

# COVID-19 VACCINE TOOLKIT FOR EMPLOYERS



## Employer Resources: Vaccines and Next Steps

COVID-19 presented unprecedented challenges to every person and every business sector in 2020. Now, three vaccines have been authorized by the Food and Drug Administration: Pfizer, Moderna, and Johnson & Johnson. Our goal, and plan is to vaccinate 80% of adults by this summer. In Milwaukee County, that means vaccinating approximately 578,000 people. Medical experts agree to achieve community protection (also called herd immunity) and allow for a return to the people and activities we love we need to vaccinate 70-85% of the total population. When children become eligible, there will be a revised goal.

As you work with your employees, customers and partners, please utilize the tools and links below. The purpose of these tools is two-fold: to ensure you have the resources you need as an employer to help reach the goal of 80% vaccinated and to provide your employees with information that builds vaccine confidence. Surveys show employers are a trusted source of information about COVID-19, so as we work to build vaccine confidence and reach every individual, your help is crucial.

### What's the role of employers?

- **Educating employees about why and how to get a vaccine**
- **Reducing barriers for employees to get the vaccine (time off, transportation, etc.)**
- **Explore providing incentives to employees to get the vaccine for themselves and their families as more populations become eligible.**

### Take it Step by Step

Where to begin? Follow this step by step guide to employer resources.

- ☐ **Step 1 – Make a Plan.** Evaluate the needs of your business and your employees. Consider policies, communications, and actions that might be necessary.
- ☐ **Step 2 – Consider Human Resources and Legal issues.** Access a curated list of online resources as a starting point for these decisions.
- ☐ **Step 3 – Build Vaccine Confidence.** Tools and strategy for helping employees learn about the vaccine, including ready to use materials and a slide deck you can co-brand for presentations.
- ☐ **Step 4 – Review best practices for employee communication.** Tools and a helpful guide for communicating about the COVID-19 vaccine.

- **Step 5 – Understand who is eligible for the vaccine.** Eligibility continues to expand and your employees may have questions about their eligibility. These resources are updated on an ongoing basis. All adults are anticipated to be eligible by May 1.
- **Step 6 – Understand where your employees can get vaccinated.** There are options for employers to become a vaccination site, partner with others, or refer to sites within the community.

## **Resources for Employers**

### **Health Action Alliance Quick Start Guide: Preparing Your Company for Covid-19 Vaccines**

[https://docs.google.com/document/d/1MBH5tGPcOo7WyuZTKUqp5RU2YeHxdI\\_LxZDujoeoEo/edit](https://docs.google.com/document/d/1MBH5tGPcOo7WyuZTKUqp5RU2YeHxdI_LxZDujoeoEo/edit))

### **Health System Resources for Employers**

Advocate Aurora Health

[https://www.advocateaurorahealth.org/coronavirus-disease-2019/?\\_ga=2.184605033.1737357135.1615565068-861250627.1615565068](https://www.advocateaurorahealth.org/coronavirus-disease-2019/?_ga=2.184605033.1737357135.1615565068-861250627.1615565068)

Froedtert & Medical College of Wisconsin

<https://www.froedtert.com/employer-pandemic-resources>  
<https://www.froedtert.com/employer-pandemic-resources/covid-19-vaccine>

**Vaccine Eligibility information** – Your employees may look to you for guidance on finding out if they are current eligible for a COVID-19 vaccine. Eligibility is set by the Department of Health Services (DHS) and as new groups become eligible, there are often updates and clarifications along the way. Two reliable and useful tools that provide up-to-the-minute accuracy are:

- Wisconsin Department of Health Services (DHS) website - <https://www.dhs.wisconsin.gov/covid-19/vaccine-about.htm>
- healthyMKE eligibility tool - <https://www.healthymke.com/vaccine-information>
- Call 1-844-684-1064 for vaccine information

### **Vaccine Access information (what you might offer):**

- How to become an employer-based site: Wisconsin DHS provides an online enrollment tool for any site interested in becoming a vaccinator – <https://www.dhs.wisconsin.gov/covid-19/vaccine-program.htm>

