

# Employers, Here's A Peek At The COVID-Safe Workplace

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Employees are still commuting downstairs to their home office.

But a return to the traditional workplace finally appears to be in sight primarily as a result of the increasing availability of effective vaccines. What will the traditional workplace look like once it is safe, or safer, to return, and how will working conditions change?

Questions abound as to a range of issues, such as:

- Whether employers will require employees to get vaccinated;
- Whether and how frequently employers will require COVID-19 screening and testing;
- Whether nonvirtual work will only be allowed in staggered shifts;
- Whether meetings and events will be allowed in the office or whether employees will still need to meet through online platforms even while they are down the hall from one another;
- Whether employees will be permitted or required to travel for work purposes; and
- Whether clients, contractors, vendors and guests may enter the workplace.

Answers are likely to vary by company as employers consider different approaches in light of federal, state and local guidance.

The following provides a picture of what the new workplace is apt to look like in view of guidance provided by various governmental agencies thus far.

## **Vaccination Policies**

In an effort to keep the workplace safe, many employers are considering implementing policies requiring or encouraging employees to get vaccinated.

As an initial matter, employers implementing a vaccination policy will need to decide whether to establish an on-site or off-site vaccination program.

The [Centers for Disease Control and Prevention](#) indicate that employers with a large number of employees, enough space for a vaccination clinic, and the ability to either enroll as a vaccination provider or use an already enrolled vaccination provider will be best suited for maintaining an on-site vaccination program.[\[1\]](#)

There are a number of considerations for which employers must account when implementing vaccination policies.

### ***Paid Leave for Vaccination Time***

Employers will need to consider whether to provide employees with paid leave to receive the vaccine. The CDC has stated that it would be a best practice for employers to offer paid sick leave to employees who have "signs and symptoms" after receiving the vaccine.[\[2\]](#)

In addition, certain states have enacted laws and issued guidance regarding required paid COVID-19 vaccination leave. For example, New York state law requires employers to provide employees with up to four hours of paid time off per vaccine dose.[\[3\]](#) And guidance issued by the [Illinois Department of Labor](#) and Nevada's Office of the Labor Commissioner provides that employers should allow employees who voluntarily receive the vaccine to utilize sick leave, vacation time, other paid leave, or flex time in order to receive the vaccine.[\[4\]](#)

Employers opting for mandatory vaccination policies should also consider whether vaccination time constitutes hours worked. A couple of state agencies have issued guidance in that regard:

- The Illinois Department of Labor has issued guidance noting that if an employer requires an employee to receive a COVID-19 vaccine, the time the employee spends receiving it should either be combined with paid leave or the employer should provide compensation for the time used to obtain the vaccine.[\[5\]](#)
- The [California Department of Industrial Relations](#) recently updated its COVID-19 guidance to provide that if an employer requires an employee to receive a COVID-19 vaccine, the employer must pay for the time it takes for testing or vaccination. [\[6\]](#) That guidance also provides that an employer is required cover the cost of the vaccination and any travel expenses if the vaccine was received away from the employee's worksite.[\[7\]](#)
- Nevada's Office of the Labor Commissioner has issued guidance stating that mandatory vaccine requirements should be combined with paid leave even if the

employee receives the vaccine during nonworking time.[8]

### ***Compliance With the ADA and Title VII***

Employers implementing a mandatory vaccination policy must also navigate various anti-discrimination laws. The [U.S. Equal Employment Opportunity Commission](#) has issued guidance providing that such policies, subject to certain exceptions, may be permissible. [9] In particular, this guidance indicates that an employee may not be required to receive a vaccination if they have a disability under the Americans with Disabilities Act or sincerely held religious belief under Title VII that prevents them from receiving the vaccine. In such circumstances, the employer will need to engage in an interactive process to determine if a reasonable accommodation can be made.

### ***State Laws Restricting the Ability of Employers to Require Vaccines***

Although EEOC guidance permits mandatory vaccination programs (with the noted exceptions), some states have introduced legislation that seeks to make it unlawful to discriminate or take adverse action against someone based on vaccination status.

In Alabama, for example, House Bill 214 prohibits employers from "taking adverse action against an employee or prospective employee based on the employee's immunization status." [10] In Maryland, House Bill 1171 would prohibit an employer from terminating an employee if they refuse to receive the COVID-19 vaccine. [11]

### ***Inside the Workplace***

Employers will need to consider necessary physical changes to the workplace.

### ***How Will the Workplace Look Different?***

Earlier this year, the [Occupational Safety and Health Administration](#) released guidance recommending that employers implement COVID-19 prevention programs to address COVID-19-related concerns and limit the spread of COVID-19 in the workplace. [12] Some of the key recommendations include:

- Physical distancing: Employees should stay at least six feet away from each other whenever possible. Employers thus may need to alter workspaces or limit the number of employees that may congregate in a single place.
- Barriers: When remaining six feet away in the workplace is not feasible, shields or barriers should be installed.

- **Face Coverings:** Employers should require face coverings in the workplace and provide employees with face coverings at no cost. Notably, the CDC also recommends that all workers should wear masks in the workplace and many states have instituted mask mandates.
- **Ventilation:** Employers should follow the CDC's recommendations for improving and double-checking ventilation to prevent the spread of COVID-19.
- **Hygiene Supplies:** Employers should provide employees with hygiene supplies including tissues, soap and hand sanitizer.
- **Cleaning and Disinfection:** Employers should follow the CDC's Guidance for Cleaning and Disinfecting (as well as state and local guidance) to develop and maintain a plan to perform regular cleanings.[\[13\]](#)

In addition to the CDC's guidance, employers will have to consider some practical questions, such as:

- What capacity restrictions to impose in common areas such as lunchrooms, breakrooms, bathrooms and elevators. Some jurisdictions have already imposed caps on the number of individuals who can be in a room. For example, Chicago has a 50% capacity restriction in all noncustomer-facing offices.[\[14\]](#)
- Should employees be required to use Zoom and other online platforms to talk to the people in the offices next to them?
- Will hallways be one-directional?

