



# COVID, Your People, & the Winter Ahead

Navigating Positive Cases, Quarantines,  
FFCRA Leave, and Mask Mandates



# Meet today's panelists:



**Lesley Bruno**

*Director of HR Consulting Services*  
**Dominion Payroll**



**Kim Alexander**

*HR Pro*  
**MammothHR**



# **The Latest on Masks**



# Mask Reminder

For most US states and territories, face coverings are mandated by law as a preventive measure during the coronavirus pandemic. **Along with public health experts, the majority of governors – including some who have changed their earlier stances on masks as COVID-19 cases have surged in their states – strongly encourage wearing face masks, regardless of state mandate.**

For those areas with mask decrees, the details differ. Some states simply require a face covering anytime an individual leaves their residence, while others provide detailed instructions for where masks must be worn. In all states with mandates, children under the age of 2 years old should not wear masks, according to the CDC and further direction by states, but other age restrictions vary.



# Mask Reminder

## Virginia: State Mandate in Place

Gov. Ralph Northam initiated a statewide face-covering mandate May 29, ordering individuals throughout the state to wear face coverings when in indoor public spaces and while using public transportation. The order was updated in November to lower the age requirement for face coverings from 10 to 5 years old.



# Mask Reminder

## Tennessee: No State Mandate

Gov. Bill Lee has advised individuals to take personal responsibility when it comes to wearing face coverings in public, especially in indoor spaces and when social distancing is not possible, but no statewide mandate has been ordered. Multiple counties across the state have initiated mask mandates.



# Mask Reminder

## Texas: State Mandate in Place

Effective July 3, individuals across the state are required to wear a face covering in public indoor spaces, as well as in outdoor public spaces when physical-distancing measures are not possible. Children younger than 10 years old are exempted from the mandate, as are individuals with certain medical conditions. Counties with fewer than 20 active COVID-19 cases can apply for an exemption.

# Mask Reminder

## Florida: No State Mandate

Although city and county-level mandates exist, Gov. Ron DeSantis suspended all fines and penalties associated with not adhering to COVID-19-related restrictions on Sept. 25, hindering local leaders from enforcing their mandates



# Mask Reminder

## **North Carolina:** State Mandate in Place

Gov. Roy Cooper announced Nov. 23 that individuals in the state must wear face coverings when in indoor or outdoor public spaces and around non-household members. Face coverings are now required in schools and when exercising at gyms, building on the state's initial June mandate. The order makes exceptions for children under 5 years of age and those with certain medical conditions.

# Mask Reminder

## Colorado: State Mandate in Place

Since July 20, individuals in the state have been required to wear a mask in indoor, public spaces and when using or waiting to use public transportation. The mandate makes exceptions for those 10 years and under and those with certain medical conditions.



# **Four Steps to Take if an Employee is Diagnosed with COVID-19**

# Step One

## Notify Employees

Employees should be notified of potential exposure in the workplace, but they should not be told who is sick. Employees won't like that they can't gauge their own risk, but the Americans with Disabilities Act (ADA) requires this type of information remain confidential. Don't worry if employees figure it out on their own, but make sure you're not the one to reveal the information (and don't drop sneaky hints to help them along).



# Step Two

## **Assess the Risk of Exposure and Quarantine If Advisable**

If there was close contact for a prolonged period (about six feet or less for 15 minutes or more over the course of 24 hours), exposed employees should quarantine. If you aren't confident in your risk assessment, call your local or state health authority to help you determine which employees should quarantine.

# Step Three

## **Disinfect Areas Used by the Sick Employee**

The CDC recommends the following practices (among others):

Close off areas used by the person who is sick for 24 hours, if possible.

- Open outside doors and windows to increase air circulation in the area.
- Clean and disinfect areas and items used by the person who is sick (their workstation, bathrooms, common areas, tablets, touch screens, keyboard, registers). Wait as long as possible before cleaning and disinfecting.

If it has been seven days or more since the person who is sick was in the workplace, additional cleaning and disinfection is not necessary.

For more detailed instructions on cleaning and disinfecting the workplace after someone is diagnosed, and lots of great general guidance, see the CDC's Guidance for Business and Employers. Calling your local or state health authority is recommended as well.



