

WELCOME



Mid-America
Coalition
on Health Care

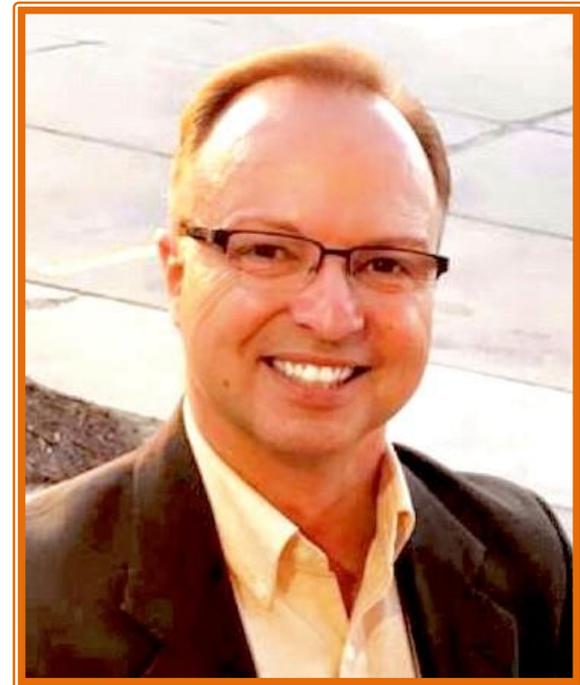
2021 Return to Work Town Hall **Vaccines, Testing & Legal** **Considerations**

Friday, March 5th @ 10:30 am

Troy Ross
President & CEO
Mid-America Coalition on Health Care



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Mid-America
Coalition
on Health Care

2021 Return To Work Town Hall Series
Vaccine Confidence, Testing & Legal Considerations

Today's Town Hall is brought to you by these Coalition Partners

Thank You!



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Mid-America
Coalition
on Health Care

2021 Small Employer Town Hall
Vaccines, Testing & Legal Considerations

WE WANT TO HEAR FROM YOU!

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2021 Return To Work Town Hall Series
Vaccine Confidence, Testing & Legal Considerations

Keynote Speakers



David Nill, MD

Vice President & Chief Medical Officer



Jenna Brofsky, JD

Senior Associate

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Workforce
health
services

COVID-19
Response

Cerner Employer COVID Vaccine Administration

March 5, 2021

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Vaccine access for employees

Benefits

-  Provides a convenient option for employees
-  Aligns with “return to work” strategies
-  Helps support local community vaccine initiatives

Considerations

-  Employee willingness to receive the vaccine
-  Ability for employee to free up time to get the vaccine
-  Availability of vaccine

COVID-19 vaccine administration



Procurement



Appointment
scheduling



Vaccine
event planning



Vaccine
administration



Reporting
requirements

**Organizations required to procure and store vaccine according to individual state requirements.*

Procurement of vaccine

State registration as a vaccinator

- Register with the state registry
- Need to be a provider entity
- Required to prove the ability to store the vaccine
- All vaccine to be administered within seven days

Closed point of dispensing

- Contract with county health department
- Ability to administer the vaccine to your own population
- County assistance with some elements of administration

Available vaccines

Moderna

- 2 shot series 28 days apart
- Requires freezing at -20 degrees Celsius
- Over 90% effective

Pfizer

- 2 shot series 21 days apart
- Approved for storage in conventional pharmaceutical freezers for up to 2 weeks
- Over 90% effective

Johnson and Johnson

- Recently received EUA from the FDA
- Single dose
- Can be stored in a refrigerator
- 85% effective

Clinical trials

Phase 1 20-100 Healthy Volunteers



Researchers try to answer these questions:

- Is this vaccine safe?
- Are there any serious side effects?
- How does the vaccine dose relate to any side effects?
- Is the vaccine causing an immune response?

Phase 2 Several Hundred Volunteers



Researchers try to answer these questions:

- What are the most common short-term side effects?
- What's the body's immune response?
- Are there signs that the vaccine is protective?

Phase 3 1000+ Volunteers



Researchers try to answer these questions:

- How do disease rates compare between people who get the vaccine and those who do not?
- How well can the vaccine protect people from disease?

Phase 4 Vaccine is Approved



Researchers try to answer these questions:

- FDA approves a vaccine only if it's safe, effective, and benefits outweigh the risks.
- Researchers continue to collect data on the vaccine's long-term benefits and side effects.

1 Source: <https://covid19community.nih.gov/resources/understanding-clinical-trials>

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Employer considerations

1) Do you consider incentives?

