Decisions such as this should be made in consultation with counsel. Many employers are considering the option of encouraging employee vaccinations using incentives. If you choose this option, you will need to consider the rules applicable to wellness programs and IRS requirements. In addition, per the EEOC, if an award is to be provided for participation in an activity, there must be some accommodation available to guarantee that all employees can participate, regardless of their ADA status. Where accommodation is not available, the EEOC regulations provide that a reasonable alternative to the activity must be available so that the employee could still earn the award without engaging in the activity.
- Important Note: On February 1, 2021, a group of over 40 business groups and associations submitted a letter to the EEOC requesting guidance on what's allowed and what might violate federal law when it comes to offering incentives to employees who receive the COVID-19 vaccination. Many employers want to help facilitate the vaccination process but need clarification on the extent to which they can offer vaccination incentives without facing ADA and other legal ramifications enforced by the EEOC.
- The letter asks the EEOC to define what qualifies as a permissible incentive and for guidance explaining how vaccine incentives can be distinguished from wellness programs (understanding that wellness incentives have been closely scrutinized over the years and are the subject of recent regulations).
- We believe that additional guidance will be forthcoming from the EEOC that will provide more definitive direction for employers to follow regarding incentives and vaccinations.

How effective are offering incentives to get the vaccine such as gift cards, etc.?

- Decisions such as this should be made in consultation with counsel. There are several ways an employer can encourage its workforce to get vaccinated, including the following:
 - Hosting an on-site clinic where vaccination is free and provided during work hours;
 - Establish HR policies that allow employees to take paid leave to obtain the COVID-19 vaccination;
 - Post articles in company communications promoting the importance of COVID-19 vaccination and where to get vaccinated.
- Many employers are considering the option of encouraging employee vaccinations using incentives. If an employer chooses this option, the employer must consider potential IRS requirements, as well as ADA and other legal considerations.

Contacts:

For questions or for more information, please see these contacts:

Nancy Green, CPCU, ARM

Executive Vice President
Global Client Promise Leader and Leader, Global COVID-19 Task Force
Aon
nancy.green@aon.com

Neal Mills

Chief Medical Officer
CRH&A, Health Solutions
Aon
neal.mills@aon.com

Carol Ungaretti

Managing Consultant
Casualty Claims Consulting, Global Risk Consulting
Aon
carol.ungaretti@aon.com

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