



Aon COVID-19 Vaccination Webinar Series

Q&A follow-up from February 4, 2021, New Dawn in COVID-19 Vaccination – Biden Administration Actions and Implications for Distribution Webinar

Updated February 18, 2021

Webinar Q&A: Aon COVID-19 Vaccination Webinar Series

The following questions were submitted by attendees of Aon's "New Dawn in COVID-19 Vaccination – Biden Administration Actions and Implications for Distribution" webinar, an installment in the Aon COVID-19 Vaccination Webinar Series. This document will be updated to include further input from attendees for subsequent installments in the webinar series.

Note: 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 (February 2021), changes are expected, and determinations and decisions are evolving. All names and identifiable information have been removed to ensure full confidentiality.

COVID-19 and Promoting CDC Guidelines on Reducing the Spread

How is the administration planning to help promote mask-wearing in communities where that is not the norm?

- Per published material from The Centers for Disease Control (CDC), the use of masks can substantially reduce transmission of virus. Refer to CDC for more information.

COVID-19 Variants & Endemic Issues

Do we know if the South Africa mutation is in the U.S. yet, and do we expect it to be as dangerous as it has been in South Africa?

- Yes, the South African variant is here in the U.S. The variant's infectiousness, disease severity, mortality, and vaccine effectiveness are all areas of active investigation.
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Do you need to be vaccinated every year like the flu shot or no?

- Some vaccine manufacturers are developing booster shots. The CDC has not yet released any guidance on recommendations or need for booster shots.
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Can you still get infected with COVID-19 after you have been vaccinated?

- 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.
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Please clarify if the COVID-19 vaccine stops the infection or can it stop the transmission of the infection known since COVID-19 is the symptomatic experience of that infection?

- 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.

Employers & On-site Vaccination Offerings

What are the legal and risk considerations of holding an on-site COVID-19 vaccine clinic?

- 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.

Should an employer offer on-site vaccination clinics? What is the liability on the employer's part? For employees that have allergies, should we secure paramedics, in the event of an anaphylactic reaction?

- 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.

How Should Employers Communicate the Benefits of the Vaccine?

What role should employers take in encouraging employees to get vaccinated?

- 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.

How do you recommend preventing "COVID-19 Fatigue" among our employees? Any advice?

- Best practices to reduce transmission of the virus continue to evolve. We recommend visual prompts and weekly discussions about best practices to keep safe hygiene top of mind. Please reach out to Aon colleagues for additional information.
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I work for a pharmaceutical company that focuses on drug development through clinical trials. Even though we are in this business of developing new drugs, we have staff who are concerned about getting a vaccine that has been developed and tested so quickly. Anything we can do as an employer to combat that feeling?

- The leadership team should seriously consider taking a vaccine pledge. Aon has developed materials that can assist with this approach.
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How do we know the vaccine is safe when it hasn't been used for longer than a short amount of time for people?

- 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.

HR Allowances & Proof of Vaccination

As an employer, are we allowed to recommend the vaccine? And are we allowed to ask whether they took the vaccine?

- 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.
 - 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.
-

Are employers allowed to track and ask for proof of vaccination?

- Currently, there is no directive or requirement for employers to maintain a record of employee's 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 HIPAA 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.
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Would the U.S. government consider implementing a PASSPORT stating you received the Vaccine like what has been done in Israel?

- The U.S. government and big tech firms are both working on potential solutions in this vaccination status arena.
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Can we ask for proof of vaccination?

- 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 HIPAA 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.
-

If we DON'T require the vaccine, should we still request documentation to track which employees receive it?

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 - 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.
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If an employer has not mandated COVID-19 vaccination for its employees, *should* employers ask employees whether they have been vaccinated?

- Decisions such as this should be made in consultation with counsel. Currently, there is no directive or requirement for employers to maintain a record of employee's 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 HIPAA 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.
-

Is tracking employee vaccination contrary to HIPPA regulations?

- Currently, there is no directive or requirement for employers to maintain a record of employee's 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 HIPAA privacy requirements.
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Can employers ask if an applicant/ potential employee received the vaccination?

- Decisions such as this should be made in consultation with counsel. Employers can require applicants provide proof of their vaccinations however, employers should avoid asking applicants 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.

Mandating vs. Encouraging Vaccination

What are the pros and cons of encouraging vs. requiring employees to get the vaccine?

- 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.
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Can a business require employees to vaccinate?

- 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.
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If the COVID-19 vaccine is mandated, will they also mandate people to get the flu vaccine, too, and any others?

