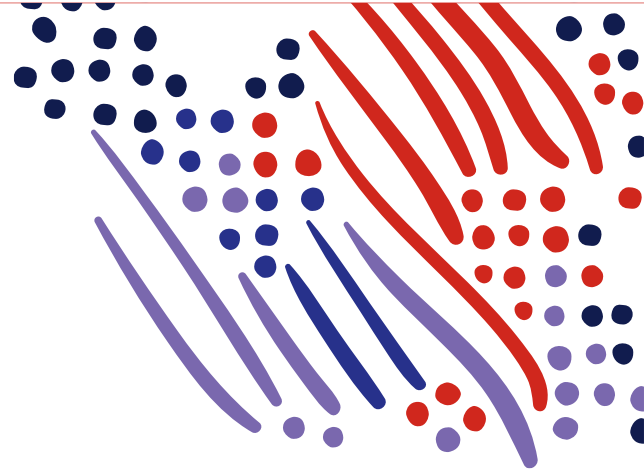


COVID-19 Vaccination Guidance: Top Considerations for Employers

September 2021



Logistics and Resources



COVID-19 Vaccination Guidance: Top Considerations for Employers

The screenshot displays a presentation interface with several panels and a central slide. The central slide is titled "COVID-19 Vaccination Guidance: Top Considerations for Employers" and features a graphic of a stylized American flag. The slide also includes the date "September 2021" and the ADP logo.

On the left, the "Speaker Bio" panel lists two speakers: Helena Almeida, Vice President, Counsel at ADP, Inc., and Samantha Munro, Counsel at ADP, Inc.

On the right, the "Resource List" panel contains a list of resources: Presentation, COVID-19 Vaccine Mandate Resources, ADP Employer Preparedness Toolkit, Eye on Washington: President Biden Issues COVID-19 Executive Order – Vaccine Mandate, and Workplace Spotlight Series.

Below the Resource List is a "Q&A" panel with a text input field labeled "Enter your question" and a "Submit" button.

At the bottom of the interface is a navigation bar with icons for various functions: a presentation icon, a video icon, a "Q&A" icon, a document icon, a user icon, a calendar icon, a question mark icon, and a settings icon. A red oval highlights the "Q&A" icon and the document icon.

Red arrows point to the "Slides" panel (top center), the "Resource List" panel (top right), and the "Q&A" panel (bottom right).



ADP and Wolters Kluwer Partnership

ADP has partnered with Wolters Kluwer to provide accountants access to best-in-breed tax information.

Today's program is approved for 1 CPE credit.

Manage all of your courses and certificates here:

<https://www.cchcpelink.com/adp>

To receive your credit, answer all 4 polling questions presented during the webcast.



A screenshot of the CCH CPELink website. The header includes navigation links like "Questions? Chat with us! Books or CPE", "Cart", "Help", and "My Account". A search bar is present with the text "CPE" and "Search...". Below the header, there's a banner for "ADP® Continuing Professional Education Center" with a photo of two people. The main content area is titled "Welcome to your ADP® CPE Center" and describes the partnership between ADP and CCH CPELink. It highlights that ADP is dedicated to helping accountants increase productivity and profitability. The page lists several offerings: "ADP National Webinars" (Group Internet Based Interactive Live Webinars from CCH CPELink), "ADP Group Live Seminars" (Group Live Seminars Sponsored by ADP), and "On-Demand Courses" (On Demand Courses from CCH CPELink exclusively for Accountant Connect™ users). Each section includes a brief description and a "Learn More" or "Register Now" button. A sidebar on the right contains links for "CPE - Home Support" and "CPE - CPE Support".

Disclaimer

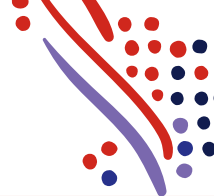
This presentation is not:

- Legal advice
- The final word on today's topics
- A political opinion

Before taking any actions

Before taking any actions on the information contained in this presentation, employers should review this material with internal and/or external counsel.

