



COVID-19 Vaccine:Workplace Issues

May 17, 2021

Presented by



Nathaniel M. Glasser Member of the Firm nglasser@ebglaw.com 202-861-1863



Jennifer Barna Senior Counsel jbarna@ebglaw.com 973-639-5232

2021 Epstein Becker & Green, P.C. | All Rights Reserved. | **ebglaw.c**

Workplace COVID-19 Vaccine mandates

EEOC permits mandatory vaccination policies, *subject to*:

- Reasonable accommodations for disability or sincerely held religious belief
- Unionized workforce: Review CBA/bargaining history
- State or local laws

To mandate or not?

- Business/safety reason(s)
- Scope: Condition of employment or something less (e.g. to enter the office)?
- Your employee population: Enthusiastically Vaccinated or Hesitant?
 - Anonymous survey
 - How to handle those who object?
 - Protected reasons
 - Other reasons

Workplace COVID-19 Vaccine Mandates - Continued

Is time spent obtaining vaccine compensable?

What kind of proof?

Vendors/clients/visitors?

Adverse reactions/OSHA 300 workplace illness logs

Reasonable Accommodations (Federal Law)



- Direct threat? If yes, attempt to provide accommodation
- May exclude unvaccinated employee from worksite, but may not automatically terminate
- Interactive process, confidentiality, no retaliation
- Pregnant Employees
- 2 Sincerely-Held Religious Belief, Practice or Observance
 - Reasonable accommodation, unless it is an undue hardship
 - Assume request is based on sincerely held religious belief
 - Objective basis for questioning the religious nature or sincerity of belief
- 3 Philosophical or Other Non-Protected Reason
 - Under federal law, no legal requirement to excuse
 - Practical issues what if a large percentage of employees fall into this category?
 - If employer opts to accommodate, do so in a non-discriminatory manner



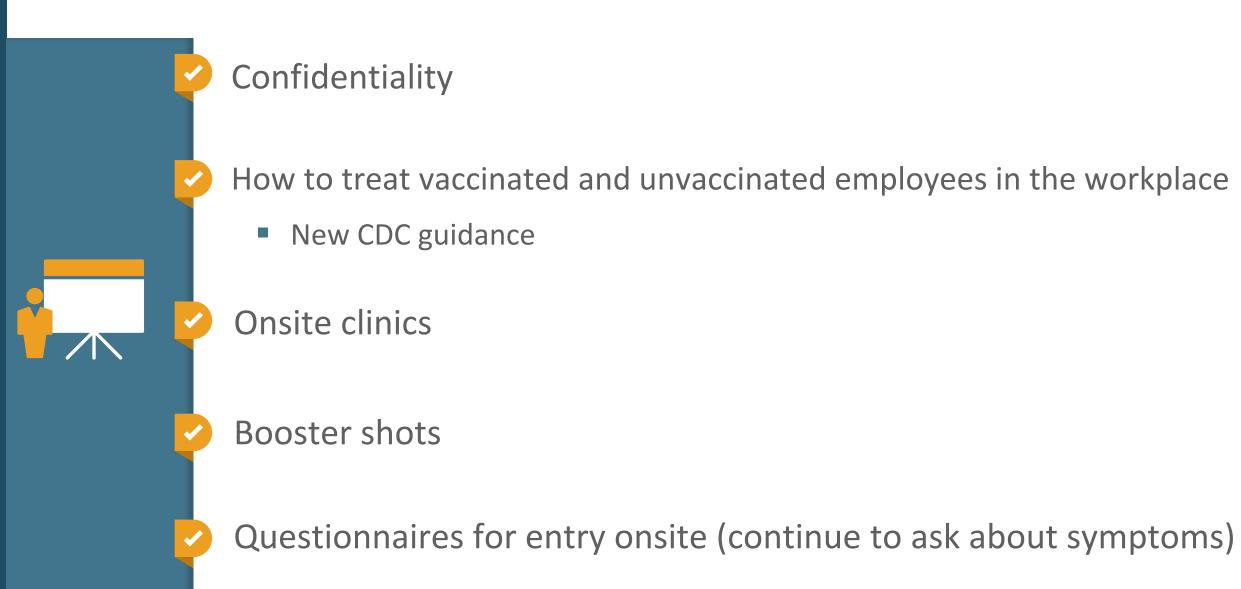
Incentives

- ERISA/ACA and ADA wellness program rules
- EEOC de minimis standard –
 withdrawn but additional guidance is
 expected

Education campaign

- Written materials
- Presentation by trusted medical professional

Miscellaneous



o © 2021 Epstein Becker & Green, P.C. | All Rights Reserved. | ebglaw.com



- Jun. 2: Hate Crimes and Mental Health: Strategies and Resources for Employers
- Jun. 10/17: Where Do We Go From Here? Employee Health & Wellbeing for a New Era