- There is no specific guidance on this currently.
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In California, can vaccinations be required?

- 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.
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If vaccines become mandated, how will it work if someone claims that it goes against the religious or medical beliefs? How as an employer would we want to handle that?

- Decisions such as this should be made in consultation with counsel. Care must be taken before excluding an employee from the workforce who indicates that he or she cannot take the vaccination due to a disability or because of a sincerely held religious belief or practice based on the requirements of the Americans with Disabilities Act (ADA) and Title VII of the 1964 Civil Rights Act (Title VII), respectively.
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Can you terminate someone that does not want to get vaccinated?

- Decisions such as this should be made in consultation with counsel. The December 16, 2020 EEOC guidance identified instances in which employees who are not vaccinated may be excluded from the workplace. However, Employers may be required to provide reasonable accommodations to employees who are unable to take the vaccine due to certain medical or religious reasons.
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Can employers require employees to sign a waiver waiving their rights to sue?

- Decisions such as this should be made in consultation with counsel.
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Can employers force testing?

- Decisions such as this should be made in consultation with counsel. Employers can require testing before entry into the workplace. Employers should ensure tests are accurate and reliable. California employees are entitled to compensation if their employers require that they obtain a COVID test while off the clock.
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Can an employer require employees receive vaccine to remain employed? What if an employee refuses?

- Decisions such as this should be made in consultation with counsel. The December 16, 2020 EEOC guidance identified instances in which employees who are not vaccinated may be excluded from the workplace. However, Employers may be required to provide reasonable accommodations to employees who are unable to take the vaccine due to certain medical or religious reasons.

Vaccination & Legal Protections

If employers encourage vaccination and an employee contracts the virus and then initiates a claim against the employer, will the government create protections for the employers?

- . There is potential for government protections and insurance clauses in the future, however, at this time there is nothing that applies specifically to COVID regarding protecting the employer from a claim for any reaction to the vaccine if required. Generally speaking, if an employer mandates the vaccine, it is very likely that any adverse medical reaction would be compensable under Workers Compensation. Employers are advised to seek advice from counsel on liability issues which may arise from its vaccine program.
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How can we get legal protections to require the vaccination for employment (in healthcare)?

- Congress spent six months debating expanding immunity for employers and did not do it. Congressional action is the only way this can be achieved.
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We are concerned about requiring the vaccination and/or incentivizing it based on unknown effects of the vaccination on the employee. Since pharmaceutical companies may be protected from litigation (and subrogation), and insurers could introduce exclusions from claims resulting from pandemic exposures, how should employers look at this risk, particularly given the unknown impact of the vaccine over time? Are there government protections for employers in the hopper for consideration?

- There is potential for government protections and insurance clauses in the future, however, at this time there is nothing that applies specific to COVID-19 regarding protecting the employer from a claim for any

reaction to the vaccine if required. Employers are advised to seek advice from counsel on liability issues which may arise from its vaccine program.

Vaccination Rollout, Timing, Cost & Compliance

Why are some states doing much better at vaccines and some are not doing a good job? Is there anything that can be done about that. There is very little communication in our state.

- Each state has approached vaccination strategies differently. Some have enlisted retail pharmacies while others have activated the national guard. The greatest barrier to better vaccination is limited supply of the vaccine.
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Can you give us any specific dates as to when retail pharmacies will be able to begin providing vaccination to customers?

- Some retail vaccines have begun receiving/ administering the vaccines. Each geography has a unique plan to ascertain which/when pharmacies will receive.
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Will there be any regulation on the pharmacies that will be receiving the vaccine?

- Pharmacies are still subject to the usual regulations. Additionally, the pharmacies are subject to specific regulations regarding who and when the COVID vaccine can be administered.
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Please confirm: So, retail pharmacies (CVS, Walgreens, etc.) will be receiving vaccines to administer to general public?

- Yes, many retail pharmacies are offering limited access to vaccine now.

What are the concrete and definitive plans for helping those people that do not have computer access to 'sign up' for a shot?

- We recommend people call their local COVID-19 hotline to gain information on how to register for a vaccination appointment.

What is the expectation for vaccines to be available for people who don't fit high risk thresholds or first responders?

- We believe non-high-risk individuals will be able to access vaccine in mid-April or later
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How long is the time between the first and second vaccination?

