

# COVID-19 Vaccinations: What Employees and Employers Need to Know

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As the United States begins its rollout of the COVID-19 vaccine, employees are receiving conflicting information about what their employers can and cannot require of them. This article will address some of employees' most pressing questions about how to navigate vaccination-related issues in the workplace in the months to come.

## Can my employer require me to be vaccinated against COVID-19?

Generally speaking, yes. Employers can impose health and safety requirements on all employees as a condition of employment to the extent those requirements do not conflict with the Americans with Disabilities Act ("ADA") by violating the [rights of individuals with disabilities](#) or by misusing their employees' confidential medical information. The Equal Employment Opportunity Commission ("EEOC") has explained that under the ADA, employers are prohibited from requiring employees to undergo medical procedures that "seek information about an individual's physical or mental impairments or health" unless the procedure is "job-related and consistent with business necessity." U.S. Equal Employment Opportunity Commission, "Enforcement Guidance on Disability-Related Inquiries and Medical Examinations of Employees under the ADA," (July 27, 2000); 42 U.S.C. § 12112(d)(4)(A).

In its most recent guidance regarding the COVID-19 pandemic, the EEOC stated that the COVID-19 vaccine is not a prohibited medical procedure within the meaning of the ADA because it does not "seek information about an individual's physical or mental impairments or health." As a result, employers need not demonstrate that the COVID-19 vaccine is "job-related and consistent with business necessity" before requiring employees to be vaccinated. If employers administer the vaccine to employees in the workplace, they need to be cautious about asking preliminary questions that might elicit information about a person's physical or mental impairments or health, but requiring the vaccine itself would not pose a problem under the ADA. As a result, they can require their employees to be vaccinated, with limited exceptions.

## Can I refuse to be vaccinated against COVID-19 even if my employer requires it?

Yes, but only in limited circumstances.

### 1. Refusing the vaccine for medical reasons

If an individual has a disability that would make it dangerous for him or her to be vaccinated, his or her employer may have to excuse him or her from getting the vaccine under certain circumstances. Under the ADA, an employer can require an employee with a disability to be vaccinated against COVID-19 if the employee would pose a "direct threat to the health or safety of individuals in the workplace" if he or she does not get the vaccine. The ADA defines "direct threat" as "a significant risk

of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation.” 29 C.F.R. § 1630.2(r).

In determining whether an employee would pose a “direct threat” to others in the workplace, employers must conduct an “individualized assessment” of the individual’s ability to perform the essential functions of his or her job safely without getting the vaccine. 29 C.F.R. § 1630.2(r). That assessment must be based on “reasonable medical judgment” that relies on “the most current medical knowledge and/or on the best available objective evidence.” *Id.* In conducting the assessment, employers must consider

- (1) the duration of the risk posed by the employee
- (2) the nature and severity of the potential harm caused by the employee
- (3) the likelihood that the potential harm will occur
- (4) the imminence of the potential harm. *Id.*

In its most recent COVID-19 guidance, the EEOC concluded that an unvaccinated employee would pose a “direct threat” to others in the workplace if the employee would “expose others to the virus at the worksite.” An employer therefore can require an employee with a disability to be vaccinated against COVID-19 if the employee would expose his or her coworkers to the virus, unless the employer can provide a reasonable accommodation that would eliminate or reduce the risk of exposure so that the unvaccinated employee no longer poses a “direct threat” to others in the workplace.

Under the ADA, an employer must provide an accommodation to a person with a disability unless the accommodation imposes an “undue hardship” on the operation of the employer’s business, which the statute defines as “significant difficulty or expense.” 42 U.S.C. § 12112(b)(5)(A); 42 U.S.C. § 12111(1)(A). In the context of COVID-19, the EEOC has identified several simple, low-cost accommodations that employers can implement to limit employees’ exposure to the virus, such as requiring all employees to wear masks, gowns, or other protective gear beyond what their employer normally would require, designating one-way aisles on showroom floors, or using plexiglass, tables, or other barriers to ensure safe distances between protected employees and their coworkers or customers. Employers can consider the unique circumstances of the pandemic, such as the feasibility of delivering certain supplies and the sudden loss of some or all of their income streams, to determine whether an accommodation imposes an “undue hardship.” Depending on the specifics of an individual’s job, measures like these might suffice to exempt employees from a mandatory vaccination requirement.

