

# RETURNING EMPLOYEES TO THE WORKPLACE

**MAY 25, 2021**

James R. Hammerschmidt, Esq.  
Scott A. Mirsky, Esq.  
Jessica B. Summers, Esq.

**PALEY**  
ROTHMAN

# COVID-19 VACCINES IN THE WORKPLACE

- COVID-19 VACCINES
  - The Big Question:
    - To **encourage** employee to get vaccinated?
      - or
    - To **require** employees to get vaccinated?

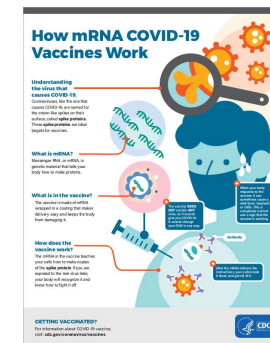
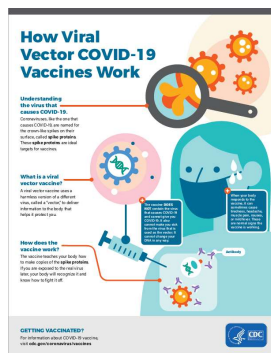
# ENCOURAGING COVID VACCINES FOR EMPLOYEES

## *The Basics*

- *Can we encourage employees to get vaccinated?*
  - YES, but with limits
- *How can we encourage employees to get vaccinated?*
  - Educate workforce about COVID vaccines
  - Vaccine incentives
  - Paid time off for COVID vaccines
- *Can we ask for proof of vaccination/vaccination cards?*
  - YES, but keep in separate health info file

# EDUCATE WORKERS ABOUT COVID VACCINES

- The CDC has a toolkit with messaging tips, sample letters, posters, etc.



- <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/toolkits/essential-workers/newsletters.html#employees>

# VACCINE INCENTIVES

- EEOC has not provided specific guidance for COVID-19 vaccine incentives.
  - Incentive can violate the Americans with Disabilities Act or the Genetic Information Nondiscriminatory Act (GINA)
  - For now, we suggest that incentives be minimal (*e.g.*, \$5 gift card)

## PAID TIME OFF FOR COVID VACCINES

- Federal government is offering a tax credit
  - Employers with less than 500 employees
  - Paid leave to allow employees to:
    - receive the COVID-19 vaccine
    - recover from any illness or condition as a result of receiving the vaccine
  - Up to two weeks (80 hours) of leave per employee
    - capped at \$511 per day (total of \$5,110)
  - Credits are applied toward employer's share of Medicare tax

# MANDATING COVID VACCINES FOR EMPLOYEES

## *The Basics*

- *Can we require employees to get vaccinated?*
  - **Federal law** – yes\*
    - \* As we will discuss this is subject to important caveats and considerations.
  - **State law** – It depends. Some states are considering, or have enacted, laws to prohibit private employers from mandating COVID vaccines.
  - But MD, VA and DC have NOT passed such laws yet
- *Should we require employees to get vaccinated?*

# COVID VACCINE MANDATES

## *Reasonable Accommodation of Disabilities*

- Employers that choose to mandate the vaccine will have an obligation to reasonably accommodate an employee who cannot receive the vaccine because of a disability.
- Unvaccinated employees can be excluded from the workplace if the employer can show that the individual poses 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.”
- If the employer can show there is a significant risk to justify exclusion from the workplace, the employer must still consider what other accommodations might be available (such as telework).



# COVID VACCINE MANDATES

## *Religious Accommodations*

- An employer has an obligation to accommodate an employee's sincerely-held religious belief unless doing so would pose an undue hardship.
- The objection may be to vaccinations in general or to a specific vaccine.
- Employers can require documentation to verify that the objection is based on a sincerely-held religious belief versus a personal moral belief that is not directly tied to any religious tenet.

# COVID VACCINE MANDATES

## *Additional Points of Caution*

- Be careful to prevent harassment or retaliation against employees who have received an accommodation based on disability or religion.
- Be mindful of reverse age discrimination issues.
- Protect medical information (including the vaccination cards and accommodation documents).
- Be aware of potential issues related to adverse vaccine reactions.
- Don't let your guard down and continue to comply with best practices and safety mandates.

# COVID VACCINE MANDATE POLICIES

- Key provisions:
  - When the mandate will go into effect
  - What constitutes “vaccinated”
  - Reasonable accommodation statement with information as to how an accommodation should be requested
  - What documentation should be provided and to whom
  - Reminder that existing safety policies and procedures will remain in effect
  - Reservation of right to change the policy at any time going forward

# LIABILITY ISSUES

- No liability shields passed at federal, VA, MD or DC levels
- A business has an obligation to protect employees, contractors, and customers.
- In an attempt to reduce liability, businesses are turning to release/waiver agreements.
- A release/waiver cannot fully eliminate a business' obligation to protect its employees, contractors, and customers.