One incentive is that a person no longer needs to quarantine if exposed once they have completed a vaccination series

2) Will you require workers to receive the vaccine?

Have not seen any employers requiring in the market so far

3) Triaging your workforce based on the supply of vaccine

- Need to adhere to the state phasing guidelines
- Base approach on internal needs

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What about distributed populations?

- Have a clear communication strategy to encourage vaccination
- Recommend that employees attempt to get vaccine at local community events
- Provide lists of locations where vaccines may be available
- Collaborate with national suppliers who may be able to set up small capacity events



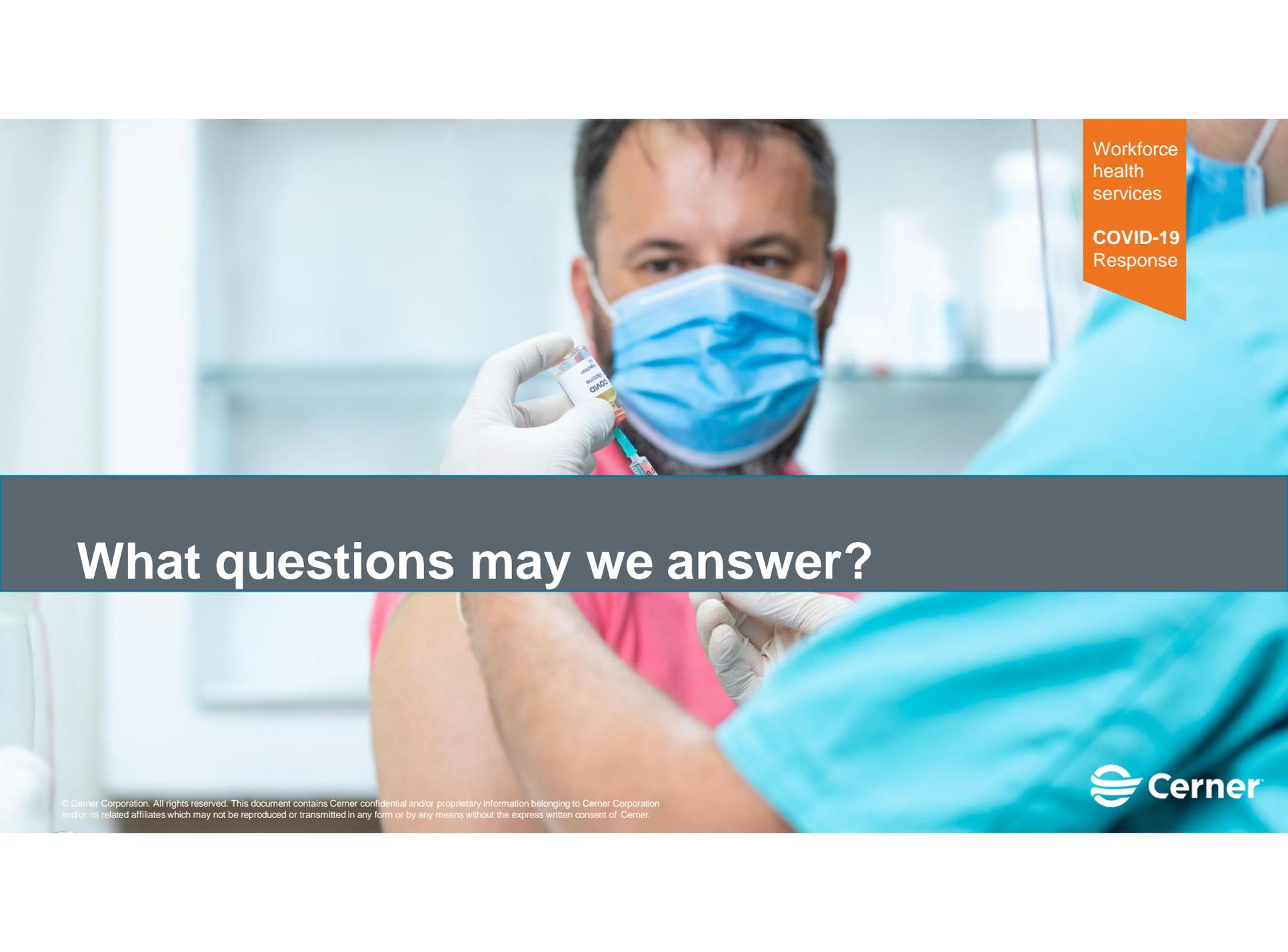
PCR vs. Antigen testing

PCR

- Nasal or throat swab
- Reliable - considered “Gold Standard”
- Must be run in lab with certain equipment
- Nationwide delays in resulting during surges

Antigen testing

- Rapid testing – 15 to 30 min
- Nasal swab or saliva
- Less reliable – lower sensitivity
- Limited emergency use authorizations
- Not useful for screening asymptomatic people



Workforce
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COVID-19
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What questions may we answer?

