

Employers start preparing for the supreme court's vaccine mandate ruling

OSHA's vaccine mandate continues to cause stress and frustration for employers, employees, and many more. Recently, packs of lawyers have begun descending on the Supreme Court to argue the validity of OSHA's hotly contested vaccine mandate rule. That means employers are in limbo as to the fate of this rule. However, as we continue to encourage — regardless of how the court rules, you could ignore all the legal maneuvering and institute your own mandate. Many employers already have.

A matter of policy

From dress codes to working hours, you're in charge of setting workplace policies. A vaccine mandate, with accommodations for employees who can't get shots because of underlying medical conditions or their sincerely held religious beliefs, is just another item on the list.

Private employers' vaccine mandates have withstood judicial scrutiny time and again.

In addition, the Supreme Court has thus far allowed OSHA's mandate to stand, so technically, it's in effect right now. It's also arguable the court won't impose a stay while it's deciding the case—the outcome remains to be seen. Finally, there will be a time gap, since the court isn't going to rule immediately from the bench.

So it would be prudent to create a vaccine mandate at least as robust as OSHA's. *Advantage:* Having a policy in line with OSHA's requirements will prove your good faith now and later, should the court rule in OSHA's favor.

Here's some help to get you started. *Tip:* Since federal agencies change their recommendations often in response to new developments, instead of getting bogged down with too many details, where possible, refer and link to the FDA's, CDC's or OSHA's current policies.

1. Define your target audience. You have choices. You can require all employees to be vaccinated or only those who regularly come into the office or interact with the public. You can exclude employees who never come into the office, either because they work from home or they work outdoors.

2. Define your vaccination policy. In addition to their initial one or two shots, will you also require employees to get boosters? Will this be all the boosters the FDA approves? So far, the FDA has approved only one round of booster shots, but it's likely it will approve more.

3. Define your timeline. By what date will employees be required to get their first shot? Then their second shot? Then their boosters? Employees who take two vaccinations get them three weeks apart; the booster is usually five months later (recently shortened from six months). Tag someone to keep track of these timelines and remind employees when it's time for them to receive their boosters.

4. Set pay/leave policies. If you want employees to get all their shots, incentivize them to do so. You don't need to go overboard. OSHA's pay/leave policies should suffice, but because of the omicron variant, wait times at vaccine provider facilities may be longer now.

5. Determine the proof you'll accept. Employees should be required to present their vaccination cards to you every time after a shot. You'll need to record this information and keep it confidential. Alternatively, you could accept app-based confirmation; several states have approved apps for this purpose.

6. Define your testing policy. Vaccination doesn't ward off illness; it just lessens the severity. So all employees should be tested. Vaccinated employees can be tested less frequently than unvaccinated employees. A testing policy may cover the tests you'll accept, whether you'll pay for them (e.g., yes for vaxxed employees, no for unvaxxed employees) and how, when and by whom they're administered.

7. Develop a protocol for vaccinated employees who test positive. In accordance with the latest [CDC guidelines](#), vaxxed employees who test positive should be sent home; they can work from home, if their jobs allow. If they're working, they must be paid. If they're not working, decide whether you'll pick up the tab or whether they must use their paid sick time. *Head's up:* Some states require you to extend paid sick leave to employees and other states have specific pandemic-related paid sick leave laws.

8. Determine the protocol for unvaxxed employees. The EEOC says you should accommodate employees who can't get shots because of medical or religious reasons.

Unvaxxed employees should be required to wear masks, be separated from other employees and be tested regularly. The testing interval is up to you—every week, every day, every other day. Employees can be forced to shoulder those costs. Unless you have a good reason, employees should be tested on their own time.

9. Set discipline for employees who flout the rules. Employees should know their actions—such as presenting a forged vax card—will have consequences. Decide what those consequences are, including termination. Then communicate them to employees.