**Vaccine Access information (where you can refer employees):** Once employees are eligible, finding a vaccine provider is the next step. There are a few sources for you and your employees, which are updated on an ongoing basis:

- CDC Essential Workers & Employee's: How and When to Get Vaccinated: <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/recommendations/essentialworker/employees.html>
- Wisconsin DHS Map of Vaccine Providers (statewide map and information): <https://www.dhs.wisconsin.gov/covid-19/vaccine-map.htm>
- Vaccine Finder: <https://vaccinefinder.org/>
- CDC Federal Retail Pharmacy Program: <https://www.cdc.gov/vaccines/covid-19/retail-pharmacy-program/index.html>

### **Building Vaccine Confidence with Your Employees**

- **Share materials and information that explain how vaccines work, what to expect, and address concerns. Visit <https://www.healthymke.com/covid-infographs-downloads>**
- **Utilize this ready-made slide deck for a presentation to employees**
- **Provide links to local, national, and international health and science resources:**

Ascension: <https://healthcare.ascension.org/COVID-19>

CDC: <https://www.cdc.gov/coronavirus/2019-nCoV/index.html>

FDA: <https://www.fda.gov/emergency-preparedness-and-response/coronavirus-disease-2019-covid-19/covid-19-vaccines>

Froedtert & Medical College of Wisconsin

<https://www.froedtert.com/covid-19-vaccine-updates>  
<https://www.froedtert.com/covid-19-vaccine-updates/facts-and-science>  
<https://www.froedtert.com/videos> also available as a YouTube playlist

Medical College of Wisconsin: <https://covid19.mcw.edu/>

World Health Organization: <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/covid-19-vaccines>

## Communications Guidance

Health Action Alliance Communications Guidance for Businesses -

<https://docs.google.com/document/d/1jrM4fJFkqOT6aEGzrZU0avyYUt10IDdMdRvjDD3HBWk/edit>

Say This/Not That Guide:

<div>SAY THIS... NOT THAT</div>	SAY THIS...	NOT THAT
	Building vaccine confidence	Addressing vaccine hesitancy
	Not Intending to take the vaccine	Resistant or against the vaccine
	People who have Questions about the vaccine	People who are resistant, against, skeptical about the vaccine; people who are anti-vaxxers
	Intending to take the vaccine	Eager to take the vaccine
	All COVID-19 vaccines are safe and effective	All COVID-19 vaccines were developed quickly
	Get the latest information	There are things we still don't know
	Keep your family safe; keep those most vulnerable safe	Get back to normal
	Taking the vaccine is a personal choice, we want it to be an informed choice	People should take the vaccine because it is the right thing to do
	We all want to get back to spending time with who we love and doing the things we miss	This past year has been tough, taking the vaccine will help us get back to normal
	The choice is yours to make	You should take the vaccine
	Vaccine availability is limited globally, nationally and in our community	Vaccine isn't available in our community
	Providing access to the vaccine for all who want to take it is critical for vaccine equity	We need vaccine to be distributed to communities of color
<small>Sources: Ad Council; Societal Experts Action Network (SEAN); National Academies of Sciences, Engineering and Medicine (NAEM)</small>		<b>For more information, and to stay up to date on vaccine eligibility, visit: <a href="https://healthyMKE.com">healthyMKE.com</a></b>

## Human Resources/Legal Guidance

Use these resources as a starting point for human resources and legal decisions about the vaccine.

Network for Public Health: Guidance COVID-19 Vaccine and Employer Mandates

- <https://www.networkforphl.org/resources/guidance-covid-19-vaccine-and-employer-mandates/>

MRA: The Employer's Role in Preparation of the COVID-19 Vaccine -

<https://www.mranet.org/article/inside-hr/employers-role-preparation-covid-19-vaccine> and Should Employers Mandate the COVID-19 Vaccine? - <https://www.mranet.org/article/should-employers-mandate-covid-19-vaccine>

SHRM: COVID-19 Vaccine Resources: <https://www.shrm.org/hr-today/news/hr-news/pages/covid-19-vaccination-resources.aspx>



In partnership with Milwaukee UEOC, a public health collaborative.