# WAIVERS

## *Exculpatory Clauses*

### EMPLOYEE WAIVERS

- Disfavored due to unequal bargaining power between the employee and employer
- Workers Compensation coverage (cannot be waived)

# WORKPLACE SAFETY RULES

- Federal
  - OSHA and CDC provided guidance but no mandates
  - CDC General Business FAQs:  
<https://www.cdc.gov/coronavirus/2019-ncov/community/general-business-faq.html>
  - OSHA COVID-19 safety rules overdue
- State
  - Virginia COVID-19 Final Standard
  - Maryland Essential Workers Protection Act
- Continuing General Safety Precautions and Best Practices

# WORKPLACE SAFETY BEST PRACTICES

- Absent OSHA regulations, once state of emergency orders are lifted, employers will be left largely on their own
- Generally claims will be limited to workers compensation
- What should employers do?
  - Need to make employees continue to feel safe and be safe
  - Likely err on side of caution for the near term
  - Continue sensible safety policies
    - Masks in common areas and open work spaces
    - Signage to encourage regular hand-washing
    - Routine cleaning, particularly high-touch surfaces
    - Testing and quarantine requirements for unvaccinated employees
    - Keep lots of sanitizer and masks available
    - Social Distancing - Avoid large gatherings in close quarters, conference areas and around “water-coolers”
    - Overall capacity limits, phasing-in of workforce & staggered schedules
    - Continue visitor screening

# BE PREPARED FOR RETURNING EMPLOYEES TO WORK

- Just like all the preparations made to have some workers in the office when COVID hit, we now need to prepare just as diligently for greater density and adjust to new guidelines.
- Communicate, communicate, communicate and let employees know things may change
- Plan and map out employee recall procedures and consider special needs of workforce
- Continue to review health screening protocols, exposure response plans and PPE needs
- Remind employees about Employee Assistance Program (EAP)
- Dust off, review or consider new policies on:
  - Telecommuting and remote work
  - Time and attendance policies
  - Business travel and event attendance
  - Personal travel (some areas of the world are not safe yet!)
  - Leave accrual and cash out
  - Public emergency and inclement weather closures
  - Client and visitor policies and contact tracing methods
  - IT practices, including BYOD usage
- Audit the employee manual – what needs to be reconsidered or revised?



# AGREEMENTS

- Employment agreements
  - Review templates
  - Consideration in future agreements
- Vendor and independent contractor agreements
- Consider language that gives the company flexibility to modify
  - Compensation levels, fees, prices
  - Right to terminate if state of emergency or pandemic or business interruptions occur

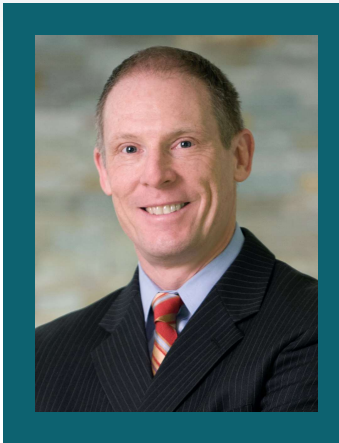
## CONTINUING COVID-RELATED LAWS

- Families First Coronavirus Response Act (FFCRA) tax credit
- American Rescue Plan Act of 2021
  - COBRA Premium Assistance (applies to state “mini-COBRA” laws as well)
    - April 1, 2021 through September 30, 2021
    - Must have been covered by employer group health plan
    - Must have a COBRA qualifying event
    - Must elect COBRA continuation coverage within 60 days
    - Employer, plan admin or insurer receives a tax credit
  - Other provision affecting employers

# THANK YOU!

## Q+A

If you have any questions, please don't  
hesitate to contact us.



**Jim Hammerschmidt**  
[jrh@paleyrothman.com](mailto:jrh@paleyrothman.com)  
301-951-9338



**Scott Mirsky**  
[smirsky@paleyrothman.com](mailto:smirsky@paleyrothman.com)  
301-968-1648



**Jessica Summers**  
[jsummers@paleyrothman.com](mailto:jsummers@paleyrothman.com)  
301-968-3402



@PaleyRothman

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

Paley Rothman  
4800 Hampden Lane | Sixth Floor | Bethesda, Maryland 20814

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