

## FAQs – EEOC – Hiring and Vaccinations

### Hiring and Onboarding

Under the ADA, prior to making a conditional job offer to an applicant, disability-related inquiries and medical exams are generally prohibited. They are permitted between the time of the offer and when the applicant begins work, provided they are required for everyone in the same job category.

**1. If an employer is hiring, may it screen applicants for symptoms of COVID-19?**

Yes. An employer may screen job applicants for symptoms of COVID-19 after making a conditional job offer, as long as it does so for all entering employees in the same type of job. This ADA rule applies whether or not the applicant has a disability.

**2. May an employer take an applicant's temperature as part of a post-offer, pre-employment medical exam?**

Yes. Any medical exams are permitted after an employer has made a conditional offer of employment. However, employers should be aware that some people with COVID-19 do not have a fever.

**3. May an employer delay the start date of an applicant who has COVID-19 or symptoms associated with it?**

Yes. According to current CDC guidance, an individual who has COVID-19 or symptoms associated with it should not be in the workplace.

**4. May an employer withdraw a job offer when it needs the applicant to start immediately but the individual has COVID-19 or symptoms of it?**

Based on current CDC guidance, this individual cannot safely enter the workplace, and therefore the employer may withdraw the job offer.

**5. May an employer postpone the start date or withdraw a job offer because the individual is 65 years old or pregnant, both of which place them at higher risk from COVID-19?**

No. The fact that the CDC has identified those who are 65 or older, or pregnant women, as being at greater risk does not justify unilaterally postponing the start date or withdrawing a job offer.

However, an employer may choose to allow telework or to discuss with these individuals if they would like to postpone the start date.

### Vaccinations

**1. Under the ADA, Title VII, and other federal employment non-discrimination laws, may an employer require all employees physically entering the workplace to be vaccinated for COVID-19?**

The federal EEO laws do not prevent an employer from requiring all employees physically entering the workplace to be vaccinated for COVID-19, subject to the reasonable accommodation provisions of Title VII and the ADA and other EEO considerations discussed below. These principles apply if an employee gets the vaccine in the community or from the employer.

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In some circumstances, Title VII and the ADA require an employer to provide reasonable accommodations for employees who, because of a disability or a sincerely held religious belief, practice, or observance, do not get vaccinated for COVID-19, unless providing an accommodation would pose an undue hardship on the operation of the employer's business.

As with any employment policy, employers that have a vaccine requirement may need to respond to allegations that the requirement has a disparate impact on, or disproportionately excludes, employees based on their race, color, religion, sex, or national origin under Title VII (or age under the Age Discrimination in Employment Act (40+)). Employers should keep in mind that because some individuals or demographic groups may face greater barriers to receiving a COVID-19 vaccination than others, some employees may be more likely to be negatively impacted by a vaccination requirement.

It would also be unlawful to apply a vaccination requirement to employees in a way that treats employees differently based on disability, race, color, religion, sex (including pregnancy, sexual orientation and gender identity), national origin, age, or genetic information, unless there is a legitimate non-discriminatory reason.

**2. What are some examples of reasonable accommodations or modifications that employers may have to provide to employees who do not get vaccinated due to disability; religious beliefs, practices, or observance; or pregnancy?**

An employee who does not get vaccinated due to a disability (covered by the ADA) or a sincerely held religious belief, practice, or observance (covered by Title VII) may be entitled to a reasonable accommodation that does not pose an undue hardship on the operation of the employer's business. For example, as a reasonable accommodation, an unvaccinated employee entering the workplace might wear a face mask, work at a social distance from coworkers or non-employees, work a modified shift, get periodic tests for COVID-19, be given the opportunity to telework, or finally, accept a reassignment.

Employees who are not vaccinated because of pregnancy may be entitled (under Title VII) to adjustments to keep working, if the employer makes modifications or exceptions for other employees. These modifications may be the same as the accommodations made for an employee based on disability or religion.

