



COVID-19 Vaccinations and Employees

As our employees gain wider access to the COVID-19 vaccines, here are some questions and answers to consider. We hope this is helpful, but as always, contact your local counsel for legal advice.

❓ Who is included in “education employees” eligible to get the vaccine?

The “education employees” eligible for the vaccine as of February 8 include teachers, administrators and other education staffers, like aides, custodians and CNP workers. See [ADPH News Release](#) and footnote 1 of the ADPH [Vaccination Allocation Plan](#).

❓ Are board members included in this group?

No, but individual board members may be eligible for other reasons, e.g. over age 65, high-risk conditions, working in a high risk field like healthcare or first-responder, etc.

❓ Can I require my employees to get the vaccine? If yes, should I?

Yes and no. Generally, employers can require employees to be vaccinated except for those who need medical or religious exemptions. However, particularly because the currently available vaccines have only received “emergency use authorization” from the FDA rather than full approval, employers should carefully consider whether they should require employees to take the vaccine.

The better question is not whether to mandate the vaccine, but should you. Education leaders should be sensitive to employee fears related to the speed the vaccines were developed and concerns from some in communities of color related to past medical abuses committed by government officials and healthcare providers.

Mandating vaccines in this environment would not be helpful. The better strategy is to encourage employees to get vaccinated by educating them and modeling support for vaccines while being respectful of those with concerns.

❓ Can I ask an employee if he or she has been vaccinated?

Yes. An employer can ask if an employee has been vaccinated, but if the employee says no or declines to answer, the employer should not inquire further. The reason an employee has not been vaccinated may touch on their medical condition. For that reason, the employer should not solicit additional information.

❓ In an effort to encourage my employees to get vaccinated, can I offer incentives?

Presumably yes. By law, school boards can offer monetary or other incentives for taking some action beyond their normal work. We assume taking a vaccine to stem a deadly pandemic which is crippling schools would fall into the category of allowable incentives, but be mindful of your messaging. Some may interpret that offer as proof that the vaccine may be risky.

❓ Do I have to give employees leave to get vaccinated?

No, because you're not mandating vaccinations, but if you want to encourage as many employees as possible to be vaccinated, granting them time to do so would be helpful. Unless you're holding a vaccine clinic at one of your schools where you have more control over the flow and timing, many employees may have to go to first-come, first-serve vaccine clinics in your region. This could take hours. You could consider granting one "vaccine day" (in the form of paid administrative leave) that they can use to get the vaccine. Of course, they would need to show verification that they were vaccinated. If the goal is to get or keep your schools open, you should do everything you can to encourage employees to get vaccinated.

❓ I have an employee who doesn't want to come to work and doesn't want to get the vaccine. What can I do?

The answer to this question is the same remains the same as it was before the vaccine became available. While we don't recommend mandating the vaccine, the employer decides whether employees have to report to the worksite—not the employee. If an employee refuses to come to work, we recommend the four-step process we proposed in the fall related to employees who were afraid to come to work because of the virus:

- If an employee expresses concern about returning to the workplace, have a conversation with him and determine if there's a way to allay those concerns, e.g. change in work environment, schedule or duties which reduces contact with others, etc.



- If changes cannot be made to the work environment, consider if there are any remote work options that may be appropriate.
- If remote work is not an option, the employee may use his accrued personal or vacation leave. Emergency paid sick leave under the FFCRA is not an option because “fear” is not one of the six reasons for taking such leave. Also accrued sick leave would not be an option under Alabama state law.
- If none of these options resolve the situation, the employer can consider an unpaid leave of absence or even termination based on the employee’s failure to perform the essential functions of his job, but this should be used as a last resort.

If accommodations are offered, be mindful of the precedent being set and make sure you offer these accommodations in a fair and nondiscriminatory manner. Also, periodically evaluate the situation to determine if changes need to be made.

? **Once we begin vaccinations, do we still have to wear masks and socially distance?**

Yes. According to the CDC, wearing masks and social distancing will remain a part of our daily lives for the foreseeable future—even as we get vaccinated. Until vaccinations are more widely available and accepted, and scientists are able to learn more about the impact of the vaccine, we should all continue proper mitigation efforts.

? **Once an employee is vaccinated, do they have to quarantine if they come in close contact with a positive person?**

Yes. Again, scientists are still learning about the impact the vaccine and whether those who are vaccinated can still become infected and/or transmit the virus. Until we have more information, those who have been vaccinated will still have to quarantine if they are exposed to a positive person.

? **Can we use our school as a vaccination site? Can our school nurses perform the vaccinations?**

Yes to both. Using the school site as a central location can be a welcome benefit to your employees, especially in rural areas where availability may be limited, but be mindful of potential liability with such a program. While there are strong immunity protections in place, including our state-agent immunity, sovereign immunity and federal immunity like the PREP Act (Public Readiness and Emergency Preparedness Act), we must be mindful of potential personal injury claims and privacy concerns that are triggered by our employees receiving medical information as part of the vaccination process. Before you offer one of your schools as a vaccination site, consult with your local counsel.