## **2. Refusing the vaccine for religious reasons**

If an employee has a sincerely held religious belief, practice, or observance that prohibits vaccination, he may be allowed to refuse vaccination in some circumstances. Title VII of the Civil Rights Act of 1964 (“Title VII”) prohibits [discrimination on the basis of religion](#), including “all aspects of religious observance and practice, as well as belief,” unless an employer is “unable to reasonably accommodate [an employee’s] religious observance or practice without undue hardship on the conduct of the employer’s business.” 42 U.S.C. § 2000e(j). In other words, the employee can be excused from getting vaccinated if the employer can provide an accommodation that poses no more than a de minimis cost or burden on the employer’s business operations. Employees should note that the standard for “undue hardship” under Title VII—“more than a de minimis cost or burden”—is a lower standard than “undue hardship” under the ADA.

Though employers generally assume that an employee's request for a religious accommodation is based on a sincerely held belief, practice, or observance, the EEOC has stated that an employer would be justified in requesting additional supporting information if the employer has an "objective basis" for questioning the religious nature or the sincerity of a particular belief, practice, or observance. In the context of mandatory vaccinations, courts have found that transferring an employee to a position without a vaccination requirement—or allowing an employee to request a transfer to such a position—are reasonable accommodations for employees who object to vaccinations on religious grounds. See, e.g., *Horvath v. City of Leander*, 946 F.3d 787, 792 (5th Cir. 2020); *Robinson v. Children's Hosp. Bos.*, No. CV 14-10263-DJC, 2016 WL 1337255, at \*10 (D. Mass. Apr. 5, 2016).

## **Can my employer terminate me if I refuse to be vaccinated against COVID-19?**

Yes, an employer can terminate an employee for refusing to be vaccinated (as long as the termination otherwise complies with equal employment opportunity and other workplace laws) unless the employee meets one of the narrow exceptions identified above:

(1) the employee is unable to receive the vaccine due to a disability and their employer can provide a reasonable accommodation that would eliminate or sufficiently reduce the risk that they would expose their coworkers to the virus

(2) the employee is unable to receive the vaccine due to a sincerely held religious belief, practice, or observance and their employer can provide a religious accommodation that poses no more than a de minimis cost or burden on the employer's business operations.

## **Once I have been vaccinated, can my employer request proof of my COVID-19 vaccination?**

Yes. The ADA prohibits medical inquiries that question "whether [an] employee is an individual with a disability or . . . the nature or severity of the disability" unless the inquiry is "job-related and consistent with business necessity." 42 U.S.C. § 12112(d)(4)(A). In its most recent COVID-19 guidance, the EEOC stated that requesting proof of a COVID-19 vaccination does not constitute a prohibited medical inquiry because such a request is "not likely to elicit information about a disability," since there are many non-disability-related reasons that might explain why an employee has or has not been vaccinated. Employers therefore can request proof of an employee's COVID-19 vaccination, regardless of whether the request is "job-related and consistent with business necessity."

## **If my employer does not require all employees to be vaccinated against COVID-19, can I refuse to return to work?**

Generally speaking, no. Under the Occupational Health and Safety Act of 1970 ("OSH Act"), however, employers are required to provide every employee "employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm." 29 U.S.C. § 654(a)(1). Section 11(c) of the OSH Act also protects employees against retaliation for refusing to work if an employee believes that he or she faced death or serious injury (and the situation is so clearly hazardous that any reasonable person would believe the same thing); the employee tried, where possible, to get his or her employer to correct the condition, was unable to obtain a correction, and there is no other way to do the job safely; or the situation is so urgent that the worker does not have time to eliminate the hazard through regulatory channels, such as calling OSHA. OSHA has not issued guidance thus far suggesting that employers should implement mandatory vaccination policies.

To learn more about employment matters related to the COVID-19 pandemic, see other resources below.

[Coronavirus Questions and Answers: What Do Employees Need to Know](#)

[COVID-19 Whistleblower Protections: Few Options for Workers Reporting Unsafe Working Conditions](#)

[Coronavirus Stimulus Fraud](#)

**[EEOC COVID-19 Support](#)**