**3. How can employers encourage employees and their family members to be vaccinated without violating the EEO laws, especially the ADA and GINA?**

Employers may provide employees and their family members with information to educate them about COVID-19 vaccines, raise awareness about the benefits of vaccination, and address common questions and concerns. Also, under certain circumstances employers may offer incentives to employees who receive COVID-19 vaccine. As of May 2021, the federal government is providing vaccines at no cost to everyone ages 12 and older.

There are many resources available to employees seeking more information about how to get vaccinated:

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- The federal government's online [vaccines.gov](https://www.vaccines.gov) site can identify vaccination sites anywhere in the country (or <https://www.vacunass.gov> for Spanish). Individuals also can text their zip code to "GETVAX" (438829) – or "VACUNA" (822862) for Spanish – to find three vaccination locations near them.
- CDC's website offers a link to a listing of [local health departments](#), which can provide more information about local vaccination efforts.
- In addition, the CDC offers [background information for employers about workplace vaccination programs](#). The CDC provides a complete communication "tool kit" for employers to use with their workforce to educate people about getting the COVID-19 vaccine. (Although originally written for essential workers, it is useful for all workers.) See [CDC's Essential Workers COVID-19 Toolkit](#). Employers should provide the contact information of a management representative for employees who need to request a reasonable accommodation for a disability or religious belief, practice, or observance or to ensure nondiscrimination for an employee who is pregnant.
- Some employees may not have reliable access to the internet to identify nearby vaccination locations or may speak no or limited English and find it difficult to make an appointment for a vaccine over the phone. The CDC operates a toll-free telephone line that can provide assistance in many languages for individuals seeking more information about vaccinations: 800-232-4636; TTY 888-232-6348.
- Some employees also may require assistance with transportation to vaccination sites. Employers may gather and disseminate information to their employees on low-cost and no-cost transportation resources available in their community serving vaccination sites and offer time-off for vaccination, particularly if transportation is not readily available outside regular work hours.

### **General**

#### **4. Is information about an employee's COVID-19 vaccination confidential medical information under the ADA? (5/28/21)**

Yes. The ADA requires an employer to maintain the confidentiality of employee medical information, such as documentation or other confirmation of COVID-19 vaccination. This ADA confidentiality requirement applies regardless of where the employee gets the vaccination. Although the EEO laws themselves do not prevent employers from requiring employees to bring in documentation or other confirmation of vaccination, this information, like all medical information, must be kept confidential and stored separately from the employee's personnel files under the ADA.

### **Mandatory Employer Vaccination Programs**

#### **5. Under the ADA, may an employer require a COVID-19 vaccination for all employees entering the workplace, even though it knows that some employees may not get a vaccine because of a disability? (12/16/20, updated 5/28/21)**

Yes, provided certain requirements are met. Under the ADA, an employer may require all employees to meet a qualification standard that is job-related and consistent with business necessity, such as a safety-related standard requiring COVID-19 vaccination. However, if a particular employee cannot meet such a safety-related qualification standard because of a

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disability, the employer may not require compliance for that employee unless it can demonstrate that the individual would pose a “direct threat” to the health or safety of the employee or others in the workplace. A “direct threat” is a “significant risk of substantial harm” that cannot be eliminated or reduced by reasonable accommodation. [29 C.F.R. 1630.2\(r\)](#). This determination can be broken down into two steps: determining if there is a direct threat and, if there is, assessing whether a reasonable accommodation would reduce or eliminate the threat.