- Per the CDC, the currently authorized vaccines to prevent COVID-19 in the United States require two shots to get the most protection:
 - Pfizer-BioNTech doses should be given 3 weeks (21 days) apart
 - Moderna doses should be given 1 month (28 days) apart
 - The CDC recommends you get the second shot as close to the recommended 3-week or 1-month interval as possible. However, there is no maximum interval between the first and second doses for either vaccine. You should not get the second dose earlier than the recommended interval.
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What about legislating a limit to the amount that can be charged to administer the vaccine? All costs included. Severe abuse by private stand-alone ERs in Texas. Resulting in bills over \$3,000.

- Per the CDC, vaccine doses purchased with U.S. taxpayer dollars will be given to the American people at no cost. However, vaccination providers can charge an administration fee for giving someone the shot. Vaccination providers can be reimbursed for this by the patient's public or private insurance company or, for uninsured patients, by the Health Resources and Services Administration's Provider Relief Fund. No one can be denied a vaccine if they are unable to pay the vaccine administration fee.
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Vaccines are communicated as free to individuals across the U.S., why would my state DOH be asking for my insurance information? If billed to my Employer Group Health plan, would these claims costs essentially be applied to my self-insured plan, and therefore result in increased premiums in the following year? Free does not seem free to individual if this is the case.

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-

Is there a way to designate our employees as essential? Is yes, what is that process? If no, what other options do we have to guide our employees on getting vaccinated as quickly as possible? Who is monitoring the changing landscape on this so that we get information ASAP?

- Employers may get the essential workforce designation by working with their state health department. Aon has a team of consultants working on COVID-19 solutions. Please outreach to your Aon contact for more information.

Vaccination Supply

Are there plans to use the Defense Production Act (or other legal means) to require other pharmaceutical companies to produce one or both current vaccines? By "other" companies, I mean pharmaceutical companies that are not currently producing a vaccine.

- This is a consideration. Some Pharma companies have announced they are voluntarily sharing their manufacturing capacity with manufacturers of COVID Vaccine so that vaccine manufacturing can be increased.

What is the biggest challenge in increasing production/administration of the vaccine across the country?

- The largest bottlenecks to date have been the lack of adequate supply of vaccine followed by inadequate staffing of mass vaccination centers. Manufacturing of vaccine and staffing are still ramping up to meet demand.

Vaccinations and Return to Work

What are the major factors to look at when considering whether to require employees to get tested and vaccinated prior to coming into the office?

- 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.

Can our company make it mandatory for employees to have received both doses of the vaccine before they physically return to the office? Do state laws play into this? Would we need different policies for each office?

- 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. A policy requiring vaccination prior to return to work should be developed with your HR and Legal team(s) to ensure it complies with ADA and Title VII regulations.

What are some of the things that employers can do currently while we are waiting to get access to vaccines to our employees?

- Employers should share/educate employees on safety and efficacy of vaccine. Additionally, employers should encourage compliance with CDC guidelines for reducing transmission of COVID.
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If all employees in a manufacturing plant are fully vaccinated (an intact bubble, if you will), can they remove COVID-19 safety measures? No outside customers / suppliers would be onsite.

- At this time, it is advised to continue to require masks and social distancing measures even after employees are vaccinated. Not enough information is currently available to say if or when CDC will stop recommending that people wear masks and avoid close contact with others to help prevent the spread of the virus that causes COVID-19.
 - In addition to the CDC guidance on this question, OSHA has now 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.
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Is there a threshold/major milestone with vaccinations being available or actually injected (such as 70%) in the community, that an organization can use to determine when to bring employees back to the office? For example, if the vaccine is still only available on a limited basis or our employees still haven't had access, is it advisable to have our employees return to the office?

- An employer deciding whether to return employees to the office must consider ongoing developments in the scientific and regulatory ecosystems.
- 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.
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In your surveys to date, how many pharma companies plan on or are mandating vaccinations as a requirement to return to work vs. encouraging vaccinations?

- We have not directly surveyed pharma companies, but understand that employers in certain industries, particularly health care, may decide to adopt a mandatory vaccination policy related to returning employees to the workforce, but accommodations may be required for certain workers based on various factors, including the individual's disability or a sincerely held religious practice or belief. Employers are encouraged to seek advice on appropriate accommodations from counsel.
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If we don't mandate the vaccine in our factory, but provide incentives (i.e. cash or time off) for those who choose to get the vaccine, what alternatives can we offer to those who have religious or medical exemptions for not getting the vaccine?

- The EEOC has provided in its regulations that if an award is to be provided for participation in an activity, there must be some accommodation available to guarantee that disabled employees can participate. 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. Employers are encouraged to seek advice on appropriate accommodations from counsel.
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Is remote working on a permanent basis mitigation strategy employer are considering?

