

AN EMPLOYER'S GUIDE TO NAVIGATING THIRD-PARTY VACCINE MANDATES ON VISITORS, VENDORS, AND MORE

Insights
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As employers implement their own internal COVID-19 protocols and procedures, many have the additional burden of complying with third-party vaccine policies or enforcing their own vaccine policies upon non-employees such as independent contractors, vendors, or visitors. Such policies raise various issues that come with the vaccine mandate territory, from accommodations to record keeping. Here is our guide to navigating third-party vaccine mandates.

Complying with Third-Party Mandates on Your Employees

As the pandemic continues, more businesses are imposing vaccine requirements on third parties, which may include *your* employees. Generally, accommodation obligations for religious beliefs or disabilities extend to only employees. However, there are certain joint employer and public accommodation considerations to take into account.

As an employer, you may be faced with a situation where you do not have a mandatory vaccination policy, but a customer location where your employees work prohibits unvaccinated visitors on their premises. In such a situation, you may have limited options:

- comply;
- negotiate to allow for accommodations for employees who have protected objections; or
- decline to do business with that entity.

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Regardless of the third-party restrictions, it is your duty as an employer to comply with employment laws, including reasonably accommodating those who cannot be vaccinated due to a sincerely religious belief or a disability. This puts employers – especially those who have not implemented their own vaccine mandate – in a real pickle.

Conduct a Vaccine Census and Be Transparent

If you have not already, now is a good time to conduct a census to determine the vaccination status of your employees. This first step is crucial in determining how you can comply with third-party policies. Private employers may ask the vaccination status of employees (note that in Montana, you cannot require your employees to disclose their vaccination status). Contrary to what many on social media believe, [requesting this information is not a HIPAA violation](#).

When collecting this information, it is recommended that you be as transparent as possible with your employees about the reasons why you need the information. For example, explaining to employees that some (or all) third-party locations are only permitting vaccinated individuals on their worksite can help create buy-in from your employees.

Determine How You Will Comply with the Mandate

Once you have determined the vaccination status of your workforce, you can consider options for compliance with the third-party vaccine policy. You will want to determine how many vaccinated employees you will need to fulfill your obligations to your customers and/or to sustain your business and whether that will require you to impose a mandate on employees to fill those roles. In the event you need to mandate the vaccine for some or all of your employees, be sure to check out our [five-step plan](#) for implementing a vaccine mandate, which includes developing a robust and clear reasonable accommodation policy to address [religious](#) and disability issues.

Keep in mind it is possible to require certain job positions be vaccinated to comply with a customer requirement, but in doing so, the policy should be consistently applied within that role. For some employers, a customer's vaccination requirement may tip the scales in favor of an undue hardship under Title VII, the ADA, and other state laws that was not present before the mandate went into effect. However, this



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analysis requires careful consideration and should be done with the assistance of employment counsel.

Documentation and Privacy Issues

In addition to requiring compliance with the third-party vaccine mandate, certain clients or locations may require that you attest to the vaccination status of your employees who visit the worksite or require that you provide proof of vaccination status of your employees. Remember that handing over confidential medical information about your employees can expose you to potential liability. While appropriate authorization and consent agreements might aid you in this regard, it is important to be mindful of the confidentiality and privacy obligations under state and federal law. Again, any such disclosure should be done with the assistance of employment counsel. On the other hand, there is no issue for you if your employee *voluntarily* provides the requested information directly to the third party without your involvement.

Enforcing Your Own COVID-19 Vaccine Policy on Customers, Contractors, and Guests

As noted, many employers are enforcing third-party vaccine mandates at their worksites or complying with vaccine verification mandates. When doing so, there are considerations to be mindful of, particularly when it comes to accommodations.

Visitors

Some businesses are required to enforce a vaccine mandate for guests or other visitors (most commonly restaurants, hotels, and other hospitality businesses). In such situations, you need to consider not only the issue of reasonable accommodations but of customer relations. [This Insight](#) walks you through considerations you should take into account.

If the worksite is open to the public, then public accommodations for visitors must be considered. For example, the California Department of Fair Employment and Housing has issued [guidance for employers when faced with public accommodation issues related to the COVID-19 vaccine](#). If not open to the public, you can require visitors to be vaccinated and you do not have to consider accommodations. However, many employers will consider

accommodations (e.g., masking, proof of negative test before entry, etc.).

Temporary Employees

Due to joint employer considerations, accommodations should be extended to temporary employees. Normally the primary employer has the obligation to handle the accommodation details, but as a host employer there is an obligation to cooperate in the process. The EEOC has published [guidance](#) on accommodations for contingent employees.

Third-Party Vendors

For third-party vendor employees with limited or no joint employment risk, there is generally no obligation to provide accommodations. While this position is defensible, employers are encouraged to consider making similar accommodations.

If you decide to accommodate third parties, you need to decide how that process will work. You may have the contracted employer handle the accommodations and notify you of compliance with your policy including the requirements for those who have approved accommodations. However, this may create a disclosure of confidential medical information of the third-party employee and the appropriate authorizations should be gathered. Alternatively, the third-party employees could each disclose their vaccination and accommodation status directly to you, which may limit the confidentiality concern, but create an administrative burden.

Conclusion

We will monitor these developments and provide updates as the vaccine mandate landscape often changes. Make sure you are subscribed to [Fisher Phillips' Insight 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 your Fisher Phillips attorney, the authors of this Insight, or any attorney on our [FP Vaccine Subcommittee](#).