Visit [healthymke.com](https://healthymke.com) for more information

# LET'S GET BACK TO WHO AND WHAT WE MISS MOST

COVID-19 has changed how we live and how we feel. COVID-19 vaccines are the first step to get us back to who and what we miss most.



*I miss hugging my mama.*



*I miss going to church.*



*I miss going to the store without a mask.*



*I miss going out to see a band.*

You have questions and that's ok. It's time to get the facts to help you make an informed choice.

Get the facts at [healthymke.com](https://healthymke.com)



# COVID-19 VACCINES AT-A-GLANCE



## **Pfizer** (mRNA)

2 shots in the arm  
given 21 days apart

For people ages 16+

Uses messenger RNA to  
tell your cells how to make  
antibodies that protect you  
against COVID-19

Your cell breaks down and  
gets rid of the mRNA after  
using it to make antibodies

mRNA does not come in  
contact with DNA so it  
cannot change it



## **Moderna** (mRNA)

2 shots in the arm  
given 28 days apart

For people ages 18+

Uses messenger RNA to  
tell your cells how to make  
antibodies that protect you  
against COVID-19

Your cell breaks down and  
gets rid of the mRNA after  
using it to make antibodies

mRNA does not come in  
contact with DNA so it  
cannot change it



## **Johnson & Johnson** (Traditional)

1 shot in the arm

For people ages 18+

Uses an adenovirus to tell  
your cells how to make  
antibodies that protect you  
against COVID-19

Adenovirus cannot make  
copies of itself and cannot  
change DNA

All vaccines were held to the same  
rigorous safety and effectiveness  
standards as all other vaccines in  
the United States.

All vaccines were found to be highly  
effective at protecting against  
COVID-19.

All vaccines teach the body  
to protect itself.

None of the vaccines contain a live  
virus and cannot give you COVID-19.

After receiving the vaccine, you may  
experience tenderness at the  
injection site, fatigue, low-grade  
fever, headache, or muscle/joint  
soreness – these should go away  
within a day or two.

## 8 COVID-19 VACCINE FACTS YOU NEED TO KNOW

### **FACT NO. 1: A COVID-19 vaccine will not give you COVID-19.**

A COVID-19 vaccine does not contain any part of the virus and cannot cause an infection or positive result on a viral test.

### **FACT NO. 2: A COVID-19 vaccine may provide protection against more than one strain.**

Like all viruses, the virus that causes COVID-19 develops small mutations over time. Data shows that all COVID-19 vaccines are effective against multiple strains currently in circulation.

### **FACT NO. 3: Vaccines have not been linked to infertility or miscarriage.**

There is no evidence that COVID-19 vaccines cause infertility or increase your chances of a miscarriage. In addition, the natural post-infection immune response to COVID-19, which the vaccine mimics, has not resulted in an increase in miscarriages.

### **FACT NO. 4: A COVID-19 vaccine will not change your DNA.**

COVID-19 vaccines are either a mRNA vaccine or traditional vaccine, none of which interact with DNA in any way. It triggers an immune response that produces antibodies, which protect you from getting infected.

### **FACT NO. 5: COVID-19 vaccines are safe and effective.**

Significant scientific progress decades before the pandemic, in addition to collaboration among scientists around the world, made vaccine development and testing possible.

### **FACT NO. 6: We know exactly what is in a COVID-19 vaccine.**

Pfizer, Moderna and Johnson & Johnson have published the ingredient lists for their COVID-19 vaccines. Speculation that either contains microchips or tracking devices has been proven false.

### **FACT NO. 7: Practicing the 3 W's keeps everyone safe.**

Even after getting vaccinated, protect those around you by watching your distance, wearing a mask, and washing your hands.

