

What Association Executives Need to Know About Vaccinations:

Can an Association require its employees to get vaccinated?

According to the [guidance on COVID-19 vaccines issued by the Equal Employment Opportunity Commission \("EEOC"\)](#) on December 16, 2020, employers may impose mandatory vaccination policies as a condition of employees physically entering the workplace, subject to some exceptions (see next question for more detail).

Are there any exceptions?

Companies must consider exceptions to a mandatory vaccination policy if a worker's refusal is based on a disability or a sincerely held religious belief, practice, or observance. The Americans with Disabilities Act ("ADA") requires that a company first determine whether the unvaccinated worker poses a "direct threat" to others, and whether that threat can be reduced or eliminated through other measures, such as COVID-19 screenings, social distancing and personal protective equipment.

Companies can only bar a worker from the workplace if they conclude no reasonable accommodation exists that would eliminate or reduce the threat. Even then, a company must evaluate whether an accommodation, such as remote work, can be provided to the employee. Similarly, and absent undue hardship, Title VII requires that companies provide reasonable accommodations to workers who request a religious accommodation related to a mandatory COVID-19 vaccination policy.

This is a complex area, and employers are strongly advised to seek legal counsel when an employee requests an exemption to a mandatory vaccination policy. Moreover, employers may wish to consult with legal counsel when drafting a mandatory vaccination policy.

Are there any exceptions?

If an employee cannot get vaccinated for COVID-19 because of a disability or sincerely held religious belief, practice or observance, and there is no reasonable accommodation possible, then it would be lawful for the employer to exclude the employee from the workplace. This does not mean the employer may automatically terminate the worker. As stated above, the employer must consider whether an accommodation, such as remote work, can be provided. Employers will also need to determine if there are any other employee protections under federal or state anti-discrimination laws, or other applicable laws.

What about testing? Can employers require COVID-19 viral testing of employees before allowing them to work in the office and require periodic testing to determine if their presence in the workplace poses a direct threat to others?

Yes, according to current guidance from the EEOC. Per the ADA, mandatory medical testing of employees must be “job related and consistent with business necessity.” Employers can choose to administer a COVID-19 viral test (to determine if an employee has an active case of COVID-19) because an individual with the virus may pose a direct threat to the health of other persons in the workplace.

Employers should ensure such viral tests are accurate and reliable, keeping updated with the Centers for Disease Control and Prevention (“CDC”) and Food and Drug Administration (“FDA”) recommendations. In contrast to viral testing, the ADA does not allow employers to require antibody testing (which shows whether a person previously had COVID-19) before allowing employees to re-enter the workplace, because results regarding the presence of antibodies do not meet the ADA’s “job related and consistent with business necessity” standard for employee medical examinations.

Employers are reminded that a negative viral test does not mean the employee will not acquire COVID-19 at a later point. All workers should follow the infection control practices (face coverings, physical distancing, handwashing, cleaning and disinfecting, etc.) to prevent COVID-19 infections in the workplace.

Now that vaccinations have started, should I reopen my Association office?

Per [California’s Blueprint for a Safer Economy](#), each county in California is assigned a Tier by the California Department of Public Health (“CDPH”) based on the rate of its positive COVID-19 tests and cases. There are four Tiers: Purple (widespread), Red (substantial), Orange (moderate) and Yellow (minimal). Association offices, which are “office workspaces (non-essential businesses)” can only reopen if they are located in a county with a Tier assignment of Orange or Yellow. As of February 16, 2021, most counties were assigned to Tier Purple.

Even when an Association office can reopen based on its Tier Orange or Yellow assignment, because there are many health and safety rules requiring significant staff time and resources, it might be preferable to wait until the pandemic conditions improve; or the Association may wish to implement certain policies to help prevent infections (e.g., staggering shifts to only allow a small group of workers inside the building at the same time, limiting public access, limiting gatherings, etc.) The Industry Guidance for “office workspaces” and the “checklist for office workspaces” can be found [here](#). An Association’s decision on whether it is the “right” time to open the office workplace will likely depend on such factors as the physical layout of the office, number of employees, staff’s ability to telework, the Association’s business needs and its available resources.

Many Associations have developed ways to serve their members while their staff has been working remotely, e.g., by using online communications, and curbside or other contactless pickup.

The State requirements take a considerable amount of planning, time and labor and will require continuing staff and financial resources. For example, the Association may need to make structural changes to its physical office, create and post various signs (e.g., near elevators or break rooms), arrange for more frequent cleaning, purchase protective equipment, face coverings, hand sanitizer and other supplies, and adjust employee work schedules to reduce the number of people in the office at the same time, among other things. The Association may need to obtain input from its legal, financial and insurance advisors. Ultimately, Association executives must use

their best judgment regarding the Association's specific business needs and its ability to comply with all of the State Guidance, CAL/OSHA, and CDC requirements, along with any applicable local rules and requirements.

Where can I get more information about COVID-19 and the workplace?

See the [Guidance for Employers](#) section on C.A.R.'s coronavirus microsite and the [COVID-19 Emergency Temporary Standards FAQ](#) on the California Department of Industrial Relations website.

Sources: California COVID-19 Website, California Department of Public Health, C.A.R. Legal, Centers for Disease Control and Prevention, Federal Drug Administration, U.S. Equal Employment Opportunity Commission