Today's speakers



Helena Almeida

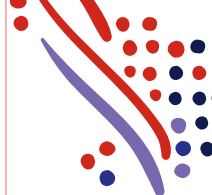
*Vice President, Counsel
ADP, Inc.*



Samantha Munro

*Counsel
ADP, Inc.*

Agenda



- President Biden's COVID-19 Action Plan
- Impact of President Biden's COVID-19 Action Plan on employers:
 - Federal employees and employees of government contractors
 - Private employers with 100 employees or more
- Considerations for employer vaccine mandates
- Handling medical and religious accommodations



Path Out of the Pandemic: President Biden's Action Plan

Path Out of the Pandemic:

Six-Pronged Approach*



Vaccinating the
Unvaccinated



Further Protecting
the Vaccinated



Keeping Schools
Safely Open



Increasing Testing &
Requiring Masking

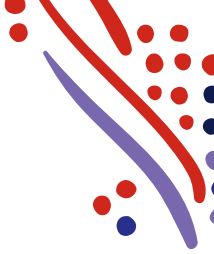








Protecting Our
Economic Recovery



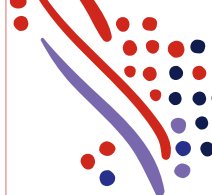
Improving Care for
those with COVID-19

Vaccinating the Unvaccinated



Affected employers	Proposed Requirement
 <p>Federal executive branch workers and employees of contractors that do business with the federal government (government contractors).</p>	 <p>COVID-19 vaccination will be required for all workers and contractors. For employers servicing federal government, language will be added to new contracts and renewals beginning in October.</p>
 <p>All private-sector employers with 100 or more employees.</p>	 <p>Onsite workers will be required to be either vaccinated or tested weekly for COVID-19.</p> <p>Employers will also be required to provide paid time off to get vaccinated and recover from potential vaccination side effects.</p> <p>OSHA will issue an emergency temporary standard (ETS) to implement the requirements in the coming weeks.</p>
 <p>Medicare and Medicaid participating hospitals and other health care settings that receive Medicare or Medicaid reimbursement.</p>	 <p>COVID-19 vaccination will be required for all workers.</p>

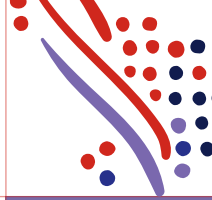
Polling question



Does your company have a COVID-19 vaccine policy in place?

- Yes
- No
- Unsure

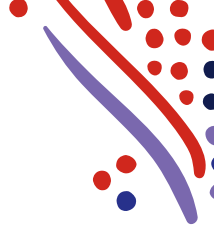
Polling results placeholder





COVID-19 Executive Order for Federal Contractors

Executive Order: “Ensuring Adequate COVID Safety Protocols for Federal Contractors”



- No immediate workplace requirements
- Details will be issued September 24 by White House’s “Safer Federal Workforce Task Force” (saferfederalworkforce.gov)
- In October, Federal agencies will begin including contract language requiring contractors to comply with guidance published by the White House’s Safer Federal Workforce Task Force
- EO will apply to any locations in which an individual is working on or in connection with a federal government contract
- Requirements likely to include
 - Vaccine mandate (without testing option?)
 - May cover remote workers who service government contracts
 - May include employees not working on federal contract but at same location



Requirements for Private Employers

OSHA Emergency Temporary Standard (ETS)

Issued by Department of Labor

- Secretary of Labor can issue ETS when “**employees are exposed to grave danger**” from exposure to substances or agents determined to be toxic or physically harmful or from new hazards” and an **emergency standard is “necessary to protect employees from such danger”**
- No “notice and comment” process —details may not be available until day ETS is published
- ETS may be in place for up to six months; OSHA may then issue a permanent standard that has been adopted through ordinary rulemaking processes
- State OSHA Plans must adopt the standard set forth in the OSHA ETS (or standard at least as stringent)



OSHA Emergency Temporary Standard

Many important details have not been announced



What we know

- All employers with 100+ employees must **require workers to be vaccinated** or undergo weekly COVID-19 testing
- Employers can require vaccinations with no testing option
- Must permit medical and religious accommodations
- Must provide **paid time off for vaccination** and to recuperate from side effects of vaccination
- Employers may (must?) ask for proof of vaccination
- No requirements for 100% remote workers?



