



Do's and Don'ts of Workplace COVID-19 Vaccinations

July 2021

As Community Action Agencies (CAAs) continue to adapt and evolve in response to the global COVID-19 pandemic, their strategies for protecting employees from serious illness resulting from COVID-19 has shifted from mitigating the risk of transmission via measures like PPE and social distancing to promoting vaccinations. This article provides guidance for CAAs that want to encourage employee vaccinations and offers some key do's and don'ts as they engage in vaccine-related efforts.

Vaccine Mandates

If your CAA mandates that employees get vaccinated against COVID-19 before physically entering the workplace:

DO

- ✓ Ensure that your mandatory vaccine policy is consistent with applicable state law. While such policies are permissible under federal law, some states are considering or have enacted legislation prohibiting employee vaccine mandates or restricting employers from asking for proof of vaccination.
- ✓ Make sure your CAA has a documented process in place for considering requests for medical accommodations under the Americans with Disabilities Act (ADA) and religious accommodations under Title VII of the Civil Rights Act.
- ✓ Have a termination process to address employees who refuse to comply with the policy and don't have a basis for legal accommodation.

DON'T

- ✗ Selectively apply the mandate in a way that discriminates against members of a protected class (race, religion, nationality, gender, disability status, etc.).
- ✗ Automatically terminate employees who refuse to get vaccinated and cannot be accommodated. Employers should determine if any other rights apply under federal workplace anti-discrimination laws or other federal, state, and local authorities before taking adverse employment action against an unvaccinated employee.
- ✗ Ask pre-screening questions that are likely to elicit protected medical information if your CAA requires employees to get a COVID-19 vaccine from the CAA or its agent. Your CAA should only ask these questions if they are job-related and consistent with a business necessity.

One Approach: North South Community Action, Inc. (NSCA) decides to implement a mandatory vaccination policy for all employees returning to NSCA's offices. NSCA's written policy requires these employees to provide a copy of their CDC COVID-19 Vaccination Record Card. Employees who cannot be vaccinated due to a medical disability or religious belief are directed to contact the HR Department to determine whether a reasonable accommodation exists to enable the employee to return to work in person without posing an undue hardship to NSCA.



Vaccine Administration

If your CAA offers to vaccinate employees on a voluntary basis:

DO

- ✓ Give employees the option not to be vaccinated if they do not answer pre-screening questions. Employers can ask pre-screening questions, even if they are likely to elicit protected medical information, as the ADA does not apply to these questions when vaccinations are voluntarily administered.
- ✓ Provide vaccine recipients and/or their caregivers with the FDA-issued [Emergency Use Authorization \(EUA\) Fact Sheet](#) for each type of vaccine administered by your organization.
- ✓ Keep any employee medical information obtained in the course of administering the vaccination program confidential and stored separately from their general personnel files.

DON'T

- ✗ Take adverse action against an employee, including harassing the employee, for refusing to participate in a voluntary CAA-administered vaccination program.

One Approach: NSCA contracts with a local healthcare clinic to offer on-site Moderna COVID-19 vaccinations to its employees and family members, and participation is entirely voluntary. Before vaccination, employees are provided with the FDA's EUA Fact Sheet for the Moderna vaccine, and employees are asked to answer a number of pre-vaccination screening questions, including questions about their medical history and past allergy reactions, as well as to sign a statement acknowledging that they have read and understood the fact sheet prior to receiving their vaccination.

Proof of Vaccination


If your CAA asks employees for proof of vaccination:

DO

- ✓ Ask only to see documentation or other confirmation of vaccination, rather than an employee's medical records.
- ✓ Keep any collected information regarding employees' vaccination status confidential and stored separately from their general personnel files.

DON'T

- ✗ Ask any follow-up questions that are likely to elicit protected medical information (e.g., "why haven't you been vaccinated?"), unless your organization can show that asking the question is job-related and consistent with business necessity.

- 
- ✓ Check state and local laws to determine whether you may ask employees for proof of vaccination. Some states and localities have passed or introduced legislation limiting—or in some cases eliminating—an employer’s ability to ask for proof of vaccination status from its clients and/or employees as a condition of entering the workplace. CAAs considering implementing any employee vaccination policy should consult with local counsel to understand what their limitations might be under state and local law.

One Approach: As a condition of returning to the physical workplace, NSCA requires all employees to submit answers to a questionnaire form that reads, in relevant part: “Have you been vaccinated against COVID-19? If yes, please attach a copy of your CDC Vaccination Record Card”. The form also asks employees if they have recently experienced symptoms of COVID-19, or if they or someone they have been in contact with has tested positive for COVID-19 in the last 10 days. Upon receipt of each questionnaire and attached documents, NSCA stores the forms in a confidential file kept separate from the employees’ general personnel files.

Vaccine Incentives

If your CAA offers incentives to employees to get vaccinated:

DO

- ✓ Give all employees an equal opportunity to receive the incentive, including employees who cannot get vaccinated due to a disability or sincerely-held religious belief.
- ✓ Have a written policy and administer the incentives in accordance with the Uniform Guidance’s Cost Principles, if the incentives are paid for via federal funds (see [2 C.F.R. §200.437 - Employee health and welfare costs](#); [2 C.F.R. § 200.431 - Compensation--fringe benefits](#)).

DON'T

- ✗ Make incentives so valuable or extravagant that an employee feels coerced into getting vaccinated, if your CAA administers the vaccines directly to employees. This limit operates as a safeguard against employees feeling pressured into disclosing protected medical information to their employer, since employees would have to answer pre-vaccination, disability-related screening questions. However, if a third party with no relation to your CAA administers the vaccine, such as a pharmacy or mass vaccination site, this limit on vaccine incentives does not apply.

One Approach: NSCA offers all employees two days’ paid time off if they choose to get vaccinated. The PTO is administered pursuant to a written policy approved by NSCA’s board and paid for out of federal funds permitting such use, such as CARES CSBG and supplemental Head Start funding.



Vaccine Education

If your CAA wants to educate employees about the COVID-19 vaccines:

DO

- ✓ Provide employees with educational resources and information—such as print posters, fact sheets, and online resource references—relating to the safety and efficacy of COVID-19 vaccines. These materials are made available by [the CDC](#), the [Mayo Clinic](#), the [FDA](#), and your local healthcare providers.
- ✓ Pay for vaccine outreach and education efforts using state and federal funds that allow for such use. See OCS Information Memoranda [157](#) and [161](#) regarding the use of CARES CSBG funding for this purpose.

DON'T

- ✗ Coerce employees into receiving the vaccination through intimidation or under threat of termination or any other adverse employment action.
- ✗ Mislead employees with false information about COVID-19 vaccines or any other preventative measures.

One Approach: NSCA puts up CDC-provided posters in conspicuous places around the workplace with truthful and accurate information about the safety and efficacy of COVID-19 vaccines, as well as distributing fact sheets with similar information to its employees.

This publication is part of the CARES CSBG Legal T/TA Center. It was created by CAPLAW in the performance of the U.S. Department of Health and Human Services (HHS), Administration for Children and Families (ACF), Office of Community Services Cooperative Agreement - Grant Award Number 90ET0467-03-02. Any opinion, findings, conclusions, or recommendations expressed in these materials are those of the author(s) and do not necessarily reflect the views of HHS and ACF. The contents of this publication are intended to convey general information only and do not constitute legal advice. Any communication through this publication or through CAPLAW's website does not constitute or create an attorney-client relationship. If you need legal advice, please contact CAPLAW or another attorney directly.