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Labor Commissioner

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## **Oregon employers can require employees to be vaccinated: your questions answered**

State guidance and [Frequently Asked Questions](#) for workers and employers

“COVID-19 vaccines are becoming more and more widely available each day, and vaccinations hold the key to returning Oregonians to life less restricted by the pandemic,” says Labor Commissioner Val Hoyle. “We all must do everything we can to slow the spread of COVID-19 as quickly as possible – we’re in this together.”

The federal government has provided [guidance](#) to employers about requiring vaccines and Oregon law generally matches that guidance. Employers may require workers to receive a COVID-19 vaccine, with some exceptions.

If employers do not require vaccines, there are many other COVID precautions that employers can mandate to protect their workers and customers. These include continued mask requirements and physical distancing, remote work, and proactive vaccine education.

Employers cannot require COVID-19 vaccinations if they employ specific types of workers or have contractual limitations. Workers may also make requests for exemptions or accommodations because of religious beliefs or a disability that prevents them from receiving a COVID-19 vaccine.

By state law, workers who cannot be required to get a vaccine include people licensed or certified to provide health care, employees of health care facilities, licensed health care providers or clinical laboratories, firefighters, law enforcement officers, corrections officers, or parole and probation officers.

For employers with a unionized workforce, a collective bargaining agreement could directly prohibit mandatory vaccines in the workplace. An individual employment contract could also explicitly prohibit vaccines, but is much less common.

Under civil rights and disability laws, employers with mandatory COVID-19 vaccine policies must consider requests for exceptions for individuals with sincerely held religious convictions and those with a disability that prevents them from receiving a COVID-19 vaccination. Employers are not required to grant an exception if it creates an “undue hardship” on the business or a “direct threat” to the safety of the employee or others.



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Frequently asked questions and more information for workers and employers is available below on our website at <https://www.oregon.gov/boli/workers/Pages/covid-vaccine.aspx>.

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## [Frequently asked questions \(also available on BOLI website\)](#)

### **For Workers**

*My employer has mandated that I get a COVID-19 vaccine. Where do I get one and how do I provide proof?*

Until the virus is available for the general public, contact your healthcare provider for current eligibility for the COVID-19 vaccination and stay in touch with your employer – especially regarding documentation they'll expect to verify vaccination.

*My employer has mandated a vaccine, but I don't want to get one – what do I do?*

With a few exceptions, employers have a right to require a COVID-19 vaccination. If the reason you don't want to get vaccinated arises out of a sincerely held religious conviction or a disability, you can request a reasonable accommodation from your employer.

*My employer has mandated a vaccine, but I am unable to get one because I am allergic – what do I do?*

There are two different COVID-19 vaccinations available now with more on the way. Depending on your allergy, it is possible one of the other formulations may be tolerable. If not, discuss your concern with your employer to work out what other accommodations may be possible.

*My employer will not require anyone to get the COVID-19 vaccine and is not requiring masks or social distancing at work. What should I do?*

Employers are not required to mandate the vaccine. You certainly could get the vaccine yourself as soon as it becomes available and encourage your coworkers to do the same. Your employer does need to ensure that you have a workplace free of known dangers. If your employer or workplace isn't following the Governor's executive orders around COVID-19 protections or you feel your workplace isn't safe, you can make a complaint with OSHA here: <https://osha.oregon.gov/workers/Pages/index.aspx>.

*Can employers offer a financial incentive to employees to get a COVID-19 vaccination?*

The answer here depends on the kind of incentive offered. Oregon's pay equity law requires equal pay for comparable work, so paying vaccinated employees more than others who could not get a vaccination (because of religious conviction or a disability) could create liability, even as a one-time bonus.

Employers could potentially offer incentive programs that don't result in a pay differential (e.g., all employees might get a bonus once a certain percentage of the workforce either obtains the vaccine or is exempted because of bona fide religious conviction or a disability). Even so, employers need to ensure individuals are not retaliated against for their religion or disability.

## **For Employers**

*I'd like to mandate vaccines for my employees. What are the first steps I should take to do so?*

With increasing availability of the COVID-19 vaccination, planning for vaccination requirements should start now.

1. Provide employees with as much advance notice and information as possible. Information on the development and safety of COVID-19 vaccines is available [here](#).
2. Provide a path (or multiple paths) for questions. While few employees are exempt from required vaccinations, you want to ensure employees with a need for accommodation have a clear path to pursue that conversation.
3. Consider whether you want to provide the vaccination onsite/with a contractor or require employees to obtain the vaccination from their own health care provider. Requiring employees to obtain COVID-19 vaccination from their own providers reduces the possibility of pre-vaccination screening triggering ADA restrictions on disability-related inquiries.

*Our office has required employees to receive vaccines, do we have to pay them for the time to go get the vaccine?*

That depends. Receiving a vaccination is not a medical exam, but it likely amounts to medical attention. Under wage and hour law, time spent by an employee waiting for and receiving medical attention on the premises or at the direction of the employer during the employee's normal working hours on days when the employee is working would need to be paid. OAR 839-020-0046(2). On the other hand, if an employee chooses to get a required vaccination off hours and off premises, the time need not be paid. An employee that opts to receive a required vaccination off premises but during work hours, could use any available Oregon sick leave. (Sick leave must be provided with pay by employers with 10 or more Oregon employees – six or more if the organization has an establishment in Portland.)

*I have determined I will not mandate vaccines because our employee contract prohibits it. What are other steps I can take to minimize risk of COVID-19 and/or encourage employees to get the vaccine?*

Widespread vaccination is our best way forward to a return to normal. That said, certain types of workers may not be required to get a vaccine. As you noted, these include employees working under a contract that specifically prohibits making vaccination a condition of employment.

Employers can certainly continue to require measures already recommended to protect both employees and customers from COVID-19. These include requiring masks, creating physical distancing, encouraging remote work and proactive education. Of course, as the vaccine becomes more widely available, you might consider allowing workers to go get the vaccine during work hours.

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**EMPLOYEE EDUCATION:** Just as employers have been educating workers throughout this pandemic – about masks, about handwashing, about social distancing, employers can proactively educate and encourage vaccination. As more vaccines become available employers may want to consider onsite vaccination events, as many do with the annual flu vaccine.

*We have an employee that has already told us that they have a disability that would prevent them from getting a vaccine.*

Under EEOC guidance, "If an employer determines that an individual who cannot be vaccinated due to disability poses a direct threat at the worksite, the employer cannot exclude the employee from the workplace—or take any other action—unless there is no way to provide a reasonable accommodation (absent undue hardship) that would eliminate or reduce this risk so the unvaccinated employee does not pose a direct threat." Employers should not assume a termination is required — a conversation with the affected employee may turn up viable alternatives.