



The Vaccine Is Almost Here — Now What? Considerations For Healthcare Employers Preparing To Inoculate Employees

Insights

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The CDC recently adopted a recommendation from an advisory committee that healthcare workers should be the first in line to get COVID-19 vaccine shots after they receive approval from the Food and Drug Administration (FDA). But healthcare workers include a wide range of different people. Hospitals, for example, employ far more workers than doctors and nurses. What about, for example, respiratory therapists, nursing assistants, lab personnel, food service workers, custodians and administrative staff? Should they also be among the first to receive the vaccine? If they do, will healthcare employers have enough of the vaccine to provide it to all these employees? And the process of administering the vaccine will be far more complex than simply that asking staff to line up and take a shot considering the extremely low-temperature storage requirements and the thawing and mixing process also involved. Prioritization and distribution logistics will be tremendously important. What do healthcare employers need to know about this critical development to prepare for tomorrow?

Broad Definition May Mean There Isn't Enough To Go Around

Although employers are awaiting additional guidance on how to distribute their vaccines, the Advisory Committee on Immunization Practices' (ACIP) December 1 announcement has provided some guidance that will be very helpful in planning. As defined by the CDC, healthcare personnel include persons "serving in health care settings who have the potential for direct or indirect exposure to patients or infectious materials, including bodily substances." This definition is broad enough to include nearly all of the above-mentioned employees and perhaps more. Thus, the ACIP's recommendation may encompass more workers than employers are able to vaccinate.

Some healthcare employers may still not know how many doses of vaccines they will receive. Regardless of how the numbers shake out, how should you decide who receives the first doses? The ACIP has provided some guidance on that point as well.

Recommendations On Prioritizing Initial Vaccine Doses

The ACIP recommends that where initial supply is insufficient to vaccinate all of a facility's healthcare personnel, you should, in no particular order, prioritize:

- Personnel with direct patient contact and who are unable to telework, including those who handle infectious materials; and
- Personnel working in residential care or long-term care facilities

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The ACIP also recommends that employers take into account personnel who have had COVID-19 in the 90 days prior to vaccination. Current evidence suggests that reinfection is uncommon in the 90 days following initial infection. Where supplies are limited, as seems likely to be the case, the ACIP suggests that vaccines will be most beneficial for those who are still more susceptible to the virus.

However, the ACIP notes that having previously contracted COVID-19 *does not* suggest that such persons should never be vaccinated. Rather, it suggests that because these persons are less likely to re-contract the virus during the 90-day period, their vaccination should be delayed until more vulnerable persons have been vaccinated and supplies are more readily available.

Vaccine May Cause Complications

Data suggests that the vaccine may induce symptoms such as fever, headache, and myalgias. While experiencing these symptoms, recipients may be absent from work. Of course, shortages of healthcare personnel are problematic. To maintain more availability among the workforce, the ACIP has suggested staggering delivery of vaccines so that personnel from a single department or unit are not all simultaneously vaccinated (and possibly experiencing symptoms that may require them to miss work).

Evidence also suggests that pregnant and breastfeeding women are potentially at increased risk for severe COVID-19 illness and death. Considering the prevalence of women of child-bearing potential among the healthcare workforce, a significant number of employees could be pregnant or breastfeeding at any given time. However, trials are still underway on the safety and efficacy of COVID-19 vaccines among this population. Notably, the EEOC has not yet issued any workplace guidance on vaccine considerations. Therefore, it is currently unclear whether prioritizing women in vaccine distribution could present concerns regarding gender discrimination.

Healthcare employers will also likely encounter resistance from some employees for other reasons. In its guidance on flu shots, the EEOC has noted that employees may be **legally entitled** to an accommodation based on an ADA disability. Similarly, an employee may also be entitled to an accommodation based on a sincerely held religious belief or practice.

Conclusion

As the availability of COVID-19 vaccines approaches, you must be prepared to deal with prioritization, logistics, and responding to employees' concerns. We will continue to monitor developments related to the new vaccines and related workplace questions that arise. Make sure you are subscribed to Fisher Phillips' Alert System to get the most up-to-date information. If you have questions about how to ensure that your vaccine policies comply with workplace and other applicable laws, visit our Vaccine Resource Center for Employers or contact any attorney on our FP Vaccine Subcommittee or in our Healthcare Industry Practice Group.

This Legal Alert provides an overview of developing workplace issues. It is not intended to be, and should not be construed as, legal advice for any particular fact situation

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