- Questions remain about whether remote work, at the current levels, will last as a permanent work arrangement. There are indicators that many companies plan to allow employees to continue working from home at least some of the time, but we expect business necessity and productivity needs will ultimately drive decisions on how companies address remote work in the future. Employers considering this approach should seek advice from counsel.

Vaccines & Incentives

What incentives do you recommend to encourage vaccinations?

- We can give you some examples of what other employers are doing. Many employers are providing approved time off from regularly scheduled work (paid or unpaid) to encourage employees to get vaccinated. As an example, Aon created a global policy to provide employees who choose to receive the COVID-19 vaccine with access to up to 16 hours of additional paid time off per injection, recognizing the time commitment associated with receiving each injection and any potential recovery.
-

Would you suggest time off for vaccination itself, in particular the day after second dose?

- Some employees may need a recovery day following vaccination.
 - Many employers are providing approved time off from regularly scheduled work (paid or unpaid) to encourage employees to get vaccinated. As an example, Aon created a global policy to provide employees who choose to receive the COVID-19 vaccine with access to up to 16 hours of additional paid time off per injection, recognizing the time commitment associated with receiving each injection and any potential recovery.
-

Regarding providing incentives to employees to get vaccines, what should we be concerned about, especially with the ADA and incentive rules?

- 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.
-

As an incentive, could we say... If employees get the vaccine, they no longer need to wear a face covering?

- At this time, it is advised to continue to require masks and social distancing measures even after employees are vaccinated. Not enough information is currently available to say if or when CDC will stop

recommending that people wear masks and avoid close contact with others to help prevent the spread of the virus that causes COVID-19.

- In addition to the CDC guidance on this question, OSHA has now 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.

Most employers cannot afford to offer incentives after the financial year we have had. If you decline the shot due to disability, isn't it discriminatory if you then cannot get the incentive?

- It is important to provide employees with effective communication regarding the benefits of vaccination. Additionally, employers may want to offer employees time off to be vaccinated. Regarding cash and other incentives, ADA and IRS restrictions need to be addressed, and counsel should be consulted.
- 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.
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- 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.

Can you give an incentive paid into HSA accounts to avoid the taxable benefit?

- Aon recommends consultation with your HR and Legal teams to determine the IRS impact on incentives and HSA accounts.

Could an incentive be found to discriminate against someone who cannot get vaccine due to a protected reason?

- Decisions such as this should be made in consultation with counsel. Considerations include: EEOC guidance regarding employees whose medical condition (or sincerely held religious beliefs or practices) might prevent them from taking the vaccination, reasonable alternative standards for earning rewards under the HIPAA rules, financial limitations on incentives, notice requirements under the ADA and HIPAA, and tax consequences of cash payments or gift cards.

Vaccines & Workers' Compensation Exposure

What potential workers' compensation liabilities arise if employers offer employees the opportunity to be vaccinated during their work shift, or incentives to encourage their participation in being vaccinated?

- 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. 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.

We are concerned about work comp or liability claims arising from encouraging vaccination (to include providing paid time off and having administered on our premises). How can we protect ourselves from this exposure? Concerned about short-term adverse reactions as well as long-term issues that could present (or be alleged and be difficult to defend).

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Is this covered under our policy if they sue us because of a reaction?

- 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.

If an employee is exposed to someone with COVID-19 on the job, now that FFCRA has expired, will leave be compensable under workers' compensation?

- Lost time due to a diagnosed COVID-19 illness will only be paid if the claim for benefits is deemed compensable under the state-specific workers' compensation laws. Even in states that have adopted presumption laws, a claim alleging COVID-19 contracted at work may be disputed with evidence such as:
 - measures in place to reduce potential transmission of COVID-19 in the employee's place of employment
 - the employee's non-occupational risks of COVID-19 infection
 - statements made by the employee
 - other evidence regularly used to dispute a work-related injury.

The Bar on Healthcare (panelist J.D. Piro) Podcast

Where can we get the details on the podcast referenced?

https://insights-north-america.aon.com/events-webinars/podcast-the-bar-on-healthcare?lsrc=3ef40c97-83ad-4e6f-a90e-f12ae3c9d9cb&utm_source=LinkedIn_Elevate

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

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For more information about Aon's response to COVID-19 and solutions for clients, please see Aon's external site at www.aon.com/coronavirus.

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Aon plc (NYSE: AON) is a leading global professional services firm providing a broad range of risk, retirement and health solutions. Our 50,000 colleagues in 120 countries empower results for clients by using proprietary data and analytics to deliver insights that reduce volatility and improve performance.

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