To determine if an employee who is not vaccinated due to a disability poses a “direct threat” in the workplace, an employer first must make an individualized assessment of the employee’s present ability to safely perform the essential functions of the job. The factors that make up this assessment are: (1) the duration of the risk; (2) the nature and severity of the potential harm; (3) the likelihood that the potential harm will occur; and (4) the imminence of the potential harm. The determination that a particular employee poses a direct threat should be based on a reasonable medical judgment that relies on the most current medical knowledge about COVID-19. Such medical knowledge may include, for example, the level of community spread at the time of the assessment. Statements from the CDC provide an important source of current medical knowledge about COVID-19, and the employee’s health care provider, with the employee’s consent, also may provide useful information about the employee. Additionally, the assessment of direct threat should take account of the type of work environment, such as: whether the employee works alone or with others or works inside or outside; the available ventilation; the frequency and duration of direct interaction the employee typically will have with other employees and/or non-employees; the number of partially or fully vaccinated individuals already in the workplace; whether other employees are wearing masks or undergoing routine screening testing; and the space available for social distancing.

If the assessment demonstrates that an employee with a disability who is not vaccinated would pose a direct threat to self or others, the employer must consider whether providing a reasonable accommodation, absent undue hardship, would reduce or eliminate that threat. Potential reasonable accommodations could include requiring the employee to wear a mask, work a staggered shift, making changes in the work environment (such as improving ventilation systems or limiting contact with other employees and non-employees), permitting telework if feasible, or reassigning the employee to a vacant position in a different workspace.

As a best practice, an employer introducing a COVID-19 vaccination policy and requiring documentation or other confirmation of vaccination should notify all employees that the employer will consider requests for reasonable accommodation based on disability on an individualized basis. (See also [K.12](#) recommending the same best practice for religious accommodations.)

- 6. Under the ADA, if an employer requires COVID-19 vaccinations for employees physically entering the workplace, how should an employee who does not get a COVID-19 vaccination because of a disability inform the employer, and what should the employer do? (12/16/20, updated 5/28/21)**  
An employee with a disability who does not get vaccinated for COVID-19 because of a disability must let the employer know that he or she needs an exemption from the requirement or a change at work, known as a reasonable accommodation. To request an accommodation, an individual does not need to mention the ADA or use the phrase “reasonable accommodation.”

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Managers and supervisors responsible for communicating with employees about compliance with the employer's vaccination requirement should know [how to recognize an accommodation request from an employee with a disability](#) and know to whom to refer the request for full consideration. As a best practice, before instituting a mandatory vaccination policy, employers should provide managers, supervisors, and those responsible for implementing the policy with clear information about how to handle accommodation requests related to the policy.

Employers and employees typically engage in a flexible, interactive process to identify workplace accommodation options that do not impose an undue hardship (significant difficulty or expense) on the employer. This process may include determining whether it is necessary to obtain supporting medical documentation about the employee's disability.

In discussing accommodation requests, employers and employees may find it helpful to consult the [Job Accommodation Network \(JAN\) website](#) as a resource for different types of accommodations. JAN's materials about COVID-19 are available at <https://askjan.org/topics/COVID-19.cfm>. Employers also may consult applicable [Occupational Safety and Health Administration \(OSHA\) COVID-specific resources](#). Even if there is no reasonable accommodation that will allow the unvaccinated employee to be physically present to perform his or her current job without posing a direct threat, the employer must consider if telework is an option for that particular job as an accommodation and, as a last resort, whether reassignment to another position is possible.

The ADA requires that employers offer an available accommodation if one exists that does not pose an undue hardship, meaning a significant difficulty or expense. See [29 C.F.R. 1630.2\(p\)](#). Employers are advised to consider all the options before denying an accommodation request. The proportion of employees in the workplace who already are partially or fully vaccinated against COVID-19 and the extent of employee contact with non-employees, who may be ineligible for a vaccination or whose vaccination status may be unknown, can impact the ADA undue hardship consideration. Employers may rely on [CDC recommendations](#) when deciding whether an effective accommodation is available that would not pose an undue hardship.

Under the ADA, it is unlawful for an employer [to disclose that an employee is receiving a reasonable accommodation](#) or [to retaliate against an employee for requesting an accommodation](#).

