

COVID-19 Vaccination Considerations for the Real Estate Industry

By Joanne Braddock Lambert,

February 9, 2021

Meet the Authors



Joanne Braddock Lambert

(She/Her)

Principal

407-246-8447

Joanne.Lambert@jacksonlewis.com

Related Services

COVID-19

Disability, Leave and Health Management

Real Estate

COVID-19 vaccines continue to roll out across the country at various speeds and under various state plans. Real estate industry employers are considering how to approach COVID-19 vaccinations within their workplaces. Some employers in the real estate industry have essential employees who are working in person to keep operations, such as residential and commercial buildings, functioning. Real estate industry employers also may have employees who are voluntarily working in person — either in office buildings or out in the field — and doing so on either a regular or sporadic basis when they are not working remotely.

The real estate industry faces unique challenges in designing workplace vaccination programs based on the various types of workplaces and the nature of job positions. Whether commercial or residential property management companies, or sales and leasing brokerages, all real estate employers will all be affected. This article offers some key considerations and practicalities.

Determine whether to implement a mandatory COVID-19 vaccination policy or one that encourages employees to get vaccinated.

The issue of a mandatory versus an “encouraging” policy is ripe with issues that have not been fully developed under the law. Factors to consider include the Emergency Use Authorization status of the COVID-19 vaccines, implications under state workers’ compensation laws, the availability of the vaccine in the employer’s geographic areas, the tier system under state plans that outline the order of individuals who may receive the vaccine, and for unionized employers, collective bargaining obligations. While there is no current law that requires employees to get a COVID-19 vaccination, this is a swiftly evolving topic, and there could be related laws passed in the future on the federal or state levels. As a result, real estate industry employers should monitor these developments and be prepared to modify reopening plans accordingly.

At this time, [guidance](#) issued by the U.S. Equal Employment Opportunity Commission (EEOC) does not expressly prohibit employers from implementing mandatory vaccinations under federal anti-discrimination laws. The EEOC does not expressly state that employers can mandate vaccines, but that seems implicit in its guidance, which also notes certain obligations, such as exceptions and accommodations based on disability, pregnancy, and employees’ sincerely held religious beliefs. Issues surrounding informed consent requirements should also be carefully reviewed if considering a mandatory vaccination program.

Keep in mind, the EEOC only deals with federal EEO laws. It does not address state or local laws. That means employers must stay up to speed on current pending state legislation on COVID-19 vaccines. Presently, there are state bills pending that take both sides on permitting or prohibiting mandatory vaccinations, so this issue could become

more complicated over time.

Real estate industry employers should take into account these considerations, which will likely require involvement of human resources, legal counsel, operations, and safety personnel, when designing a mandatory or “encouraged” vaccination program that works best for the company’s operational needs, culture, and the overall safety of its employees.

Take the first few steps to consider your program’s scope.

Regardless of whether you decide on a mandatory or “encouraging” policy, there are some practical steps that can help you understand the reality of the program you are considering implementing:

Identify the various states in which your employees work as well as their jobs in each state.

Determine whether any of the jobs are classified as “essential” under each state’s definitions. Some states have nuances as to which jobs are essential. For example, [Massachusetts' COVID-19 Essential Services Order](#) lists residential and commercial real estate services, including settlement services, as essential, but the [guidance on New York Executive Order 202.6](#) has specific restrictions around real estate workers:

Real estate services shall be conducted remotely for all transactions, including but not limited to title searches, appraisals, permitting, inspections, and the recordation, legal, financial and other services necessary to complete a transfer of real property; provided, however, that any services and parts therein may be conducted in-person only to the extent legally necessary and in accordance with appropriate social distancing and cleaning/disinfecting protocols; and nothing within this provision should be construed to allow brokerage and branch offices to remain open to the general public (i.e. not clients).

Review each state’s vaccination plan to determine where your employees’ jobs fall in the tiered rollout of vaccinations, including any time frames for the rollout. In doing so, it may become clear that some employees will be eligible to receive the vaccine at an earlier time than others. Employees performing in-person appraisals, valuations, or showings might be prioritized due to the public-facing nature of their work and state definitions of essential workers. Some states and locales also have rules requiring employees to delay vaccinations if they are working remotely. For example, this might affect employees performing remote title or appraisal work, depending upon whether the employees have in-person contact with others while performing this work.

This information will help you understand when your employees may be eligible for and able to receive a COVID-19 vaccine, which could impact the timing of your vaccination program. Although this is constantly evolving, this information will identify what elements of your vaccination program need to be initially developed.

Help your employees find where to get vaccinated when eligible.

Even when an employee is eligible to receive a COVID-19 vaccination, finding a place to get one may prove challenging from a practical perspective. In an effort to make it easier for employees to get vaccinated, consider putting together educational information on

how they can apply for vaccinations. Educating employees on website links, necessary proof of eligibility, and where they fall under a specific state plan for vaccine eligibility can decrease employee confusion and stress about finding this information. You should also determine whether essential employees need a letter from the company to confirm their essential employee status and, if so, have one prepared on company letterhead so it is readily available for your employees if and when they need it.

Additionally, decide whether you will require employees to provide proof of their vaccination if implementing a mandatory program or implementing a program that “encourages” COVID-19 vaccinations. If so, your inquiries of your employees with respect to the vaccine should end there. The EEOC has indicated that asking for other medical information could be an impermissible disability-related inquiry under the federal Americans with Disabilities Act (ADA).

What about third-party onsite or contracted vaccinations?

Other considerations arise when an employer provides onsite COVID-19 vaccinations or contracts with a third party to administer the vaccine. This is only possible if the pre-vaccination screening questions do not include questions about genetic information, and employee receipt of the vaccine is job-related and consistent with business necessity; or receipt of vaccinations are voluntary.

That's not the end of the journey.

Other issues for real estate industry employers to consider are processes to address medical and religious accommodation requests, pay obligations for the time that employees spend to receive the vaccination, potential absences post-vaccination if employees have side effects, paid leave that might be available, planning for employee objections to mandatory vaccination policies, safety measures and practices to keep the workplace intact, confidentiality of vaccination information obtained and evolving CDC, federal, state, and local guidance. Teaming up your human resources, legal, safety, and occupational health business partners is key to working through these and other emerging and dynamic issues.

©2021 Jackson Lewis P.C. This material is provided for informational purposes only. It is not intended to constitute legal advice nor does it create a client-lawyer relationship between Jackson Lewis and any recipient. Recipients should consult with counsel before taking any actions based on the information contained within this material. This material may be considered attorney advertising in some jurisdictions. Prior results do not guarantee a similar outcome.

Focused on labor and employment law since 1958, Jackson Lewis P.C.'s 1000+ attorneys located in major cities nationwide consistently identify and respond to new ways workplace law intersects business. We help employers develop proactive strategies, strong policies and business-oriented solutions to cultivate high-functioning workforces that are engaged, stable and diverse, and share our clients' goals to emphasize inclusivity and respect for the contribution of every employee. For more information, visit <https://www.jacksonlewis.com>.