### **FACT NO. 8: COVID-19 is now the leading cause of death in the United States.**

The COVID-19 vaccine is the safest and most effective way to reduce deaths.

**For more information,  
visit [healthyMKE.com](https://healthyMKE.com)**

## VACCINE MYTHS

## VACCINE FACTS



They were rushed and aren't safe.



Researchers took no safety shortcuts. Large studies show the vaccines are safe.



They change your DNA.



It is impossible for the vaccines to change your DNA.



They can give you COVID-19.



The vaccines do not contain a live virus strain.



They contain egg protein.



They do not contain egg proteins and can be given to people with egg allergies.



They cause severe side effects.



For most, vaccines cause mild side effects that go away in a day or two.



They will make women infertile.

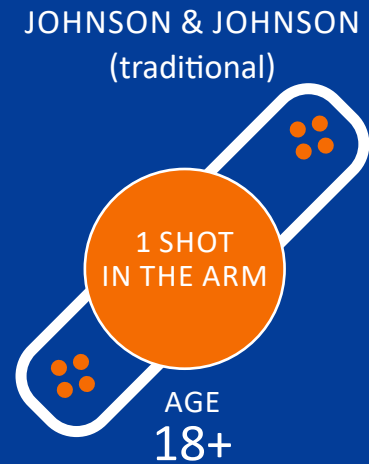
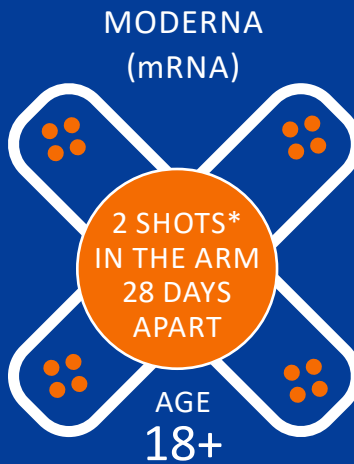
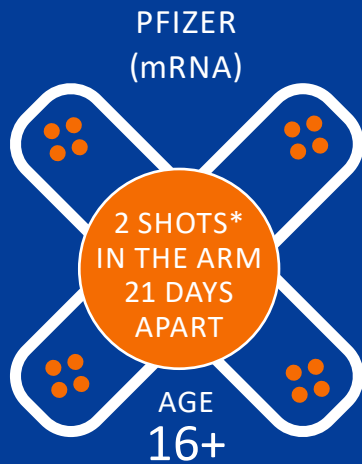


There is no evidence that the vaccines cause infertility.



# COVID-19 VACCINES - WHAT TO EXPECT

## COVID-19 VACCINES AT A GLANCE



\*Both shots must be of the same vaccine. COVID-19 vaccines are free.

## WILL I FEEL SICK AFTER THE VACCINE?



You might feel tired, have a headache or chills

Your arm might be sore

These are all signs your body is working to protect you from COVID-19. Any side effects should go away in a day or two.

## VACCINATION CARD:

After getting the vaccine, you'll get a card saying you've been vaccinated.

COVID-19 Vaccination Record Card			
Please keep this record card, which includes medical information about the vaccines you have received.			
Por favor, guarde esta tarjeta de registro, que incluye información médica sobre las vacunas que ha recibido.			
Last Name		First Name	MI
Date of birth		Patient number (medical record or IIS record number)	
Vaccine	Product Name/Manufacturer Lot Number	Date	Healthcare Professional or Clinic Site
1 <sup>st</sup> Dose COVID-19		mm / dd / yy	

## HOW DO THE VACCINES WORK?

The vaccines use mRNA (Pfizer and Moderna) or an adenovirus (Johnson & Johnson) to tell your cells how to make antibodies that protect you against COVID-19.