**7. If an employer requires employees to get a COVID-19 vaccination from the employer or its agent, do the ADA's restrictions on an employer making disability-related inquiries or medical examinations of its employees apply to any part of the vaccination process? (12/16/20, updated 5/28/21)**

Yes. The ADA's restrictions apply to the screening questions that must be asked immediately prior to administering the vaccine if the vaccine is administered by the employer or its agent. An [employer's agent](#) is an individual or entity having the authority to act on behalf of, or at the direction of, the employer.

The ADA generally restricts when employers may require medical examinations (procedures or tests that seek information about an individual's physical or mental impairments or health) or make disability-related inquiries (questions that are likely to elicit information about an individual's

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disability). The act of administering the vaccine is not a “medical examination” under the ADA because it does not seek information about the employee’s physical or mental health.

However, because the pre-vaccination screening questions are likely to elicit information about a disability, the ADA requires that they must be “job related and consistent with business necessity” when an employer or its agent administers the COVID-19 vaccine. To meet this standard, an employer would need to have a reasonable belief, based on objective evidence, that an employee who does not answer the questions and, therefore, cannot be vaccinated, will pose a direct threat to the employee’s own health or safety or to the health and safety of others in the workplace. Therefore, when an employer requires that employees be vaccinated by the employer or its agent, the employer should be aware that an employee may challenge the mandatory pre-vaccination inquiries, and an employer would have to justify them under the ADA.

The ADA also requires employers to keep any employee medical information obtained in the course of an employer vaccination program confidential.

### ***Voluntary Employer Vaccination Programs***

- 8. Under the ADA, are there circumstances in which an employer or its agent may ask disability-related screening questions before administering a COVID-19 vaccine *without* needing to satisfy the “job-related and consistent with business necessity” standard? (12/16/20, updated 5/28/21)**

Yes. If the employer offers to vaccinate its employees on a voluntary basis, meaning that employees can choose whether or not to get the COVID-19 vaccine from the employer or its agent, the employer does not have to show that the pre-vaccination screening questions are job-related and consistent with business necessity. However, the employee’s decision to answer the questions must be voluntary. The ADA prohibits taking an adverse action against an employee, including harassing the employee, for refusing to participate in a voluntary employer-administered vaccination program. An employer also must keep any medical information it obtains from any voluntary vaccination program confidential.

- 9. Under the ADA, is it a “disability-related inquiry” for an employer to inquire about or request documentation or other confirmation that an employee obtained the COVID-19 vaccine from a third party in the community, such as a pharmacy, personal health care provider, or public clinic? (12/16/20, updated 5/28/21)**

No. When an employer asks employees whether they obtained a COVID-19 vaccine from a third party in the community, such as a pharmacy, personal health care provider, or public clinic, the employer is not asking a question that is likely to disclose the existence of a disability; there are many reasons an employee may not show documentation or other confirmation of vaccination in the community besides having a disability. Therefore, requesting documentation or other confirmation of vaccination by a third party in the community is not a disability-related inquiry under the ADA, and the ADA’s rules about such inquiries do not apply.

However, documentation or other confirmation of vaccination provided by the employee to the employer is medical information about the employee and must be kept confidential.

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**10. May an employer offer voluntary vaccinations only to certain groups of employees? (5/28/21)**

If an employer or its agent offers voluntary vaccinations to employees, the employer must comply with federal employment nondiscrimination laws. For example, not offering voluntary vaccinations to certain employees based on national origin or another protected basis under the EEO laws would not be permissible.

**11. What should an employer do if an employee who is fully vaccinated for COVID-19 requests accommodation for an underlying disability because of a continuing concern that he or she faces a heightened risk of severe illness from a COVID-19 infection, despite being vaccinated? (5/28/21)**

Employers who receive a reasonable accommodation request from an employee should process the request in accordance with applicable ADA standards.

