

# COVID-19 Vaccination Toolkit for Employees of Healthcare & Long-Term Care Facilities

Guide, FAQs, & Sample Policies



**Littler**<sup>®</sup>

# Overview: COVID-19 Vaccination Toolkit for Employees of Healthcare & Long-Term Care Facilities

This Toolkit provides guidance to in-house legal and human resources as an employer decides on the workplace vaccination approach that best serves the needs of its organization.

## Guide

This Guide provides an update on the approval status (including the Emergency Use Authorization), availability, and distribution of the COVID-19 vaccine.

## Questions & Answers

In order to assist healthcare employers in planning for availability of the vaccine and answer many of the questions that they will face in deciding on the best approach for their operations, a series of frequently asked questions and answers have been prepared. These Q&As incorporate information provided in the EEOC's December 16, 2020 guidance regarding COVID-19 vaccinations.

## Template Policies\*

*\*included under separate cover within the Toolkit zip file, as Appendix B*

This Toolkit includes two different policies for healthcare and long-term care facilities: (1) a policy in which employee vaccinations are recommended (**non-mandatory**) for employees; and (2) a policy in which employee vaccinations are required (**mandatory**) for employees, recognizing that exceptions may be required in order to comply with applicable law. The policies need to be customized for an employer's use with the help of the Guide/Q&As.

DISCLAIMER: Please be advised that this Toolkit is not intended to provide legal advice or opinion. Such advice may only be given when related to specific fact situations. The materials are for informational purposes only, not for the purpose of establishing an attorney-client relationship and should not be relied upon as legal advice. This document is a general example. It is not a substitute for experienced legal counsel. For use in practice, it is highly recommended that experienced employment counsel review and revise any policies or procedures pursuant to the circumstances of each specific employer. Please note that this Toolkit is limited to providing guidance regarding employee-related issues that may arise regarding the COVID-19 vaccination. This Toolkit is not designed or intended to provide guidance regarding vaccine-related issues involving residents of long-term care facilities.

The materials in this Toolkit may be updated periodically in light of the rapidly evolving legal issues occurring in this area.

## Table Of Contents

<b>A. COVID-19 VACCINATION GUIDE.....</b>	<b>1</b>
1. Priority for Vaccine as Recommended by CDC.....	1
2. Decision-Making for Receipt of Vaccine at State Level .....	3
3. Access to the Vaccine.....	3
4. EEOC Guidance on Vaccinations.....	5
<b>B. FREQUENTLY ASKED QUESTIONS AND ANSWERS REGARDING A COVID-19 VACCINE .....</b>	<b>7</b>
1. How will the COVID-19 vaccine be distributed around the U.S.? .....	7
2. Who determines the priority list for distribution of the vaccine as it is made available around the U.S.? .....	7
3. How will the cost for the COVID-19 vaccination be handled? .....	8
4. If an employee already had COVID-19, should an employer consider excusing the employee from any vaccination program? .....	8
5. How many shots of the COVID-19 vaccine will be needed? .....	8
6. Can healthcare employers mandate that employees be vaccinated? .....	9
7. Has the CDC recommended that employers adopt mandatory vaccination programs for healthcare personnel?.....	10
8. Are there any legal standards that an employer has to consider in requesting that employees (or applicants) take a COVID-19 vaccine? .....	12
9. Assuming that an employer mandates the COVID-19 vaccine, what are the circumstances in which an employee can request to be excused from the vaccine? .....	14
10. How should employers address reasonable accommodation requests in circumstances in which an employee requests to be excused from a COVID-19 vaccine based on his or her religious beliefs or based on religious practices? .....	15
11. What sorts of issues should an employer consider if an employee refuses to take a COVID-19 vaccine based on a disability and/or medical-related reasons? .....	17
12. What if an employee cites pregnancy or breastfeeding as a reason for refusing an employer-mandated COVID-19 vaccination? .....	19
13. Can an employer ask workforce members if they have been vaccinated for COVID-19, including requesting proof of vaccination? .....	19
14. Can an employer disclose to third parties whether a workforce member has been vaccinated for COVID-19? .....	20
15. What are the benefits-related ramifications of an employer that wishes to provide the vaccine to employees on its premises?.....	22
16. Can an employer provide an award to employees as an incentive to be vaccinated?.....	23
17. Can employers with unionized workforces mandate vaccines for their workforces? .....	23
18. Are there potential legal risks that could arise if groups of workers protest the vaccine as part of the anti-vaccine movement? .....	25
19. Must employers pay employees for the time spent getting a vaccination?.....	26

<b>C. LIST OF APPENDICES</b> .....	<b>28</b>
APPENDIX A: Relevant Excerpts from EEOC Guidance Dated December 16, 2020 Regarding COVID-19 Vaccinations (“What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws”) .....	28
APPENDIX B: Sample COVID-19 Vaccination Policies for Healthcare and Long-Term Care Facilities .....	29
Sample Policy #1 – Non-Mandatory COVID-19 Vaccination Policy .....	29
Sample Policy #2 – Mandatory COVID-Vaccination Policy .....	29
APPENDIX C: State-Level COVID-19 Vaccine Distribution Guidance .....	29
APPENDIX D: FDA Fact Sheets Regarding Emergency Use Authorization of the Pfizer-BioNTech COVID-19 Vaccine .....	29
APPENDIX E: Littler Report on Legal Issues Tied to the COVID-19 Vaccine.....	29
<b>D. LITTLER’S VACCINATION WORKING GROUP</b> .....	<b>30</b>