What we don't yet know

- **When** will it be issued? ("coming weeks")
- How should employers count 100 employee threshold?
 - Count is likely to include workers at all employer sites / locations
 - Include seasonal workers?
- What level of proof of vaccination will be required?
- Guidance on paying for testing or testing time?



Considerations for employer vaccine mandates

Can employers issue vaccine mandates?



Generally, employers have the right to mandate that some or all employees be vaccinated against COVID-19.



Employers must consider accommodations for medical conditions that prevent vaccination and sincerely-held religious beliefs

Some exceptions:

Montana law prohibits vaccine mandates and prohibits discrimination based on vaccination status.

Several states have prohibited state and local governments from requiring vaccine passports (may also apply to **private employers who receive funds or have contracts with state**)

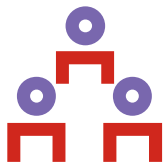
Some State Attorneys General are poised to bring legal challenges to Path Out of the Pandemic / OSHA Emergency Temporary Standard

Keep track of state and local developments in your area.

Employer vaccine policies

Generally, there are three types of vaccine policies

Employers have taken different approaches to mandates based on company need, job duties, location, and other factors.



Complete vaccination mandate for all employees regardless of their job category



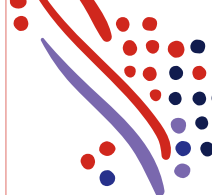
Partial mandate, requiring vaccines for employees in particular job categories



In-office mandate, for any employee that must or chooses to work in the office or conduct in-person meetings

With any of these, employer may offer option for unvaccinated employees to test regularly.

Polling question



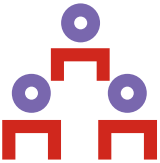
Does your company currently have or are you considering one of the following vaccine programs?

- Vaccine mandate for all employees
- Vaccine mandate only for employees in certain locations or roles
- Vaccine mandate only for employees who choose to work in the office
- None of the above

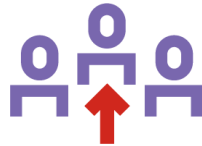
Polling results placeholder



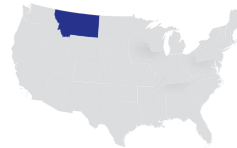
Complete vaccination mandate policy



All employees regardless of job category must be vaccinated



Subject to a duty to accommodate for a disability, religious belief and potentially for pregnancy



Note that there is **a carve-out for Montana**



Generally, this type of policy is for employers who have employees that **work on-site** in an office or other employer provided location

Partial mandate for certain employees in particular job categories

Vaccine mandate for subset of workers



Employer decides which employees will be required to be vaccinated, subject to accommodation requirements.

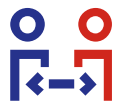


Employers must be mindful of disparate impact claims when requiring certain categories of people to be vaccinated.



The EEOC states that employers with a vaccine mandate may expose themselves to claims that the mandate disparately impacts – or disproportionately excludes – employees based on their race, color, religion, sex, or national origin under Title VII (or age under ADEA).

Vaccine mandate for employees who work in the office or have in-person meetings



Vaccines required for employees who work in the office or conduct in-person meetings, subject to accommodation requirements.



May work for employers who are willing to allow portions of their workforce to continue to work remotely.



Employees choose whether they want to work in the office, and if they choose to do so, they must be vaccinated.

Preparing a written vaccine policy

Employers should prepare a written vaccine policy that clearly sets out the vaccine requirements



- ☐ Explain what is required and by whom.
- ☐ Make clear that accommodations will be granted as required by law, and that employees with a disability or religious-based objection may request an exception or other accommodations.