### ***Staggered Shifts and Scheduling***

The CDC recommends that employers stagger shifts, start times and break times in an effort to reduce the number of employees in the workplace at one time.[\[15\]](#) Some employers may opt for hybrid scheduling by continuing to utilize remote work and only requiring employees to report to the office on certain days.

### ***Presence of Nonemployees***

Some employers will likely continue to limit the presence of clients, vendors and guests in the office. For essential visits, employers are likely to designate certain spaces in which such individuals may be present.

### ***Screening and Testing***

Employers will likely implement routine COVID-19 screening tests and require employees to complete questionnaires. According to EEOC guidance, employers may administer temperature checks to employees and ask questions related to COVID-19 symptoms, at least for the duration of the direct threat posed by the COVID-19 pandemic.[\[16\]](#) Specifically, employers may ask employees if they are experiencing symptoms of COVID-19 and if they have been diagnosed with or tested positive for COVID-19.[\[17\]](#) If an employee refuses to comply, the employer is typically permitted to bar the employee from physical presence in the workplace.[\[18\]](#)

## **Travel**

Work-related trips likely will remain on pause for some time. The CDC recommends that employers implement flexible meeting and travel options such as postponing in-person meetings, continuing remote meetings and limiting travel unless it is essential.[\[19\]](#) It also recommends that people delay all travel until they are fully vaccinated.[\[20\]](#) If someone is unvaccinated and must travel, the CDC recommends getting a COVID-19 test one to three days before the trip, wearing a mask while on all forms of transportation, receiving another COVID-19 test within three to five days after the trip and self-quarantining for seven days after the trip.[\[21\]](#)

Various cities and states also have travel restrictions that require visitors to quarantine upon arrival, subject to certain exceptions for those who have been tested, vaccinated, or recovered from COVID-19 in the previous three months. Such restrictions may conflict with work-related travel.

## **Conclusion**

Thanks in large part to increasingly available and effective vaccines, the return to the traditional workplace finally appears to be in sight.

Employers will consider different approaches as offices reopen, in light of federal, state and local guidance.

There is likely to be, however, a nearly universal effort to promote employee safety while, at the same time, fostering a renewed esprit de corps and increasing productivity.

While the terrain of and interactions in a new workplace may look different in many respects, employees are apt to have a greater appreciation for the benefits of in-person collaboration and teamwork.

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[1] Centers for Disease Control and Prevention, Workplace Vaccination Program, Workplace Vaccination Program | CDC (Mar. 25, 2021).

[2] Id.

[3] 2021 NY Senate-Assembly Bill S2588A, A3354, S2588A (nysenate.gov).

[4] Illinois Department of Labor, Employer Guidance: Compensation, Paid Leave and the COVID-19 Vaccine, IDOL Vaccine Leave Guidance.pdf (illinois.gov); State of [Nevada Department of Business & Industry Office](#) of the Labor Commissioner, COVID-19 Vaccine/Vaccination Leave Guidance, COVID-19 Vaccination Leave Guidance (nv.gov).

[5] Id.

[6] State of California Department of Industrial Relations, COVID-19 Testing and Vaccine FAQs, COVID-19 Testing and Vaccine FAQs (ca.gov).

[7] Id.

[8] Supra note 5.

[9] U.S. Equal Employment Opportunity Commission, What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws, What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws | U.S. Equal Employment Opportunity Commission (eoc.gov) (Dec. 16, 2020).

[10] HB214, The [Alabama Legislature](#) (Feb. 2, 2021), HB214-int.pdf (state.al.us).

[11] HB1171, [Maryland General Assembly](#) (Feb. 8, 2021), 2021 Regular Session - House Bill 1171 First Reader (maryland.gov).

[12] [United States Department of Labor Occupational Health and Safety Administration](#), Protecting Workers: Guidance on Mitigating and Preventing the Spread of COVID-19 in the Workplace, Protecting Workers: Guidance on Mitigating and Preventing the Spread of COVID-19 in the Workplace | Occupational Safety and Health Administration (osha.gov) (Jan. 29, 2021).

[13] OSHA also recently launched a National Emphasis Program aiming to reduce and eliminate employee exposure to COVID-19. The Program will focus its enforcement efforts on industries where employees have the highest risk of COVID-19 exposure, such as healthcare facilities, supermarkets, restaurants, and correctional institutions. OSHA will conduct inspections in these industries to ensure they are in compliance with OSHA rules. Available at National Emphasis Program – Coronavirus Disease 2019 (COVID-19) (osha.gov).

[14] City of Chicago, Phase IV: Gradually Resume Guidelines, BeSafe.Capacity-Limitations-City-of-Chicago-Phase-4-Guidelines.pdf (Mar. 25, 2021).

[15] Centers for Disease Control and Prevention, Prepare your Small Business and Employees for the Effects of COVID-19, Prepare your Small Business and Employees for the Effects of COVID-19 | CDC (Apr. 4, 2020).

[16] Supra note 2.

[17] Id.

[18] Id.

[19] Supra note 18.

[20] Centers for Disease Control and Prevention, Domestic Travel During COVID-19, Domestic Travel During COVID-19 | CDC (Apr. 2, 2021).

[21] Id.

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