

COVID-19 Vaccination Requirements: Considerations for Nonprofits

(September 13, 2021)



Can nonprofits require employees to be vaccinated?

- Yes. It is legal for nonprofits to require their employees to be vaccinated. The U.S. Department of Justice recently issued an opinion (see resources) clarifying that federal law doesn't stop private employers from requiring their staff to have vaccines that are only authorized under emergency use, as is the case for the Moderna and Johnson & Johnson vaccines for COVID-19. The Pfizer COVID-19 vaccine has now been approved by the U.S. Food and Drug Administration.
- In fact, the federal government will soon require some nonprofit workers to be vaccinated for COVID-19. On September 9, President Joe Biden issued an executive order requiring all federal contractors and subcontractors – including nonprofits that contract with the federal government – to be vaccinated for COVID-19. The executive order only applies to nonprofits that are federal contractors or subcontractors, not those that receive federal grants. President Biden also announced that:
 - He is directing the U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) to issue an emergency regulation yesterday requiring employers with more than 100 employees – including many large nonprofits – to require their employees to be vaccinated for COVID-19 or to be tested at least once a week;
 - OSHA is also developing a regulation requiring employers with more than 100 employees to provide paid time off for workers to get vaccinated or recovery from vaccinations; and
 - The Centers for Medicare & Medicaid Services (CMS) will be requiring workers in most Medicaid and Medicare reimbursed health care facilities, including hospitals, to be vaccinated for COVID-19.
- From Team Kentucky's Healthy at Work Guidance (see resources): "Entities should encourage all employees to receive vaccination for COVID-19. Consider providing assistance to employees to reduce barriers to receiving vaccination, such as allowing employees to get vaccinated during work hours."

Potential benefits of requiring vaccination:

- Improved public health outcomes: a higher vaccination rate is the best way to slow the spread of COVID-19.
- Protection of vulnerable clients (and staff)
 - Nonprofits that provide services to seniors, individuals with disabilities or other medical conditions, or children under the age of 12 have significant issues of health and safety to consider.
- Greater comfort level for clients, staff, and volunteers
 - With cases and hospitalizations on the rise, as well as growing reports of mild breakthrough cases among vaccinated people, many vaccinated individuals are wary of being in contact with unvaccinated individuals.
- Faster return to "normal" pre-pandemic operations
 - If everyone working at a nonprofit is vaccinated (and if community vaccination rates increase as more employers impose mandates), organizations can more swiftly resume their plans for re-instituting in-person services and events.
- Better manage organizational expenses - health care benefits, etc.
 - Unvaccinated employees are more likely to become ill from COVID-19, which could drive up the organization's health benefits and other costs.

This document is provided for informational purposes for nonprofits only, and is not legal advice.

With information adopted from North Carolina Center for Nonprofits,

www.ncnonprofits.org/blog/covid-19-vaccination-requirements-considerations-nonprofits

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Potential challenges of requiring vaccination:

- Limitations on employees' personal freedoms
 - For a variety of reasons, some people remain hesitant to receive COVID-19 vaccinations and/or object to any limitations on their personal liberties for philosophical or political reasons.
 - A vaccination requirement may create morale problems - or even resentment of the nonprofit where they work - for people who are hesitant or opposed to getting vaccinated.
- Loss of workers
 - Nonprofits that adopt vaccination requirements need to accept the reality that some employees may choose to leave their jobs rather than be vaccinated.
- Potential legal liability
 - There is a very slight chance that an employee (or former employee) could pursue legal action against a nonprofit in the unlikely event that they suffered health issues as a result of their employee-mandated vaccination.
 - Nonprofits could violate federal non-discrimination laws if they don't provide exceptions or accommodations for employees who are unable (or unwilling) to be vaccinated due to health or religious reasons.