For policies requiring vaccination only, if an employee chooses to work in the office or conducts in-person meetings, accommodations should generally not be an issue, as the person can work remotely.

- ☐ Identify who the accommodation requests should be addressed and how to contact them.
- ☐ Identify how long the employee has to get in compliance with the policy.
- ☐ Specify consequences for non-compliance.

A woman with blonde hair, wearing a grey blazer, is looking down at a tablet computer she is holding with both hands. She is standing in a large industrial facility, likely a factory or warehouse, with various pieces of machinery and equipment visible in the background. The lighting is bright and even.

Scenario:

Proof of
vaccination
status

Question:

Is my company allowed to ask for proof of vaccine status? If so, what should the proof include?

Answer: Yes.

Yes, employers may ask for proof of vaccination, and may be required to in certain locations and under certain aspects of Biden's plan.

- It is not a disability-related inquiry under the Americans with Disabilities Act
- It does not violate HIPAA limits on medical inquiries
- *But* employers should request only necessary information as to vaccination status

Scenario:

Proof of
vaccination
status

Proof of vaccination status



Vaccination record card or
copy of the same



Health care provider's letter
or note



An employee's attestation

Consider adding a disclaimer to any vaccine validation forms that caution employee not to provide any medical or other information beyond what is expressly requested.

Confidential nature of vaccination date and status



- The EEOC has stated that employers should treat vaccination records as **confidential medical information**.
- Employers should treat vaccination status and records **the same as other confidential medical information**, and **maintain it apart from the personnel file**.



- Under the ADA, confidential medical information **cannot be shared with supervisors**; only information concerning restrictions and accommodations flowing from the confidential medical information can be shared.
- Vaccination status of any employee **must not be shared with that employee's co-workers or others**.
- Employers should **not use stickers, badges or other marks** to identify who has or has not been vaccinated.



Scenario:

Testing time
and testing
costs

Question:

If our company is offering testing as an alternative to vaccine, who pays for the tests, the company or the employee? And do we need to pay the employee for the time it takes to get the test?



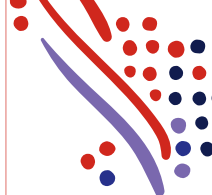
Answer: It depends.

Scenario:
Testing time
and testing
costs



Handling medical and religious accommodations

Disability accommodations



Employees or applicants who cannot get the COVID-19 vaccine because of a qualifying disability may be entitled to reasonable accommodation under the ADA. Therefore, in order to be eligible for an accommodation, the employee must first have a qualifying disability.

Commonly claimed disabilities:

- Anxiety
- Allergic Reactions
- Certain Autoimmune Disorders
- Pregnancy/Breastfeeding

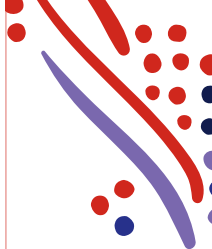
Direct threat assessment



- If the employee or applicant does have a qualifying disability, the employer must consider **whether it can reasonably accommodate the employee under a “direct threat assessment.”**
- Under a “direct threat assessment,” the employer determines **whether the unvaccinated employee or applicant poses a direct threat to themselves or others** in the workplace by exposing them to COVID-19.



- Factors to consider:
 - Nature of the work
 - Amount of close contact
 - Amount of unvaccinated people in the workplace
 - Location of work site (i.e., is it in an area with a high transmission rate)?



Religious accommodations

- Applicants and employees with “**sincerely held religious beliefs**” may be exempt from vaccination requirements if their beliefs are inconsistent with vaccination.
- No definitive list of what qualifies as a religion for these purposes – it need not be a formal church or sect.
- Employee’s belief can be different from the commonly followed tenets of the individual’s religion.
- Under the law, it is enough that the belief is a moral or ethical belief about what is right or wrong.
- The religious belief may be newly adopted, inconsistently observed.

