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Recent COVID-19-Related Employment Law Developments



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Employers should continue to check for newly enacted COVID-19-related laws, as well as federal, state, and local COVID-19 guidance.

In March 2021, New York, California, and Illinois began to require or advise that employees receive paid time off for COVID-19 vaccinations. Earlier, on March 8, 2021, the Centers for Disease Control and Prevention (CDC) issued its first recommendations for fully vaccinated individuals and have subsequently supplemented its guidance.

Paid Time Off for Vaccinations

New York. On March 12, 2021, New York enacted a law granting public and private employees in New York up to four hours of paid leave to receive a COVID-19 vaccine injection. Employees who receive a two-dose vaccination are eligible for up to four hours for each dose. Employees are paid at their regular rate of pay during this leave time. Leave taken under this new law cannot be charged against any other entitled leave, but under certain circumstances, may be waived by unions through collective bargaining. Discrimination and retaliation against employees for exercising their rights under this law are prohibited. This law is effective immediately and is set to expire on Dec. 31, 2022.

The New York Department of Labor (NYDOL) recently issued FAQs, which among other things, clarified that leave under this law is not available to an employee for purposes of assisting another person in receiving the vaccine. While leave under this law does not apply retroactively to COVID-19 vaccine injections prior to March 12, the NYDOL commented that employers are able to voluntarily offer this leave on a retroactive basis.

California. Effective March 29, 2021, California amended its paid sick leave law to provide COVID-19 supplemental paid sick leave if an employee is unable to work or telework due to certain reasons related to COVID-19, including to obtain a vaccine and recover from any side effects. California's supplemental paid sick leave applies to public or private sectors employees who work for employers with more than 25 employees. Retroactive to Jan. 1, 2021, covered employees are entitled to up to 80 hours of COVID-19 related sick leave through Sept. 30, 2021. Exempt employees must be paid the same rate of pay as wages calculated for other paid leave times. Non-exempt employees must be paid the highest of the following for each hour of leave:

- regular rate of pay for the workweek in which leave is taken;
- state minimum wage;
- local minimum wage; or
- average hourly pay for preceding 90 days (not including overtime pay).

Employees are not required to be paid more than \$511 per day and \$5,110 in total for California's COVID-19 supplemental paid sick leave.

Illinois. Similarly, in March 2021, the Illinois Department of Labor (IDOL) issued guidance regarding employee time off for COVID-19 vaccination. While not law, the IDOL guidance instructs employers to provide paid time off for employees to receive a COVID-19 vaccination if the employer requires its employees to be vaccinated. The IDOL guidance also suggests that employers allow employees to utilize sick leave, vacation time, other paid time off, or, at a minimum, flexibility to take unpaid time off in order to get vaccinated when the employer does not mandate its employees be vaccinated as a condition of employment. The IDOL guidance says that under Illinois's Employee Sick Leave Act, employers should allow employees to take time off to assist family members in receiving the vaccine if the employer's policy permits employees themselves to take time off to receive the COVID-19 vaccination.

COVID-19 Safety Guidelines

The CDC has now issued guidance for individuals who are *fully vaccinated*. Individuals are considered fully vaccinated two weeks after they have received either a single-dose vaccine or the second dose of a two-dose vaccine. However, individuals who have not hit the two-week mark are not fully protected and should continue to take the same precautions as those who have not been vaccinated. Among other things, the CDC advises that, generally, fully vaccinated people can:

- visit with other fully vaccinated people and unvaccinated people from a single household who are at low risk for severe COVID-19 disease indoors without wearing masks or physical distancing;
- refrain from quarantining and testing following a known exposure if asymptomatic;
- resume domestic travel and refrain from testing before or after travel or self-quarantine after travel; and
- refrain from testing before leaving the United States for international travel (unless required by the destination) and refrain from self-quarantine after arriving back in the United States.

