



The Delta Variant: What Do Employers Do Now?

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Today's Agenda

- Current state and local masking and vaccine restrictions in Oregon, Washington, California, Idaho, Utah, and Alaska
- Mandatory vaccination policies
- Vaccine-related inquiries
- ADA and religious accommodations
- COVID testing
- What other employers are doing
- Practical scenarios
- Your questions

State and Local Restrictions

Alaska

- Many cities require masking in public buildings and have recommended masks for indoor gatherings.
- Bill was introduced in April to ban employee vaccination requirements, but the bill was not considered during the legislative session.
- Southcentral Foundation and the Alaska Native Tribal Health Consortium will require all staff to be vaccinated by October 15, and other employers are following suit.

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Washington

- Statewide indoor mask mandate (with some exceptions)
- No Washington-specific restrictions on mandatory vaccination policies or on vaccine-related inquiries
- Microsoft, Google, Facebook, and Morgan Stanley have announced mandatory vaccination policies
- Mandatory vaccines for:
 - state workers;
 - health care providers; and
 - all public, private, and charter school employees.

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Oregon

- Masks required in all indoor public spaces, including public and private workplaces (unless eating or drinking or alone in enclosed office), regardless of vaccine status
- Effective Friday August 27, masks required in outdoor public spaces when 6 ft distance cannot be maintained
- Vaccines mandatory for health care workers, K-12 teachers and support staff, and executive branch employees starting October 18, 2021

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California

- No statewide mask mandate (likely because of scheduled recall election)
- Several cities and counties have implemented local indoor mask requirements (all Bay Area counties, Los Angeles County, Sacramento County, and Yolo County)
- No California-specific restrictions on mandatory vaccination policies or on vaccine-related inquiries
- Cisco, DoorDash, Facebook, and Google have announced mandatory vaccination policies for in-office work

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- **Mandates shmandates**

- Some governmental entities and school districts require masks on premises, but most don't
- Many private employers are now requiring employees to show proof of vaccination status or receive periodic testing
- There are currently no restrictions on mandatory vaccination policies and the business lobby generally opposes legislation prohibiting mandates
- Idaho Legislature could, but is unlikely to convene in special session to address COVID-related issues

- No statewide mask mandate
 - Some governmental entities require masks in public facilities
 - Salt Lake City Mayor issued K-12 mask mandate in SLC schools
- Currently, no restriction on vaccine mandates
- Employer vaccine mandates rare, but that could change

COVID Vaccinations

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Federal Guidance: Vaccines

- Absent a contrary state or local law, **employers can mandate that employees get vaccinated as a condition of employment**
- US Department of Justice: EUA status of the COVID vaccine does not prevent employers from instituting mandatory vaccination policies
- Must explore accommodations for employees with disabilities or sincerely held religious beliefs that prevent them from receiving the COVID vaccine

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Mandatory Vaccination Policies

POLL: Is your organization considering mandating COVID vaccines? (Or does your organization already have a mandatory vaccination policy?)

Yes

No

Undecided

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Mandatory Vaccination Policies: Factors to Consider

- ADA and religious accommodations
- Employee productivity and attendance
- Employee morale
- Reputation/PR
- Union considerations (mandatory subject of bargaining?)
- Administrative burden (checking vaccine status)
- Will the company be prepared to terminate?
- Should your company host a vaccination clinic?

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Mask Protests

We are a national retail chain and have decided to require that all customers wear a face covering or mask, regardless of vaccination status and regardless of state or local rules. A large group just showed up at our Idaho Falls location to protest our mask requirement.

What do we do?

What if the group were employees?

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Vaccine-Related Inquiries

- It is lawful to ask employees or applicants whether they have been vaccinated (e.g., job application question: *Can you provide proof of vaccination or a qualifying exemption? Yes/No*)
- An employee's vaccination status is not a "disability-related inquiry" under the ADA
- Be cautious of asking employees or applicants why they are not vaccinated – that could lead to disclosure of disability-related information

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“I’m Vaccinated” Badge

We are considering instituting a policy that requires employees to wear a sticker indicating whether they have been vaccinated.

POLL: Is that okay?

Yes

No

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Accommodations and Exemptions

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Disability and Religious Exceptions to Vaccine Requirement

Step 1: Ask for supporting documentation

Step 2: Engage in the interactive process and explore reasonable accommodations (e.g., continued mask requirement, telework, reassignment); consider undue hardship

Step 3: If unable to accommodate, make necessary determination about employment status

What Documentation Can We Request?

Disability: documentation from health care provider that explains (1) the medical condition and (2) why the medical condition prevents the employee from receiving the vaccine.

Religious: documentation explaining (1) the sincerely held religious belief and (2) why the religious belief prevents the employee from receiving the vaccine.

Jessica

We are requiring employees to return to in-person work after Labor Day and are requiring all employees to be fully vaccinated. Jessica, one of our long-term employees, just disclosed to us that she is unwilling to get the COVID vaccine because vaccinations are against her religion.

What do we do?

Can we require Jessica to provide supporting documentation?

Do we have to allow Jessica to work from home?

Penny

We operate a restaurant and have decided to require that all employees be vaccinated or provide proof of exemption by August 31, 2021. Penny, a server, is currently pregnant and has expressed hesitation in getting the vaccine. Other than being pregnant, Penny has no medical conditions of which we are aware.

POLL: Do we have to accommodate Penny?

Yes/ No

If we decide to accommodate Penny, how do we respond if other employees express concerns about her being unvaccinated?

COVID Testing

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Is This Paid Time?

Our policy is that all employees must either receive the COVID vaccine or test weekly.

POLL: Who pays for the cost of the COVID test? Employee/Employer

POLL: Does the employee need to be paid for the time spent getting tested? Yes/No

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COVID Testing

- Okay to require regular COVID testing as a condition of employment.
- Okay to offer testing as an accommodation to employees who are unable to get vaccinated.
- Employer should pay for cost of test and for time spent getting tested if test is required as condition of employment or to return to work.

Questions



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