# Step Four

## Determine When an Employee Can Return to Work

We will cover this more fully in a minute. Generally, an employee will be okay to return when:

- At least 24 hours have passed since resolution of fever without the use of medication, *AND*
- Other symptoms have improved, *AND*
- At least 10 days have passed since symptoms first appeared or since the positive test result, if the employee is asymptomatic.

# Options for Quarantine



# Options for Quarantine

## Reminder about quarantine length

While the VDH and the CDC recommend a quarantine period of 14 days for people exposed to COVID-19 for the lowest risk of infecting others, both agencies say the period could be shorter in some cases, an accommodation meant to lower the burden on people.

**10 days** – those with symptoms who meet the symptom-based guidelines (more on this in a minute); no test

**7 days** – those with symptoms with a negative diagnostic or rapid test performed on or after the 5<sup>th</sup> day following exposure

“The safest option is still to quarantine for 14 days after last exposure. Any quarantine shorter than 14 days balances reduced burden against a small possibility of spreading the virus,” the agency said in a statement.

# Options for Quarantine

Pay your employee via Emergency Paid Sick Leave via the Families First Coronavirus Response Act (FFCRA)

- As of now, available through 12/31/20
- Federally-mandated leave required to be granted by employers with fewer than 500 employees
- Applies to non-profits as well
- Government will reimburse you for up to two weeks of wages for an employee who is experiencing symptoms, been diagnosed, is caring for a loved one who is sick, or is home with a child whose school or place of care is closed due to COVID-19
- Max reimbursement amount is \$511 per day or \$5,110.
- Benefits should continue. Tax credit includes employer contribution to benefits.



# Options for Quarantine

## Unpaid leave or PTO or work remotely if possible

- If you have more than 500 employees or your employee already has exhausted EPSL, they can take PTO or you can offer them unpaid leave
- If unpaid leave, put it in writing
- If their job can be performed effectively from home, and they are able to work, allow it!

**We do not recommend terminating someone because they are under quarantine. We realize that quarantines present real issues to business continuity, but we also want to avoid any employee claims of discrimination.**

**Employers have the right to ask about travel during quarantine, but managing it will be an issue. Additionally, in states that have protection for restricting off duty activities that could be an issue. The best approach is to follow the Department of Labor's lead and put a great deal of trust into employees and their off duty activities during quarantine.**

# **Safely Returning a Sick Employee to Work**



# Safely Returning a Sick Employee to Work

## Symptom-Based Strategy (Preferred by CDC)

You may specifically ask employees to verify that all of the following would apply before allowing them to return to work:

- They have had no fever for at least 24 hours (that is one full day of no fever without the use of medicine that reduces fevers), AND
- Other symptoms of COVID-19 are improving\* (for example, when their cough or shortness of breath have improved), AND
- At least 10 days have passed since their symptoms first appeared. (It's important to note that the CDC has added that "People who are severely ill with COVID-19 might need to stay home longer than 10 days and up to 20 days after symptoms first appeared.")

\*Loss of taste and smell may persist for weeks or months after recovery and need not delay the end of isolation

# Safely Returning a Sick Employee to Work

## Doctor's Recommendation Strategy (Acceptable by CDC)

While the CDC guidance has been to discourage employers from requiring doctor's notes to reduce the burden on healthcare providers, employers could potentially choose to take the position of requiring a note from a healthcare provider.



# Safely Returning a Sick Employee to Work

## Test-Based Strategy (No Longer Recommended by CDC)

The CDC had previously included a test-based strategy for ending self-isolation. This involved obtaining two negative COVID-19 tests 24 hours apart in addition to the end of fever and improvement in respiratory symptoms.

The CDC is now discouraging this strategy. Recently, they have stated that *"Accumulating evidence supports ending isolation and precautions for persons with COVID-19 using a symptom-based strategy. This update incorporates recent evidence to inform the duration of isolation and precautions recommended to prevent transmission of SARS-CoV-2 to others, while limiting unnecessary prolonged isolation and unnecessary use of laboratory testing resources."*

They went on to state that, *"A test-based strategy is no longer recommended to determine when to discontinue home isolation, except in certain circumstances."*

**What can we require in terms of  
a COVID-19 vaccine?**



# What can we require in terms of a COVID-19 vaccine?

The Equal Employment Opportunity Commission (EEOC) addresses mandatory influenza vaccines in their Pandemic Preparedness in the Workplace guidance. This hasn't been updated regarding a COVID-19 vaccine, as one isn't yet available.