At this time, the CDC recommends that fully vaccinated people should continue to:

- wear a well-fitted mask, practice physical distancing, and adhere to other prevention measures when: in public; visiting with unvaccinated people who are at increased risk for severe COVID-19 disease or who have an unvaccinated household member who is at increased risk for severe COVID-19 disease; and visiting with unvaccinated people from multiple households;
- avoid medium and large in-person gatherings, crowds, and poorly ventilated spaces;
- isolate and get tested if experiencing COVID-19 symptoms, especially following a potential exposure;
- not visit or attend a gathering if they have tested positive for COVID-19 in the prior 10 days;
- follow guidance issued by individual employers; and
- follow CDC and state and local health department travel requirements and recommendations.

According to the CDC, COVID-19 vaccines are effective at keeping people from experiencing severe COVID-19 symptoms, and there is a growing body of evidence that suggests that fully vaccinated people are less likely to have asymptomatic infection and potentially less likely to transmit SARS-CoV-2 to others, including co-workers.

The increased data regarding COVID-19 vaccines have also prompted states to enforce different COVID-19 safety measures. For example, beginning April 10, 2021, New York no longer requires asymptomatic travelers entering New York from another country, U.S. state, or territory to quarantine or get tested for COVID-19, but domestic travelers who are not fully vaccinated or who have not recovered from COVID-19 during the previous three months are still recommended to get tested and consider quarantine. New York recommends delaying international travel until fully vaccinated. International travelers, per CDC requirements, must show proof of a negative test or recent COVID-19 recovery to board planes headed to the United States.

Nonetheless, the CDC advises it is still investigating how long vaccine protection lasts and how much vaccines protect against emerging SARS-CoV-2 variants. These open questions necessitate caution around employers eliminating COVID-19 safety measures even though their workforce may be largely vaccinated.

Some states, such as Arkansas, Indiana, Iowa, Mississippi, Montana, North Dakota, Texas, Wisconsin and Wyoming have ended their mask mandates. While employees may point to the CDC's recommendation to relax certain measures for fully vaccinated people or a state's decision to end its mask mandate as a reason to not follow an employer's COVID-19 safety measures, employers are free to maintain safety precautions, including social distancing and mask requirements. Moreover, some cities have instituted mask rules apart from state guidelines, so companies should continue to monitor local regulations.

The CDC has yet to issue detailed guidance for returning to on-site employment after workforces have been largely vaccinated. However, on March 25, 2021, the CDC instructed employers to continue following the CDC's prior guidance for employers responding to COVID-19, including wearing well-fitting masks, washing hands often, cleaning high-touch surfaces often, and making sure employees are social distancing, as well as avoiding crowds and poorly ventilated spaces. The CDC also suggests that other safety measures should remain in place, including using physical barrier protections that were previously installed. The CDC cautions that the widespread vaccination of employees is but one consideration for returning to on-site work. Other factors the CDC advises employers to consider include:

- the necessity for employees to physically return to work;
- the transmission rates of COVID-19 in the community;
- the ability of employees to continue to practice prevention measures when in the workplace; and
- local or state mandates for business closure restrictions.

On April 2, 2021, the CDC issued post-vaccination guidance, focusing on minimizing disruptions to workforces due to possible side effects from the COVID-19 vaccines. The CDC warns that side effects experienced one to three days after vaccination may overlap and be confused with signs and symptoms of COVID-19. As a result of this overlap, employers may unnecessarily be excluding employees from their workplace during the first few days post-vaccination due to fear that employees may be infectious. To minimize the impact of post-vaccination side effects, the CDC suggests that employers:

- encourage employees to schedule vaccination appointments one to two days before planned days off from work;
- consider having employees stagger vaccination appointments;
- inform employees about the potential for common side effects after vaccination and provide information about what to do if they experience side effects;
- provide or identify options for COVID-19 viral testing, so it is accessible for employees with systemic signs and symptoms after vaccination; and
- offer flexible, nonpunitive sick leave options for employees with systemic signs and symptoms after vaccination.

Employers should continue to check for newly enacted COVID-19-related laws, as well as federal, state, and local COVID-19 guidance. As more employees become vaccinated, employers should be prepared to revise their safety guidelines and policies, subject to applicable laws, recommendations, or guidance.

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