



The Widespread Availability Of COVID-19 Vaccines May Be Here Sooner Than You Think: A 10-Step Action Plan For Employers

Insights

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With over 40 million Americans having received at least one dose of the COVID-19 vaccine, Dr. Anthony Fauci recently declared that he expects the availability of vaccinations to significantly increase – predicting an “open season” on vaccine doses by as early as April. While he tempered this news earlier this week by noting that the vaccine may not be available to the general public until May or June, and President Biden announced in a February 16 town hall that he believes the country should have enough doses to vaccinate every American by July, these statements follow recent poll numbers indicating that 71% of those surveyed are willing to get vaccinated, up from 65% in late December and the highest number since July 2020. Despite the imminent widespread availability of vaccines and an increasing likelihood that workers will want to receive the shot, many employers remain unprepared to deal with vaccinating their workforces. What should employers do now to prepare for the imminent widespread distribution of vaccines? This alert provides a suggested 10-step plan for you to consider.

Why Employers May Not Be Prepared

Because the U.S. expected the supply of COVID-19 vaccines to be limited at first, most states developed and implemented a phased allocation of COVID-19 vaccine plans based on the CDC's recommendations. These recommendations came from the Advisory Committee on Immunization Practices (ACIP) – an independent panel of medical and public health experts. With the goals of decreasing death and serious disease as much as possible, preserving the functioning of society, and reducing the extra burden COVID-19 is having on people already facing disparities, most plans limited vaccine availability.

Initial recipients of the vaccine have generally been limited to healthcare personnel, residents of long-term care facilities, frontline essential workers, educators, and persons aged 65 years and older. Because of this phased approach, vaccines are not yet available for most of the American workforce. Outside of those in the healthcare sector, many employers have not begun to consider how they will handle vaccinations for their employees. But Dr. Fauci's recent comments means the time for you to start developing a plan is now.

Why Employers Should Develop a Vaccine Plan Now

As Dr. Fauci explained, the number of available doses by March and April will allow for much more of a “mass vaccination approach.” He and other national public health experts expect to see pharmacies, community vaccine centers and mobile units “stepping up the pace of vaccinations” to reach the ambitious goal set by the Biden administration of vaccinating 150 million Americans in the first 100 days of the Biden presidency.

For employers, this increases the likelihood of the mass vaccination of workforces soon. This has taken on increased importance considering that the Centers for Disease Control and Prevention (CDC) just substantially relaxed its recommended isolation requirements for those exposed to COVID-19 if they have completed the vaccine regimen. This means you would no longer need to isolate your workers in quarantine after exposure so long as they are in a three-month window after being fully vaccinated and have remained asymptomatic since the exposure.

What Should You Do? A 10-Step Plan

The time is now for employers to develop detailed vaccination plans to meet the goal of protecting workforces while at the same time remaining fully operational. You should develop your plan with the help and advice of legal counsel to avoid potential legal pitfalls, and given that many of these concepts are highly fact-dependent and need to take into account industry, company philosophy, composition of workforce, community spread, and a whole host of additional factors. That being said, you should consider the following nine steps when developing your plan.

1. Organize A Vaccine Committee – If you haven’t done any work to date, your first step may be convening a committee to help suggest and develop recommendations for your business. This committee should either be comprised of or receive input from human resources, legal, workplace safety, and other personnel who are in the best position to develop effective strategies while considering all relevant angles. The committee can serve as a central point of contact for the company program, assisting in implementing the plan development and the rollout. The committee will also be able to assist in educating employees about the vaccine rollout. They can direct traffic and assist employees who choose to get the vaccine on how to sign up for vaccination, identify vaccine locations, or sign up for a government registration.

2. Determine Your Place In Line – You should first determine whether your business is categorized as an essential business such that you can receive priority access to the vaccine in advance of the upcoming “open season.” This is largely a decision governed by the states in which you do business. In general, many states have adopted the federal definition of “essential businesses” under the Cybersecurity and Infrastructure Security Agency (CISA) Guidance on Essential Critical Infrastructure Workforce, but states may adopt their own definitions depending on local considerations. We recommend you consult with your Fisher Phillips attorney for clarification, or connect with local or regional trade or industry associations for more details.

3. Decide Whether You Will *Mandate* The Vaccine – While it appears that you can mandate the vaccine for your workforce and avoid legal exposure with respect to federal anti-discrimination

vaccine for your workforce and avoid legal exposure with respect to federal anti-discrimination laws, not many employers appear to be going this route. According to an FP Flash Survey tallying information from 700 employers, only 9% of respondents said they were considering requiring employees to take the vaccine as a condition of their employment, while 64% said they were not thinking about mandating it. Meanwhile, 27% said they were unsure what they would do. If you believe a mandate is appropriate given your specific business circumstances, you should coordinate with counsel to ensure you address accommodation, privacy, and discrimination issues, among other factors.

