



# Developing an Effective Vaccination Policy

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February 10, 2021

# Agenda



- Legal Guidance Regarding Vaccination Policies
  - Federal Guidance
  - Utah Update
- Vaccination Policy Options for Businesses
  - Mandatory vs. Voluntary
- Best Practices
- Questions and Answers

# Federal Legal Guidance – Part I

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- The Equal Employment Opportunity Commission (EEOC) issued [guidance on December 16, 2020](#), concerning vaccines and the applicability of various EEO laws.
  - All EEOC materials regarding COVID-19 are available [here](#).
- Employers can generally require that employees receive the COVID-19 vaccine to enter their workplaces but may need to provide reasonable accommodations for individuals with medical conditions or religious beliefs that preclude them from being vaccinated.

# Federal Legal Guidance – Part II

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- Currently, employers do not have to require their employees to receive the COVID-19 vaccine to enter their worksites.
  - The Occupational Safety and Health Administration (OSHA) does, however, require that employers provide each of their employees with a place of employment that is free from recognized hazards that could cause serious harm. 29 U.S.C. § 654.
  - This requirement could give rise to a vaccination requirement in the future.
  - State Occupational Safety and Health Agencies could also require vaccinations.

# UTAH VACCINE UPDATE

## Vaccines now available for:

**Healthcare workers, long-term care facility staff and residents, first responders, ages 70 and older, and K-12 teachers and school staff.**

## **Starting March 1: Utahns 65-69 and people with the following conditions:**

- Solid organ transplant recipients
- Cancer: non-hematologic diagnosed within last 1 year; hematologic diagnosed within last 5 years
- Receiving immunosuppression therapy;
- Immunocompromised state from blood, bone marrow, or organ transplant; HIV; use of corticosteroids long-term; or use of other immune weakening medicines long-term
- Severe kidney disease: on dialysis or with stage 4 or 5 chronic kidney disease
- Uncontrolled diabetes: patients with an A1c of 9.0 or higher
- People with a BMI of 40 or higher
- Chronic liver disease: chronic hepatitis B or C, chronic infective hepatitis (hepatitis B or C), alcohol-related liver disease, primary biliary cirrhosis, primary sclerosing cholangitis, or hemochromatosis
- Chronic heart disease (not hypertension)
- Severe chronic respiratory disease (other than asthma)
- Neurologic conditions that impair respiratory function,
- Stroke and dementia
- Asplenia including splenectomy or a spleen dysfunction, including sickle cell disease

# Utah Vaccines Legal Update 1

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- Emergency Powers would terminate automatically when 1.7 million Utahns are vaccinated and/or contracted COVID-19 & recovered (HB 294)
- Prohibit businesses from requiring vaccination verification from the Utah Statewide Immunization System before providing services (HB 117)
- Prohibit government from requiring the Covid-19 vaccine (HB 308)
  - Not applicable to private businesses

## Utah Vaccines Legal Update 2

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- UOSH – guidance on Mitigating & Preventing the Spread of COVID-19 in the Workplace
  - Issued January 29, 2021
  - For planning assistance – not a standard or regulation
  - Suggests making vaccines available at no cost to eligible employees and providing training on its benefits
  - Reminds that even vaccinated workers must continue to follow other guidelines (face masks, social distancing, etc.) until better information is available

(\*UOSH emergency rule in November mandated wearing of facemasks by all employees w/ limited exceptions)



# Vaccination Policy Options



- Require Vaccinations
- Encourage Vaccinations
- Do Nothing

# Potential Benefits of Requiring Vaccinations



- Protect employees, customers and others who enter the worksite
- Reduce employee sick days and need for medical care
- Reduce risk of having to close business because of COVID-19 outbreak
- Reduce risk of civil liability or administrative enforcement action
- Further public health benefits of vaccinations

# Potential Drawbacks of Requiring Vaccinations



- Divert resources to administering the vaccination policy
- Could negatively affect employee morale and retention
- Increase risk of discrimination suits regarding accommodations
- Fewer benefits in certain industries

# Middle Ground: Policy Encouraging Vaccinations

- Potential Benefits:
  - Some protection for employees, customers and others who enter worksite
  - Some reduction of employee sick days
  - Some reduction of risk of having to close business
  - Some reduction of risk of civil liability or administrative enforcement action
- Potential Drawbacks:
  - Still diverts resources to administer policy
  - May still affect employee morale and retention

## Best Practices for Vaccine Policy – General

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- Create a clear, written policy.
- Distribute the policy to all employees.
- Explain the reason for the policy decision
  - Example: “At SixFifty, we are committed to the safety of our employees, customers, and all others who enter our workplace. . .”
- Provide a clear contact point for questions about the policy.

