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What employers can do when a worker refuses to be vaccinated

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An April survey by Monmouth University [found 21% of Americans don't plan to take the Covid-19 vaccine](#). For employers, that means there's a good chance at least one vaccine holdout will be on their staffs.

It's a scenario experts say can cause tension and anxiety within a business, and it's just the latest in a [series of high-stakes vaccine situations employers are facing as they return to the office](#).

"I think employers feel a lot of anxiety and nobody wants to be responsible for employees getting sick," said [Kristen Prinz](#) of Chicago-based [The Prinz Law Firm](#).

Employment attorneys and workplace experts say there are several ways companies can address the different challenges that will arise in a business where not all employees are vaccinated, including tension between vaccinated and unvaccinated workers.

Prinz said companies should engage with employees on both sides of the issue. That could include conducting surveys and one-on-



PROVIDENCE HEALTH

Experts foresee some conflicts in offices between vaccinated and unvaccinated workers.

one conversations to gauge comfort levels. Employers would just need to tread carefully if those conversations involve specific questions around a worker's vaccination status.

Ultimately, a goal can be getting all employees to a place where they are comfortable and feel safe in their work environment. That could involve strategic work station placement or, in a hybrid environment, decisions about which employees come into the office on which days.

Prinz said the issue is likely to be more challenging for larger employers. Companies where all employees need to be onsite every day will also face difficulties.

For companies that have high-risk employees based on their medical status, Prinz said there could be scenarios where employers need to make an accommodation, such as allowing them to work from home to avoid unvaccinated coworkers. They need to comply with the Americans with Disabilities Act and Equal Employment Opportunity Commission requirements.

Given the events of the past year, Prinz said companies attempting to deny accommodation requests could face headwinds if employees have been working at home for the past 14 months.

"They're gonna have a harder time saying, 'We can't reasonably accommodate someone from working from home,'" Prinz said.

Confronting the unvaccinated

Prinz said employers can also take a more hard-line approach if they want to reduce the number of unvaccinated workers in their ranks.

Outside of situations involving medical or religious exemptions, experts say nothing in federal law prohibits employers from mandating the vaccine – although they note guidance has been unclear in many cases. They could even terminate a worker for failing to get it. Companies would need to be aware of state or local laws, as well as collective bargaining agreements, if they choose to take those steps.

That being said, most companies haven't been mandating the vaccine at this point, in part because it's often not practical to enforce the policy across the board.

"Employers will have to decide if they're really willing to fire an employee who refuses the vaccine," said [Martha Boyd](#), a shareholder at Baker Donelson Bearman Caldwell & Berkowitz PC, [in a recent story on vaccine mandates](#). "I advise employers to always think about their very best employee — the No. 1 salesperson — and ask themselves if the employer is willing to terminate that salesperson's employment if she refuses the vaccine. Or what if 10 of your best employees refuse?"

Prinz does expect to see the percentage of employers requiring the Covid-19 vaccine to increase over time, especially once vaccines are granted full authorization by the Food and Drug Administration, rather than the emergency-use authorization they are currently operating under. Even so, [experts say mandates are a complicated proposition](#).

The regulatory picture

The Centers for Disease Control & Prevention's latest mask guidance is another driving force behind those expectations, because it put an even brighter spotlight on vaccination status.

If employees feel uncomfortable around an employee who is unvaccinated and is not required to wear a mask, Prinz there is potential for the situation to be reported to the Occupational Safety and Health Administration.

So far, OSHA has generally defaulted to CDC guidance, which [recently allowed fully vaccinated employees to go without a mask](#).

[Kevin Troutman](#), co-chair of the health-care practice at Atlanta-based law firm Fisher Phillips and leader of its vaccine subcommittee, said the best course of action is to be consistent with policies and safety guidelines.

"(Employers) need to keep in mind that OSHA may issue some more specific rules that may not dovetail exactly with what the CDC has said, but we think they'll be reasonably close," Troutman said.

If an OSHA issue does arise, Troutman said an employer's consistent enforcement of mask protocols for unvaccinated workers would help demonstrate tangible steps the company took toward workplace safety.

Outside of regulatory guidelines, he said another focus area for businesses with unvaccinated workers is creating an environment where individuals aren't harassed or isolated based on their status.

Experts said companies should also be wary of creating scenarios in which only vaccinated employees have access to opportunities, such as training or career development activities. Doing so could put the company at risk of discrimination claims if affected employees have a medical or religious exemption.

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