

Common COVID-19 Q&A

Do the CDC's eased mask rules for fully vaccinated individuals apply to health care settings?

Not generally. The CDC recommends that all staff, patients, and visitors to continue wearing masks in all healthcare facilities, regardless of vaccination status. With that said, the CDC has indicated that health care personnel who are fully vaccinated are permitted to participate in an in-person meeting and/or be in break rooms without masks so long as all individuals in that setting are vaccinated. Considering the requirement that all individuals be vaccinated, the use of this additional CDC guidance will have very limited applicability.

Can I require employees to get vaccinated?

Yes, but you must grant exceptions as required by law. For example, an employee may object to vaccination on the basis of a disability or a religious conviction. Consult legal counsel when deciding whether to grant or deny an exception to your mandatory vaccination policy.

Can I ask employees for proof of vaccination?

Yes. The EEOC has advised that asking an employee to show proof of vaccination does not violate federal law. However, do not solicit any further medical information or ask the employee's reason for vaccination. Keep any proof of vaccination confidential in accordance with state and federal law.

Can I require employees to wear a badge showing their vaccination status?

Be cautious about implementing a vaccine badge program and only do so upon advice of counsel. A badge program may raise discrimination concerns or impact employee morale. Consider the purpose behind the program and whether it may be accomplished through alternative means.

Can I offer incentives to encourage employee vaccination?

Yes. The EEOC has advised that an employer may offer an incentive to employees to voluntarily provide documentation or other confirmation of a vaccination received in the community. However, employers who administer the vaccine themselves cannot offer incentives so large that employees feel coerced to participate. Consult an attorney if you wish to offer incentives for employer-administered vaccines.

Can I restrict certain jobs to only vaccinated employees?

It depends on the nature of the job and the employee's objection to vaccination. Consult an attorney to determine whether there is a reasonable accommodation that would allow the unvaccinated employee to perform the essential functions of the job without imposing an undue hardship on the employer and whether the employee poses a direct threat to the workplace. Remember to consult with an attorney before taking any workplace action that could be perceived as a penalty for lack of vaccination.

How does OSHA view CDC guidance on Covid?

There is some uncertainty with respect to OSHA's viewpoint. The current CDC guidance related to mask wearing for vaccinated individuals is the most recent example of where this uncertainty exists. At the present, OSHA has indicated it is reviewing the CDC guidance on measures for fully vaccinated workers and permits employers to follow the CDC guidance in the interim. Keep in mind, however, that this can be a complex OSHA compliance issue for employers. Even if CDC guidance can be interpreted to allow fully vaccinated individuals to forego masks, employers will need to ensure they follow OSHA's guidance on safe work practices. OSHA's requirements can generally be found at <https://www.osha.gov/coronavirus/safework>. Keep in mind that employers relying on the CDC guidance regarding foregoing masks for fully vaccinated workers must have some means by which the employer can be satisfied that individuals foregoing masks are in fact fully vaccinated. In addition, the OSHA guidance is much broader than this narrow question of masks for fully vaccinated workers. Employers are strongly encouraged to review OSHA's general guidance and ensure compliance with the many facets of OSHA's guidance as a means to eliminate as much OSHA liability as possible.

This information is not a legal opinion and does not provide legal advice. The legal requirements related to the COVID-19 pandemic are subject to change. Be sure to consult with an attorney about your specific situation.