Questions to consider:

- Who should decide whether a nonprofit requires its employees to get COVID-19 vaccinations?
 - While an executive director can recommend that a nonprofit require vaccinations - possibly in consultation with other staff - a vaccination policy is a significant personnel policy change for most nonprofits, so it would be appropriate for the board of directors to approve it.
 - You could call a special meeting (by conference call or Zoom) or the board could approve it by unanimous written consent using email (as long as your bylaws allow your board to use unanimous written consent votes).
- Which employees are covered?
 - Many health systems are requiring all employees (with limited exceptions) to be vaccinated, regardless of whether they are working on-site or from home. This type of broad vaccination requirement will have the greatest impact on increasing overall vaccination rates in the community. However, some nonprofits may be focused primarily on protecting the health of their own employees and clients and may choose to limit the mandate to staff who are working on-site.
- Should vaccination requirements also apply to volunteers?
 - Nonprofits that are seeking to protect their staff and clients from contracting COVID-19 and that hope to maximize vaccination rates in their community probably should consider requiring volunteers to be vaccinated. Legally, volunteer vaccination mandates are probably difficult to enforce, since volunteers generally don't receive anything of value in exchange for their service for nonprofits (meaning they can't be legally bound by a contract with the organizations that they serve).
- What exceptions should employers allow?
 - To prevent legal liability for violating the Americans with Disabilities Act or Title VII of the Civil Rights Act, it is important for nonprofits to allow exceptions to vaccination mandates for workers with disabilities, medical conditions, or religious beliefs that prevent them from being vaccinated.
 - The U.S. Equal Employment Opportunity Commission has provided useful guidance on exceptions and accommodations for individuals with health or religious reasons for not being vaccinated (see resources). Some employers are allowing workers to remain unvaccinated if they don't come into the office or if they agree to wear masks at work and take weekly COVID-19 tests to help minimize possible spread of the virus to co-workers and clients.

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- Should nonprofits provide their employees time off for vaccinations?
 - While it is not absolutely required, nonprofits should make every effort to provide paid time off for when their workers are getting vaccinated and if they need time to recover after vaccinations. This shouldn't create new financial costs for nonprofits, since the American Rescue Plan Act allows nonprofits to receive refundable payroll tax credits for the amount of paid leave they provide to their employees for their vaccinations (or to help their family members get vaccinated).
 - From Team Kentucky's Healthy at Work Guidance (see resources): "Entities should encourage all employees to receive vaccination for COVID-19. Consider providing assistance to employees to reduce barriers to receiving vaccination, such as allowing employees to get vaccinated during work hours."
- How soon should requirements take effect?
 - Realistically, nonprofits need to allow sufficient time for unvaccinated staff to schedule their vaccination appointments and receive two shots if they are getting the Pfizer or Moderna vaccines. This means that nonprofits should allow at least a month - and possibly six weeks - before requiring employees to be fully vaccinated. In the meantime, nonprofits can require employees who aren't fully vaccinated to work from home, wear masks, and/or take weekly COVID-19 tests.

Resources:

- Federal opinion, <https://www.justice.gov/olc/file/1415446/download>
- September 9 Executive Order, <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/09/09/executive-order-on-requiring-coronavirus-disease-2019-vaccination-for-federal-employees/>
- Foundation for a Healthy Kentucky
 - Resources, www.healthy-ky.org/about-us/covid-19-resources
 - Vaccine myths/facts graphics, www.dropbox.com/sh/ek7zx5lwsia346n/AAAOyQXYoMmxlCg9lhalsxUZa?dl=0
- Guidance from the EEO Commission, <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>
- KNN COVID Resources, <https://www.kynonprofits.org/coronavirus>
- Kentucky Chamber of Commerce
 - COVID Stops Here, www.kychamber.com/covidstopshere
 - Vaccination Resources for Businesses, www.kychamber.com/vaccines
 - Webinar recording: Debunking the myths about the COVID-19 vaccine with KY medical professionals, www.kychamber.com/covidvaccinemyths?_zs=jPTiA1&_zl=BNVP6
- Society for Human Resources Management (SHRM)
 - Main website, www.shrm.org/pages/default.aspx
 - Employers React to Workers who Refuse Vaccination, www.shrm.org/resourcesandtools/legal-and-compliance/employment-law/pages/if-workers-refuse-a-covid-19-vaccination.aspx
 - Sample Vaccination Policy, www.shrm.org/resourcesandtools/tools-and-samples/policies/pages/vaccination-policy-mandatory-covid19-coronavirus.aspx
- Team Kentucky COVID resources
 - Vaccine Webpage, govstatus.egov.com/ky-covid-vaccine
 - Team KY COVID-19 Vaccination Dashboard, dashboard.chfs.ky.gov/views/KYPublicFacingDashboard_16191000580170/KentuckyCOVID-19Vaccination?iid=1&isGuestRedirectFromVizportal=y&embed=y
 - Healthy at Work Guidance, chfs.ky.gov/agencies/dph/covid19/Recommended%20Minimum%20Guidance.pdf

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