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COVID-19 overview & vaccine updates

David Nill, MD

Vice President and Chief Medical, Cerner





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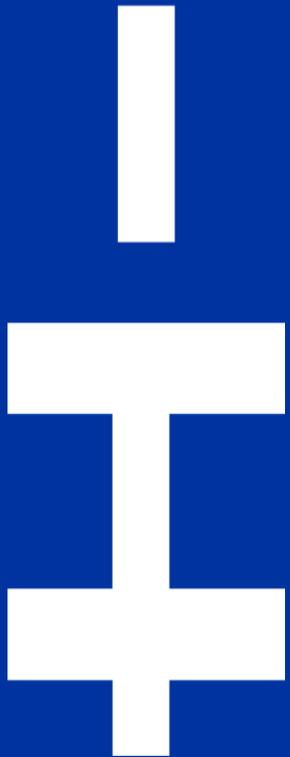
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COVID-19 Vaccines for Your Workplace: What to Know and How to Prepare

Mid-America Coalition on Health Care

Jenna Brofsky

February 5, 2021





What We'll Cover

- Legal concerns for employers
 - Federal and state
- What to consider in your vaccine planning
 - Mandates
 - Incentives

Employers' legal concerns

What legal issues does vaccination raise for employers?



What is the employer's role?

**ALL
EMPLOYERS MUST**

Continue to
protect against
COVID-19 hazards
at work.

**NEARLY ALL
EMPLOYERS WILL**

Educate.
Inform.
Encourage.

**SOME
EMPLOYERS MAY**

Incentivize.
Mandate.



Legal concerns overview

FDA EUA

Experimental drug but silent on mandates.

TITLE VII

No discrimination based on religion.

ADA

No discrimination based on disability.

OSH ACT

Workplace safety. Whistleblower protection. ETS?

STATE LAW

Flu vaccine mandates. Public policy. Proposed leg?

CIVIL LIABILITY/WORKERS COMP

Injuries and legal immunity?



Title VII: Religious exemption

- No discrimination based on sincerely-held religious belief.
- Make reasonable accommodation unless “undue hardship.”
- COVID spreading at work could be undue hardship:
 - More than a *de minimis* cost.
 - Increased safety and/or legal liability risks.



ADA: Disability-related exemption

- No discrimination based on disability.
- Make reasonable accommodation unless poses “undue hardship” (significant difficulty or expense).
- But employee not exempt if poses a “direct threat.”





ADA: Disability-related exemption

- In March 2020 the EEOC said: Employees with COVID are direct threats, allowing more extensive medical inquiries.
- Because: Confirmed/suspected COVID case at work poses “significant risk of substantial harm” to others.
- In December 2020, the EEOC issued additional guidance:

*“If an employee cannot get vaccinated for COVID-19 because of a disability 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. Employers will need to determine if any other rights apply under the EEO laws or other federal, state, and local authorities.”*



OSHA's updated guidance

- On January 29, 2021, OSHA issued guidance on mitigating and preventing the spread of COVID-19 in the workplace
- Encourages employers to implement a prevention program, including:
 1. ***Making a COVID-19 vaccine or vaccination series available at no cost to all eligible employees.*** Provide information and training on the benefits and safety of vaccinations.
 2. ***Not distinguishing between workers who are vaccinated and those who are not:*** Workers who are vaccinated must continue to follow protective measures, such as wearing a face covering and remaining physically distant, because at this time, there is not evidence that COVID-19 vaccines prevent transmission of the virus from person-to-person. The CDC explains that experts need to understand more about the protection that COVID-19 vaccines provide before deciding to change recommendations on steps everyone should take to slow the spread of the virus that causes COVID-19.



Future OSHA guidance?

- President Biden issued an Executive Order requiring OSHA to consider issuing an emergency temporary standard regarding COVID-19 protections
 - Prediction: OSHA will likely do so
 - But what, if anything, will it say about requiring vaccines?



What do states have to say?