**They will not** change your DNA.

## CONTINUE TO PRACTICE THE 3-WS:

Even after getting vaccinated, protect your family, friends and neighbors by continuing to



**WATCH** YOUR  
DISTANCE



**WEAR** A MASK



AND **WASH** YOUR  
HANDS

# SAY THIS... NOT THAT



Sponsored by the Milwaukee UEOC Vaccine Integrated Communications Outreach & Mobilization Group | Updated: 3/9/21

SAY THIS...	NOT THAT
Building vaccine confidence	Addressing vaccine hesitancy
Not Intending to take the vaccine	Resistant or against the vaccine
People who have Questions about the vaccine	People who are resistant, against, skeptical about the vaccine; people who are anti-vaxxers
Intending to take the vaccine	Eager to take the vaccine
All COVID-19 vaccines are safe and effective	All COVID-19 vaccines were developed quickly
Get the latest information	There are things we still don't know
Keep your family safe; keep those most vulnerable safe	Get back to normal
Taking the vaccine is a personal choice, we want it to be an informed choice	People should take the vaccine because it is the right thing to do
We all want to get back to spending time with who we love and doing the things we miss	This past year has been tough, taking the vaccine will help us get back to normal
The choice is yours to make	You should take the vaccine
Vaccine availability is limited globally, nationally and in our community	Vaccine isn't available in our community
Providing access to the vaccine for all who want to take it is critical for vaccine equity	We need vaccine to be distributed to communities of color

Sources: Ad Council; Societal Experts Action Network (SEAN); National Academies of Sciences, Engineering and Medicine (NASEM)

**For more information, and to stay up to date on vaccine eligibility, visit: [healthyMKE.com](https://healthyMKE.com)**



## COVID-19 Guidance

### COVID-19 Vaccine and Employer Mandates


Developing, distributing, and administering a safe and effective vaccine to limit transmission of COVID-19 has remained a vital priority since the onset of the global COVID-19 pandemic. In the United States, vaccines must be approved by the Food and Drug Administration (FDA) before they can be marketed and distributed, which is normally a lengthy process.<sup>1</sup> In exigencies, a vaccine that has not yet been formally approved by FDA can be granted emergency use authorization (EUA), allowing an otherwise unapproved product to be used and distributed during a public health or other emergency.<sup>2</sup>

On December 11, 2020, FDA issued an EUA for a COVID-19 vaccine developed by Pfizer and German partner BioNTech,<sup>3</sup> which has demonstrated upwards of 90% efficacy in trials.<sup>4</sup> On December 18, 2020, FDA issued an EUA for Moderna's COVID-19 vaccine.<sup>5</sup> FDA is currently assessing Johnson & Johnson's vaccine for EUA authorization,<sup>6</sup> and additional EUA applications for other vaccine candidates are anticipated. Amid increasing distribution of the vaccines, public and private employers across the U.S. have already begun considering issuing vaccine mandates to their workforces, especially among health care workers (HCWs). This memorandum addresses employer-mandated vaccination during the COVID-19 pandemic, providing key legal and factual updates for public health officials and employers.

#### **Questions:**

1. What is the difference between *mandatory* vaccination and *compulsory* vaccination?
2. Can public and private sector employers mandate employees to obtain vaccines?
3. As current COVID-19 vaccines are authorized by FDA via an EUA, rather than a full biologics license, does the EUA status of a vaccine impact whether an employer can mandate it?

**Response 1:** To understand the legality of vaccine mandates, it is important to distinguish between *mandatory* and *compulsory* vaccination. Mandatory public health powers impose conditions on an individual (i.e., conditioning specific benefits, rights to access, or attaching fines to vaccination) to encourage participation.<sup>7</sup>



One example is conditioning school attendance on obtaining certain vaccinations. In contrast, compulsory public health powers do not allow for individual choice, but rather may be accomplished by force.<sup>8</sup> Compulsory public health powers are not utilized often because of the ethical concerns involved and potential infringement of individual liberties.<sup>9</sup> Nonetheless, while *mandates* provide for individual choice, albeit with conditions attached, *compulsory* actions do not.

**Response 2:** Yes. Public and private-sector vaccine mandates have generally been accepted in the United States for decades, especially in public health emergencies.