According to the guidance, an employer may require vaccinations as a condition of employment where they are job-related and consistent with business necessity but must be prepared to grant reasonable accommodations to those with a disability or religious belief as addressed by the Americans with Disabilities Act (ADA) and Title VII of the Civil Rights Act.

So, while you could require a vaccine once available, you'll need to be prepared to grant reasonable accommodations and we'd encourage you to consider whether you *should* make such a requirement a **condition of employment**. Because this is a sensitive and invasive topic, we recommend providing employees with information on the vaccine (once available), informing them of the scientific and medical guidance, and encouraging them to make a personal health decision with their healthcare provider.

# What can we require in terms of a COVID-19 vaccine?

May an employer covered by the ADA and Title VII of the Civil Rights Act of 1964 compel all of its employees to take the influenza vaccine regardless of their medical conditions or their religious beliefs during a pandemic?

No. An employee may be entitled to an exemption from a mandatory vaccination requirement based on an ADA disability that prevents him from taking the influenza vaccine. This would be a reasonable accommodation barring undue hardship (significant difficulty or expense). Similarly, under Title VII of the Civil Rights Act of 1964, once an employer receives notice that an employee's sincerely held religious belief, practice, or observance prevents him from taking the influenza vaccine, the employer must provide a reasonable accommodation unless it would pose an undue hardship as defined by Title VII ("more than de minimis cost" to the operation of the employer's business, which is a lower standard than under the ADA).(36)

Generally, ADA-covered employers should consider simply encouraging employees to get the influenza vaccine rather than requiring them to take it. **\*As of the date this document is being issued, there is no vaccine available for COVID-19.**



# What can we require in terms of a COVID-19 vaccine?

Under the Americans with Disabilities Act (ADA), a required vaccine is akin to a medical examination for which it must be job-related and consistent with business necessity. Generally, a disability-related inquiry or medical examination of an employee is job-related and consistent with business necessity when an employer has a reasonable belief, based on objective evidence, that:

- An employee's ability to perform essential job functions will be impaired by a medical condition; or
- An employee will pose a direct threat due to a medical condition.

This reasonable belief "must be based on objective evidence obtained, or reasonably available to the employer, prior to making a disability-related inquiry or requiring a medical examination."

# What can we require in terms of a COVID-19 vaccine?

While we do see certain industries require vaccinations (e.g., flu vaccine), such as the **healthcare** field and **education**, this approach is due to the risk of infection in the populations they serve (elderly, sick, children, etc.), and **in these cases, an employer's requirement that employees receive the vaccine is job-related and consistent with business necessity.**

**For other employers, we recommend that vaccinations be made voluntary.** As mentioned above, an employer may require vaccinations or consider providing them for free as an employee benefit, but you'll need to be prepared to respond should an employee seek an exception.

Further, we'll look to updated EEOC guidance related to a COVID-19 vaccine and its degree of "job-related and consistent with business necessity" given the direct threat to the workplace.

So, more to come on whether guidance related to a COVID-19 vaccine will vary from the EEOC's guidance for other vaccines.



# What can we require in terms of a COVID-19 vaccine?

Out of an abundance of caution, we advise clients to seek guidance from an attorney if they wish to require employee vaccinations outside of industry requirements.

If you are required to have vaccinated employees based on a law or contract, then it is a different matter, and you can enforce your policies.

If your practice is for the health and safety of clientele, then you would need to gather facts and ensure you can prove the lack of vaccination presents a clear and present danger to others.

# Questions?

Submit them via the Q&A function on your screen!

Or send to [questions@dominionpayroll.com](mailto:questions@dominionpayroll.com)



## Enter our Giveaway!

Visit our Instagram  
[@dominionpayroll](https://www.instagram.com/dominionpayroll) for details!



## DP Fundraiser for Feed More

Help us raise money for Feed More!  
DP will match total donations up to \$250!

DP Fundraising Page:  
<https://give.feedmore.org/team/334141>



Stay safe out there!

**Thank you**