Is it a religious belief?

Is the religious belief sincerely held?

Would accommodating the belief impose an undue hardship on the employer?

Evaluating religious accommodation requests

Can employers probe claims of religious objections?



Inquiries can be difficult to navigate.



Employers can expose themselves to risk and should generally assume that the request for religious accommodation is legitimate.

Religious accommodations and undue hardship

- Following the employer's determination that a religious belief is sincerely held, a reasonable accommodation must be provided unless it would pose an undue hardship.
- "Undue hardship" is defined as having more than a de minimis cost or burden on the employer.
- If employer is providing a certain accommodation for medical reasons, employer should be careful in denying same accommodation for religious reasons.

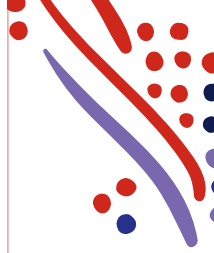


Polling question

Have you seen an increase in accommodation requests?

- Yes, more medical requests
- Yes, more religious requests
- Yes, both
- No
- Unsure

Polling results placeholder



Best practice guidance

- As an initial step, have employees complete an exemption request form where employee will provide their precise religious beliefs and how their beliefs contradict with obtaining a COVID-19 vaccination, testing or masking.
- Require signature and attestation that all information provided is truthful and accurate.
- Note on the exemption request form that additional information may be requested by employer to support the accommodation request.
- If employer has objective reason to question the religious nature of the sincerity of the belief, employer may engage in interactive process dialogue to assess belief.
- Employers should proceed carefully when following up with clarifying requests for further information.

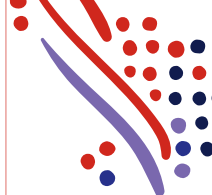


Accommodation alternatives to vaccination



- Consider whether job can be performed remotely
- Place on unpaid leave but only for a designated length of time.
- If job cannot be performed remotely consider whether other alternatives are viable such as regular testing; face mask requirements; social distancing requirements, etc.
- Are there other roles that the employee may be qualified to perform without vaccination?
- Health and safety concerns that create undue hardship such as the employee working with populations that are high risk or not yet eligible for vaccination

Polling question



Are you a CPA needing Continuing Professional Education (CPE) credit?

- Yes
- No



Key takeaways

Key takeaways

- ✓ Communicate your approach clearly to employees, contractors, and vendors
- ✓ Use care in how you collect, store, and share vaccination information
- ✓ Centralize accommodation reviews
- ✓ This is an evolving area -- continue to monitor developments at federal, state and local level

Thank you for attending!



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Thank you for attending today's CPE program!

- ✓ Be sure you completed all four of the poll questions
 - This will trigger your CPE Certificate to post to your CPELink account
- ✓ Sign in (or create) your account at: cchcpelink.com/adp
 - Use the "Forgot Password" link to have a password reset link sent to your email
- ✓ Typically, the certificate will be ready in 48 hours
 - CPELink will notify you via email when your certificate is available

Live Webinars			
Upcoming (1)		Past (5)	
Date Time	Title	Credit	Status
Jan 26, 2017 8:00am PT	Compliance Resolutions for a Better 2017	1	Attended
Certificate of Completion			
Order Receipt			
Course Details			
Jun 20, 2017 8:00am PT	IRS Tax Penalties and Abatement Strategies - Tuesday, June 20th (11AM)	0	No Show
Jun 1, 2017 8:00am PT	The Bottom Line: How Talent Management Impacts the P&L - Thursday, June 1st (11 AM EDT)	0	No Show
May 2, 2017 10:00am PT	Social Media, Body Art, Smoking & More: What's Allowed & What Isn't? - Tuesday, May 2nd (1PM EDT)	0	No Show
May 2, 2017 8:00am PT	Social Media, Body Art, Smoking & More: What's Allowed & What Isn't? - Tuesday, May 2nd (11AM EDT)	0	No Show