In 1905, the U.S. Supreme Court upheld a mandatory smallpox vaccination requirement in *Jacobson v. Massachusetts*.<sup>10</sup> The requirement, issued by the City of Cambridge, imposed a \$5 fine on those who refused vaccination.<sup>11</sup> The Court acknowledged that state and local governments are authorized to enact reasonable laws or regulations to protect public health and safety,<sup>12</sup> including tailored vaccine requirements for persons who would not likely be harmed directly by the vaccination itself.


Since the Court's seminal decision in *Jacobson*, states and localities have lawfully required vaccinations precedent to school or day care attendance as well as pursuant to employment in specific health care settings.<sup>13</sup> Several state statutes also allow for compulsory (or forcible) vaccination during public health emergencies (although these are subject to considerable constitutional challenges).<sup>14</sup> Many states also recognize a variety of medical, religious, or philosophical exemptions to these requirements.<sup>15</sup>

Unbound from constitutional requirements, private sector employers have considerable leeway in requiring employee immunization.<sup>16</sup> HCW vaccine mandates are often justified legally by balancing competing interests between assuring public and workplace safety versus respecting HCWs' vaccination concerns.<sup>17</sup> Some scholars intimate that the sheer scale of the COVID-19 pandemic could lend courts to uphold mandates against challenges.<sup>18</sup> Additionally, the Occupational Safety and Health Administration (OSHA)<sup>19</sup> and the Equal Employment Opportunity Commission (EEOC)<sup>20</sup> have previously approved employer-mandated influenza vaccination schemes that comply with anti-discrimination laws.

The federal Occupational Safety and Health Act requires employers to provide places of employment that are "free from recognized hazards that are causing or are likely to cause death or serious physical harm."<sup>21</sup> OSHA published new workplace guidance on January 29, 2021, which does not mandate vaccination, but recommends "[m]aking a COVID-19 vaccine or vaccination series available at no cost to all eligible employees," and providing information on vaccine benefits and safety.<sup>22</sup> Additionally, in prior guidance, OSHA emphasized that employees should be properly informed of vaccine benefits.<sup>23</sup>

The federal Americans with Disabilities Act (ADA) allows employers to mandate vaccination so long as reasonable accommodations are provided to employees with disabilities.<sup>24</sup> Accommodations are not required in cases of undue hardship or where others may be directly threatened and there is no way to provide a reasonable accommodation that would eliminate or reduce the direct threat.<sup>25</sup> Additionally, Title VII of the Civil Rights Act requires reasonable accommodation for employees with religious objections to vaccination, except in cases of undue hardship.<sup>26</sup>

In prior vaccine-related guidance, EEOC has recommended that ADA-covered employers simply "encourage employees to get the influenza vaccine" rather than requiring it.<sup>27</sup> Encouraging vaccination (and the means to access vaccines) may help avoid complex ethical debates and legal concerns over certain exemptions or required actions prior to implementing a mandate. For example, unionized employees may raise legal issues if vaccines are mandated outside the collective bargaining process.<sup>28</sup> Since vaccines are never fool-proof,



encouraging, rather than requiring, vaccination can help mitigate any potential legal challenges arising in the event of a vaccine-related injury.

**Response 3:** *Most likely yes.* Because COVID-19 vaccines are available without full biologics license applications (BLAs), concerns may arise whether FDA's mere authorization may circumvent vaccine mandates. The Food, Drug, and Cosmetic Act (FDCA) states that individuals receiving EUA interventions must be informed "of the option to accept or refuse administration of the product, of the consequences, if any, of refusing administration of the product, and of the alternatives . . . ." <sup>29</sup> Consistent with the Act, guidance documents for recently-authorized vaccines explain that recipients may opt to accept or refuse them, <sup>30</sup> consistent with the legal premise that the vaccine cannot be compelled or forcibly administered among autonomous persons.