When an employee asks for a reasonable accommodation, whether the employee is fully vaccinated or not, the employer should engage in an interactive process to determine if there is a disability-related need for reasonable accommodation. This process typically includes seeking information from the employee's health care provider with the employee's consent explaining why an accommodation is needed.

For example, some individuals who are immunocompromised might still need reasonable accommodations because their conditions may mean that the vaccines may not offer them the same measure of protection as other vaccinated individuals. If there is a disability-related need for accommodation, an employer must explore potential reasonable accommodations that may be provided absent undue hardship.

**Title VII and COVID-19 Vaccinations**

**12. Under Title VII, how should an employer respond to an employee who communicates that he or she is unable to be vaccinated for COVID-19 (or provide documentation or other confirmation of vaccination) because of a sincerely held religious belief, practice, or observance? (12/16/20, updated 5/28/21)**

Once an employer is on notice that an employee's sincerely held religious belief, practice, or observance prevents the employee from getting a COVID-19 vaccine, the employer must provide a reasonable accommodation unless it would pose an undue hardship. Employers also may receive religious accommodation requests from individuals who wish to wait until an alternative version or specific brand of COVID-19 vaccine is available to the employee. Such requests should be processed according to the same standards that apply to other accommodation requests.

EEOC guidance explains that the definition of religion is broad and protects beliefs, practices, and observances with which the employer may be unfamiliar. Therefore, the employer should ordinarily assume that an employee's request for religious accommodation is based on a sincerely held religious belief, practice, or observance. However, if an employee requests a religious accommodation, and an employer is aware of facts that provide an objective basis for questioning either the religious nature or the sincerity of a particular belief, practice, or observance, the employer would be justified in requesting additional supporting information. See also [29 CFR 1605](#).

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Under Title VII, an employer should thoroughly consider all possible reasonable accommodations, including telework and reassignment. For suggestions about types of reasonable accommodation for unvaccinated employees. In many circumstances, it may be possible to accommodate those seeking reasonable accommodations for their religious beliefs, practices, or observances.

Under Title VII, courts define “undue hardship” as having more than minimal cost or burden on the employer. This is an easier standard for employers to meet than the ADA’s undue hardship standard, which applies to requests for accommodations due to a disability. Considerations relevant to undue hardship can include, among other things, the proportion of employees in the workplace who already are partially or fully vaccinated against COVID-19 and the extent of employee contact with non-employees, whose vaccination status could be unknown or who may be ineligible for the vaccine. Ultimately, if an employee cannot be accommodated, employers should determine if any other rights apply under the EEO laws or other federal, state, and local authorities before taking adverse employment action against an unvaccinated employee

**13. Under Title VII, what should an employer do if an employee chooses not to receive a COVID-19 vaccination due to pregnancy? (12/16/20, updated 5/28/21)**

Under Title VII, some employees may seek job adjustments or may request exemptions from a COVID-19 vaccination requirement due to pregnancy.

If an employee seeks an exemption from a vaccine requirement due to pregnancy, the employer must ensure that the employee is not being discriminated against compared to other employees similar in their ability or inability to work. This means that a pregnant employee may be entitled to job modifications, including telework, changes to work schedules or assignments, and leave to the extent such modifications are provided for other employees who are similar in their ability or inability to work. Employers should ensure that supervisors, managers, and human resources personnel know how to handle such requests to avoid [disparate treatment in violation of Title VII](#).

*The EEOC enforces workplace anti-discrimination laws, including the Americans with Disabilities Act (ADA) and the Rehabilitation Act (which include the requirement for reasonable accommodation and non-discrimination based on disability, and rules about employer medical examinations and inquiries), Title VII of the Civil Rights Act (which prohibits discrimination based on race, color, national origin, religion, and sex, including pregnancy), the Age Discrimination in Employment Act (which prohibits discrimination based on age, 40 or older), and the Genetic Information Nondiscrimination Act. Note: Other federal laws, as well as state or local laws, may provide employees with additional protections.*

<https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws#K.5>

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