## Best Practices for Vaccine Policy – Mandatory Part 1

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- Do not administer the vaccine or contract with a third party to administer the vaccine.
  - The COVID-19 vaccines require that certain medical questions be asked before they can be administered, and the EEOC has concluded that asking these questions constitutes a “medical examination” under the Americans with Disabilities Act.
- Pay individuals for time spent being vaccinated.

## Best Practices for Vaccine Policy – Mandatory Part 2

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- Provide a clear process for individuals to verify that they have been vaccinated or to seek an exemption from the vaccine requirement because of a disability or sincerely held religious belief.
  - Provide a standard vaccine verification form with the vaccination process.
  - If individuals are requesting an exemption because of a disability, instruct them not to disclose their disability, diagnosis or any other personal medical information on the form.

## Best Practices for Vaccine Policy – Mandatory Part 3

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- Explain that a representative of the company will reach out to individuals who request an exemption from the policy to discuss their specific situation.
- Explain that the company will not discharge or discipline employees who request an exemption from the policy in good faith.



# The Big Question

## Part 1



- Can a business fire an employee who refuses to receive the COVID-19 vaccine but has not requested an exemption because of a disability or religious belief?
  - Maybe.
  - “The ADA allows an employer to have a qualification standard that includes ‘a requirement that an individual shall not pose a direct threat to the health or safety of individuals in the workplace.’” [EEOC Guidance](#)
  - How likely is an unvaccinated individual to expose others at work to COVID-19?

# The Big Question Part 2

- Can a business fire an employee who cannot receive the vaccine because of a disability or religious belief?
- Businesses are required to provide a reasonable accommodation, unless it would pose an “undue burden.”
  - An “undue burden” under the ADA means “significant difficulty or expense.”
  - An “undue burden” under Title VII means “more than a de minimis cost or burden on the employer.”

# The Big Question Part 3

Requests for an exemption from a vaccination requirement because of a disability or religious belief and questions about reasonable accommodations and what constitutes an undue burden are complicated and should be discussed with an attorney.

# Best Practices for Vaccine Policy – Voluntary Part 1

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- Pay individuals for time spent being vaccinated
- Offer an incentive
  - One time payment toward employee health insurance premiums
- Ask individuals to submit verification that they have been vaccinated so company can monitor success of policy
- Explain that employee will not face adverse employment actions if they decide not to be vaccinated

# SixFifty Solution

## Document Generation Engine



5 of 6 complete



Generate

Save & Exit

1



This tool will help you to create a customi...

This tool and the COVID-19 Vaccination Pol...

This tool will help you to create a customized COVID-19 Vaccination Policy.

2



Please provide the name of your company...

You do not need to provide the full name of...

This tool and the COVID-19 Vaccination Policy that you create may contain legal information, but they do not contain legal advice. The COVID-19 Vaccination Policy should be reviewed with an attorney before it is used.

I understand

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What office, department, or person at you...

The office, department or person that you ...

4



Do you want to require employees to be v...

The Equal Employment Opportunity Commi...

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# SixFifty Solution

## Customizable Mandatory or Voluntary Vaccination Policy

### **SixFifty COVID-19 Vaccination Policy**

At SixFifty, we are committed to the safety of our employees, customers, and all others who enter our workplace. While COVID-19 poses a threat to the health and well-being of all individuals, vaccinations can significantly reduce that threat and help protect our workplace as well as our community. After careful consideration, we have adopted this Policy requiring all employees to receive a COVID-19 vaccination as a condition of entering the workplace, except as otherwise noted.

Before returning to the worksite, all employees must complete and submit the Vaccination Verification Form attached to this Policy and provide acceptable documentation that they have received a COVID-19 inoculation to Human Resources at [HR@Sixfifty.com](mailto:HR@Sixfifty.com). Human Resources

# Questions and Answers

[www.SixFifty.com](http://www.SixFifty.com)