Whether individuals may refuse an EUA vaccine, however, is legally distinct from whether an EUA vaccine may be mandated as a condition of continued employment. <sup>31</sup> Nothing in FDA's letters of authorization for the Pfizer-BioNTech vaccine <sup>32</sup> or the Moderna vaccine <sup>33</sup> expressly limits or prohibits employer mandates. In sum, there is currently no express limitation preventing employers from mandating a vaccine distributed pursuant to EUA, rather than one issued through a full BLA, provided (1) anti-discrimination protections are assured and (2) any applicable state laws or exemptions are honored. However, per legal recognition of a personal option to take or refuse the vaccine, many employers may choose to highly encourage, rather than mandate, the vaccine.

On December 16, 2020, EEOC updated its COVID-19 guidance to provide specific information related to the COVID-19 vaccine, largely supporting this analysis. <sup>34</sup> It clarified that if an employer mandates vaccination and an employee cannot get vaccinated because of a disability or a sincerely held religious practice or belief, and no reasonable accommodation is possible, then the employer may lawfully exclude the employee from the workplace. That said, EEOC further noted that this exclusion does not automatically permit termination, as some employees may be able to telework, and additional federal, state, and local equal employment opportunity protections must be followed. Additionally, employers mandating and administering the COVID-19 vaccine should be aware that pre-screening questions may implicate ADA provisions on disability-related inquiries; any such inquiries must be "job-related and consistent with business necessity." Pre-screening questions may also implicate Title II of the Genetic Information Nondiscrimination Act (GINA), which prevents employers from acquiring or disclosing genetic information (subject to certain exceptions) and using genetic information to make decisions related to terms, conditions, and privileges of employment.

In addition to FDA's EUA and EEOC guidance, CDC's Advisory Committee on Immunization Practices (ACIP) makes its own determinations as to which vaccines it may recommend. ACIP completes its own safety review of vaccines to provide official federal vaccine recommendations that stakeholders, including state public health agencies, follow closely. <sup>35</sup> On December 12, 2020, ACIP recommended the Pfizer-BioNTech vaccine for public use in persons above 16 years of age. <sup>36</sup> ACIP similarly recommended the Moderna vaccine in persons above 18 years of age during a December 19, 2020 meeting. <sup>37</sup> If FDA and ACIP disagree on utility and safety of this or other COVID-19 vaccines forthcoming, employees may have a stronger legal basis to counter a mandate related to a specific vaccine.

Mandates are already being recommended and implemented across the nation, though some employers are strongly encouraging, rather than requiring, the vaccine. In a July 1, 2020 report, the New York State Bar Association called for a statewide COVID-19 vaccine mandate as soon as a safe and viable vaccine is available and public health officials recommend it. <sup>38</sup> Virginia State Health Commissioner Dr. Norman Oliver



also indicated a plan to mandate a safe vaccine in an August 21, 2020 interview, though Governor Ralph Northam's administration has not implemented such plans.<sup>39</sup> A November 19, 2020 Banner Health news release (applicable to its Colorado hospitals) indicated that a mandate would not be required, at least initially.<sup>40</sup> Conversely, the CEO of United Airlines has indicated a desire for a vaccine mandate once it is available for all workers,<sup>41</sup> some nursing homes and long-term care facilities across the country are implementing mandates for staff,<sup>42</sup> and a New York City restaurant recently terminated an employee who refused to get vaccinated.<sup>43</sup>

In sum, key determinants whether a COVID-19 vaccine is mandated include (1) proof of the vaccine's efficacy and safety; (2) specific authorization via FDA; (3) review and recommendations from ACIP; (4) additional elaborations from EEOC or OSHA; (5) state- or local-based emergency orders to issue mandates; and (6) emerging guidance from public and private sector employees as to the perceived or actual need of widespread vaccination among employees to assure their safety and the safety of others.

## SUPPORTERS



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February 26, 2021

<sup>1</sup> 42 U.S.C.A. § 262(a)(2)(C)

<sup>2</sup> 21 U.S.C.A. § 360bbb-3(a), (b)(1)(C).