4. Decide Whether You Will *Encourage* The Vaccine – A much preferred option, the great majority of employers appear to be considering encouraging the vaccine rather than requiring it. According to the FP Flash Survey, more than three-quarters of employers (78%) say they will consider encouraging workers to get the vaccine, with only 9% saying this was not a tactic they were considering.

5. Mount An Effective Education Campaign – While concerns about vaccination side effects are legitimate, worries over contracting COVID-19 from the vaccine – and other safety concerns – are based on inaccurate information. You can help ease some of this apprehension by providing accurate information and offering clarifications to address misinformation directly. This includes being as forthcoming as possible about likely side effects and providing information about the benefits of getting vaccinated. Employees who understand how the vaccine has been tested, its effectiveness, and track record are generally more likely to get vaccinated. In providing access to helpful information, you should be mindful that employees place much more confidence in information from established healthcare authorities rather than material from the vaccine manufacturers or political figures. We recommend that you consider gathering material from the CDC, your state or local health authority, or local healthcare organizations and share them with your workforce well in advance of their eligibility to receive the vaccine in order to smooth the waters.

6. Decide Whether You Will Incentivize The Vaccine – Many employers are considering the option of encouraging employee vaccinations through the use of incentives. According to the FP Flash Survey, the two most popular categories include cash/gifts (38%) and paid time off (30%). If you decide to offer incentives, you will need to understand the potential legal risks involved related to wellness program rules, IRS requirements, ADA accommodations, religious accommodations, financial limitations on incentives, and notice requirements under the federal law. Consult your Fisher Phillips attorney for assistance in designing a compliant incentive program for vaccines, and we recommend you review our detailed Alert discussing the risks involved with various incentive systems.

7. Consider Whether You Will Offer On-Site Vaccinations – Some larger employers may be in a position to establish an on-site vaccination center, permitting healthcare personnel on your property to administer the vaccine to your workers and perhaps members of the local community. While doing so would most likely increase the vaccination rates and reduce the time your workers would need to spend traveling to a vaccination center, it also raises several legal issues related to premises

liability, privacy, and more. Consult with your legal counsel if you are in a position to and want to set up on-site vaccines.

8. Plan For Post-Vaccination Issues – The indicates that it is not uncommon for COVID-19 vaccine recipients to experience side effects, such as pain at the injection site, fatigue, headache, and chills, most often within 24 hours of receiving the **second dose** of the vaccine. You should proactively consider how to handle issues that arise as a result:

- Especially if you encourage your workers to receive the COVID-19 vaccine, you should be careful not to inadvertently penalize employees who end up experiencing these side effects. At a minimum, ensure that you are not punishing workers by docking their pay, depleting their PTO bank, or counting side-effect-related absences as part of your disciplinary process. Keep in mind that some state and local paid sick leave laws may even require you to provide PTO, or at least offer protected unpaid leave, to employees as they recover from vaccine side effects.
- Also consider not scheduling employees for the day after receiving the second dose, or providing additional paid time off for the day after the second dose, to the extent that employees who experience side effects are unable to work. Again, employees will obviously be less inclined to get vaccinated if they believe they may have to miss work time due to side effects and possibly not be paid, or have to use their banked PTO, for that time. You may even consider providing an additional chunk of PTO to employees who voluntarily choose to get vaccinated, as at least 30% of employers are planning to do.
- You should consider working with your workforce to stagger vaccine appointments – especially the second dose – within particular departments or units. Since employees with side-effect symptoms may need to be absent from work, you can avoid having a staff shortage and keep your operations running if you avoid having an entire business unit simultaneously vaccinated.

9. Don't Ease Up On Workplace Safety Measures – Yet. Although the CDC has slightly relaxed its guidance when it comes to fully vaccinated people interacting with each other and with non-vaccinated people in certain circumstances, the impending OSHA emergency temporary standard may not relax workplace standards – and may even mandate mask-wearing and maintaining physical distancing. Moreover, California and other states continue to maintain such standards, which override the CDC guidance. Thus, even after your workers receive their full vaccine doses, you should continue to require them to adhere to common safety recommendations (such as wearing a mask over nose and mouth, staying at least six feet away from others, avoiding crowds, avoiding poorly ventilated spaces; and washing hands often) for the time being. However, so long as state rules do not run contrary, you may ease off quarantine rules in certain situations involving fully vaccinated workers (read more here).

10. Stay Updated On Vaccine Developments And Trends – Because of the rapidly changing landscape of the pandemic and vaccines, it is important to continue closely monitoring the evolving developments and trends. Make sure you are subscribed to Fisher Phillips' alert system to get the most up-to-date information.

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Conclusion

We will continue to monitor developments related to the COVID-19 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 developing detailed vaccination plans or how to ensure that your vaccine policies comply with workplace and other applicable laws, visit our [Vaccine Resource Center for Employers](#) or contact your Fisher Phillips attorney or any attorney on our [FP Vaccine Subcommittee](#).

This Legal Alert provides an overview of a specific development. It is not intended to be, and should not be construed as, legal advice for any particular situation.

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