- May take the analysis in a different direction

Already mandatory flu vaccines in healthcare settings



Public Policy Considerations

Bills recently introduced to prevent employers from requiring the COVID-19 vaccine



Proposed state legislation

- Push to introduce bills across the country prohibiting employers from mandating the vaccine
- As of 3/3: In **25 states**, legislation has been introduced that would affect employers' ability to determine what makes sense for their own workforce regarding vaccines.
 - Ex: Kansas bill would impose fine on employers who take adverse action against an employee who refused the COVID-19 bill.



Civil liability/workers compensation

- Federal PREP ACT Immunity
 - Likely applies to employers administering the vaccine
 - No immunity for willful misconduct
- Workers' Compensation covers claims arising out of and in the course of employment
- Adverse reaction/side effect of vaccine?
 - Mandated condition of employment
 - Who benefits from the vaccine?



So, can I require a COVID-19 vaccination?



Where the rubber meets the road



Can you require a vaccine?

- Yes, but claims may still arise.
- You can mandate *if* allowing exemptions for (1) religious beliefs, (2) health/disability, and (3) no state law precludes such a mandate.
- Fear and other objections probably not legally protected under federal law, but expect employees may raise them.



Benchmarking

We asked our clients:

Q: Is your organization planning to require at least some employees to get a COVID-19 vaccine when available?

They shared:

- Majority said “no”
- Some in healthcare said considering it, but worried about staffing
- A few said they may mandate in the future when vaccines are widely available and there is more information about adverse reactions



What are employees thinking?

- Employer communications the most trusted on this topic
- Feb. 2021 polling on who wants the vaccine
 - 71% of Americans are willing to get vaccinated
 - 60% of U.S. workers say they probably or definitely would get the vaccine once available to them
- Unions now more strongly supporting vaccination efforts

Action steps



Stop, take a deep breath, and count to four



What can I do now?

We'll discuss the following action steps:



1. Establish a point person or team.



2. Create a draft communications plan.



3. Create a draft vaccine plan/policy.



4. Maintain other COVID protections.



(5. Stay tuned and update!)



Establish a point person

Your vaccine coordinator or task force should:

- Have appropriate skills (EHS or HR?) and bandwidth (is your COVID-19 coordinator already overwhelmed?).
- Follow vaccine developments and your state's plans.
- Continually update your company plan.
- Quarterback execution by coordinating with management, HR, workforce, unions, and vaccine providers.
- Oversee/coordinate vaccine communications.



Create a draft communications plan

- You thought masks were controversial?
- Educate employees to overcome fears/misinformation.
- Communicate vaccine progress/safety and your plans.
- Be a trusted source. Share credible information.
- Engage leaders/managers to lead by example.
- Invite questions and good 2-way communication.



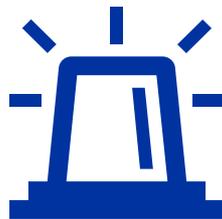
Create a draft vaccine plan/policy

- Parts depend on state distribution plans and maybe future government law/rules/guidance.
- But you can begin and consider if/how you *would*:
 - Mandate vaccination.
 - Incentivize vaccination.
 - Provide vaccines (i.e., host a vaccine clinic on-site).
 - Adopt a vaccine policy.



Do you have essential workers?

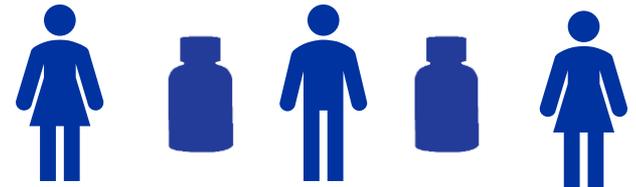
- State plans to allow them priority.
- Each state deciding who is essential.
- May identify by role vs. entire company/industry.
- If you have essential workers, accelerate your vaccine plan roll-out to participate in Phase 1.





Should you mandate vaccines?

- Further FDA/EEOC/state guidance?
- Consider workforce roles and risks:
 - Some or all essential workers?
 - High close-contact workplace?
- Union/collective bargaining agreement concerns?
- Is a mandate too heavy-handed for your culture?
- Net plus or minus for employee morale?





If you mandate...

- Decide who's covered. Essential workers? Everyone?
- Set a realistic timeline, considering vaccine availability.
- Account for any groups not recommended for vaccine (example: UK advisory for people with serious allergies).
- Review/adjust health insurance coverages.
- Mandate for on-site visitors? Anyone employees meet off-site?
- Establish system to track compliance.
- Implement system to follow-up/enforce.