<sup>3</sup> Katie Thomas et al., *F.D.A. Clears Pfizer Vaccine, and Millions of Doses Will Be Shipped Right Away*, N.Y. TIMES (Dec. 11, 2020), <https://www.nytimes.com/2020/12/11/health/pfizer-vaccine-authorized.html>.

<sup>4</sup> Katie Thomas, *New Pfizer Results: Coronavirus Vaccine Is Safe and 95% Effective*, N.Y. TIMES (Nov. 18, 2020), <https://www.nytimes.com/2020/11/18/health/pfizer-covid-vaccine.html?action=click&module=RelatedLinks&pgtype=Article>.

<sup>5</sup> Denise Grady et al., *F.D.A. Authorizes Moderna Vaccine, Adding Millions of Doses to U.S. Supply*, N.Y. TIMES (Dec. 18, 2020), <https://www.nytimes.com/2020/12/18/health/covid-vaccine-fda-moderna.html>.

<sup>6</sup> Carl Zimmer, *New Analyses Show Johnson & Johnson's One-Dose Vaccine Works Well*, N.Y. TIMES (Feb. 24, 2021), <https://www.nytimes.com/2021/02/24/science/johnson-johnson-covid-vaccine.html>.

<sup>7</sup> James G. Hodge, Jr., *Preventing & Treating Communicable Conditions* 107, in PUBLIC HEALTH LAW IN A NUTSHELL (3rd ed. 2018).

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<sup>8</sup> *Id.* at 108.

<sup>9</sup> *Id.*

<sup>10</sup> *Jacobson v. Massachusetts*, 197 U.S. 11 (1905).

<sup>11</sup> *Id.* at 12.

<sup>12</sup> *Id.* at 25.

<sup>13</sup> KATHLEEN S. SWENDIMAN, CONG. RESEARCH SERV., RS21414, MANDATORY VACCINATIONS: PRECEDENT AND CURRENT LAWS 2, 4 (2011).

<sup>14</sup> *Id.* at 6.

<sup>15</sup> *Id.* at 3, 4.

<sup>16</sup> *Id.* at 5; see also Rene F. Najera & Dorit R. Reiss, *First Do No Harm: Protecting Patients Through Immunizing Health Care Workers*, 26 HEALTH MATRIX: J. L. MED. 363, 380 (2016).

<sup>17</sup> Christine Nero Coughlin et al., *When Doctors Become “Patients”: Advocating a Patient-Centered Approach for Health Care Workers in the Context of Mandatory Influenza Vaccinations and Informed Consent*, 45 WAKE FOREST L. REV. 1551, 1556 (2010).

<sup>18</sup> Brian Dean Abramson, *Preparing Health Care Providers for a COVID-19 Vaccine*, 13 J. HEALTH & LIFE SCI. L. 2, 3 (2020).

<sup>19</sup> Letter from OSHA Acting Assistant Secretary Jordan Barab to Congresswoman Marcy Kaptur (Nov. 9, 2009), <https://www.osha.gov/laws-regs/standardinterpretations/2009-11-09>.

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<sup>24</sup> 42 U.S.C.A. §§ 12112, 12113.

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<sup>30</sup> Pfizer-BioNTech, *Fact Sheet for Healthcare Providers Administering Vaccine* (Vaccination Providers) 7, U.S. FOOD & DRUG ADMIN., <https://www.fda.gov/media/144413/download> (last visited Dec. 14, 2020); Pfizer-BioNTech, *Fact Sheet for Recipients and Caregivers* 4, U.S. FOOD & DRUG ADMIN., <https://www.fda.gov/media/144414/download> (last visited Dec. 14, 2020); Moderna, *Fact Sheet for Healthcare Providers Administering Vaccine* (Vaccination Providers) 4, U.S. FOOD & DRUG ADMIN., <https://www.fda.gov/media/144637/download> (last visited Feb. 26, 2021); Moderna, *Fact Sheet for Recipients and Caregivers* 4, U.S. FOOD & DRUG ADMIN., <https://www.fda.gov/media/144638/download> (last visited Feb. 26, 2021).

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