

HENDERSON BROTHERS UPDATE

Employers Contemplate Workplace Vaccine Initiatives

September 2021

More employers may be willing to consider requiring their employees to be vaccinated following the [Food and Drug Administration's \(FDA\)](#) announcement of full approval for the Pfizer COVID-19 vaccine. According to a recent [Fortune article](#), several large employers, including Amtrak, AT&T, Bank of America, Cisco Systems, Walmart and Walt Disney are implementing COVID-19 vaccination requirements for a significant portion of their workforce. Delta Airlines recently announced that it will impose a \$200 health plan premium charge on unvaccinated employees and will add testing requirements for others that do not provide proof of vaccination status.

Many employers have been struggling with the decision on whether to adopt a mandatory vaccination policy. As expected, legal liability has been a big concern. With the Delta variant surging, employers are forced to weigh their options taking into account their location(s), culture, demographics, regulatory requirements and more.

Federal Agencies Allow Mandatory Policies

Several federal agencies, including the Equal Employment Opportunity Commission (EEOC) and the Department of Justice, permit employers to mandate the vaccine. OSHA guidance suggests employers consider adopting policies that require workers to get vaccinated or to undergo regular COVID-19 testing, and numerous court rulings have confirmed that requiring employees to be vaccinated is legal.

Mandatory Policy Considerations

Employers who are contemplating a mandatory approach may want to take the following steps:

- Determine the best way to communicate the policy to employees. This should include determining how much notice to provide before implementing the requirement, how to keep and maintain proof of vaccination, and who within the company will have access to that confidential information;
- Consider related logistical issues, such as compensation issues for travel time spent to receive the vaccine and any related reimbursement costs and supplemental paid sick leave for time taken to receive or recover from the vaccine or its side effects;
- Determine whether there are state or local laws that will restrict your approach; and
- Develop a clear reasonable accommodation policy to address religious and disability issues and take steps to communicate and administer the accommodation process in a thoughtful way.

Encouraging Employees with Cash or Premium Incentives Instead

Employers who choose not to impose a mandatory vaccination requirement may still want to consider other options like encouraging employees to get the vaccine with a taxable cash reward or health plan premium incentive. There are multiple variables to consider, depending on the approach and whether an on-site vaccination clinic is provided, including:

- Will religious and disability exemptions apply?
- Are there HIPAA and EEOC ADA wellness regulations that should be considered?
- Are there rules that limit the amount of the incentive?
- Will a new premium incentive impact my current wellness program? What about employees that waive health coverage?

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Resources

To help bring clarity to these otherwise murky issues, Henderson Brothers has partnered with Littler Mendelson – the world’s largest labor and employment law firm – to offer you Littler’s recently updated COVID-19 Vaccination Toolkit for employers.

The COVID-19 Vaccination Toolkit is designed to help employers answer many of the common vaccine-related questions and issues, and also includes the following resources:

- Sample non-mandatory and mandatory vaccination policies and Vaccine Attestation Form.
- An updated summary of EEOC and CDC guidance regarding employee vaccinations (including new information for vaccine incentives, fully-vaccinated individuals, and considerations related to “vaccine passport bans”).
- An updated Q&A Guide on workplace vaccination issues, including answers to questions relating to mandating vaccines, CDC and other public health guidance for fully-vaccinated individuals, revised EEOC guidance concerning vaccination incentives, and considerations related to “vaccine passport bans”.
- A comprehensive review of the legal issues tied to the COVID-19 vaccine.

The cost of the Toolkit is normally \$1,000, but as Henderson Brothers clients you can purchase the Toolkit for \$800 by using our company code. To purchase the Toolkit, just go to [Littler’s website](#), add the Toolkit to your cart, and enter the special Henderson Brothers code **HB1893** at checkout.

With regards to the various state and local vaccine mandates (or anti-mandates), Littler is also tracking those requirements in a multi-state chart that can be found on their [website](#).

Please feel free to reach out to HB for additional information. We can help you to design a vaccination initiative that is appropriate for your organization and is compliant with federal and state laws.

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