Exemptions from mandatory programs

- Decide how to handle employee exemptions.
- How will employees apply?
- Which exemptions will you accept? Health? Religion? Fear? Ethical/political objection?
- Who will review? How will they decide?
- What reasonable accommodations can you make?
- How will you handle employees who refuse?





Potential accommodations

Strategies to consider if you can't fully vaccinate:

- Masks + distancing (5th Circuit *Horvath* case).
- Reassignment (without discriminating).
- Teleworking options.
- Antibody testing (pending further science).
- *Note: Pandemic precautions likely continue for everyone in the short term.*





Would you incentivize?

- Pay/allow employees time to get vaccinated.
- Offer a cash bonus or gift card.
- Host a vaccine clinic (if possible).
- Offer points/credit in wellness programs.
- Gamify. Make it a competition.



TRADER JOE'S



Would you host a vaccine clinic?

On January 27, 2021, the CDC updated its guidance to address workplace vaccination programs

The guidance suggests:

- Making COVID-19 vaccination part of your workplace wellness program
- Offering free, on-site COVID- 19 vaccination
- Contacting local health department for help
- Providing vaccine recipients with:
 - EUA Fact Sheet for Recipients
 - Vaccine Record Cards





Would you host vaccine clinic?

- Depends on state plans and available vaccine.
- Check with health and flu vaccine providers for expertise, supplies, costs, and logistics.
- Check on disclosures, legal waivers, and insurance.
- Address confidentiality, records, and data privacy.





Wellness Program Issues?

- ADA and GINA require “wellness” programs that mandate disclosure of **medical information** to be **voluntary**.
- If vaccines offered **on-site**, employers must ask pre-screening questions, which include **medical information**.
 - Proof of vaccination is NOT medical information
- EEOC has concluded that high-value incentives violate ADA and GINA by coercing participation in wellness activities (i.e., high-value incentive = **not voluntary**)



Status Update

- In January, EEOC attempted to clarify what incentives can be offered to encourage participation in wellness programs.
 - But with the change in Administration, that **guidance was withdrawn**
- Employers merely requiring proof of vaccine need not be concerned with this issue
 - Employers administering vaccines on-site/hiring a vendor to administer the vaccine should stay apprised of future guidance



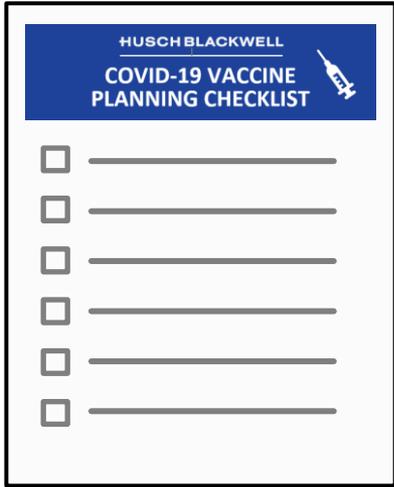
Not so fast! We're still 6 feet apart...

- Vaccine is another layer of protection. Expect a period of “Vaccine Plus” due to so many unknowns.
- Experts predict COVID precautions likely will linger at least through summer *or even all of 2021*.
- Until then, experts may urge continued social distancing, remote work, masks, and travel precaution.

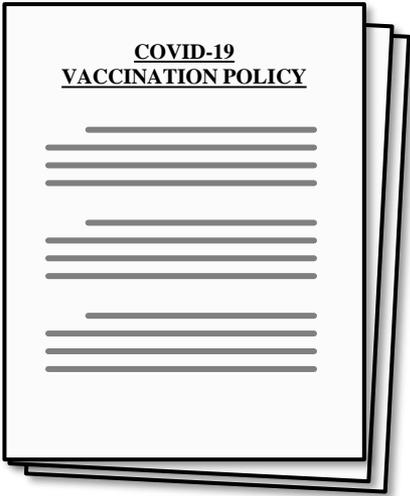


Our checklist and vaccine policy

AVAILABLE NOW



COMING NEXT





Q & A with our Keynote Speakers



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Jenna Brofsky, JD

Senior Associate





Mid-America
Coalition
on Health Care

2021 Return to Work Town Hall Series 3
**Mental Health At Home: Meeting the Needs of
Employees and their Families Where They Are**



Monday, March 29, 2021
10:30 am



Susan Lewis, MSSW
President & CEO

THANK YOU



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