

If a Company Requires a COVID-19 Vaccine, What's a Manager's Role?

By Dana Wilkie
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Your company has decided that all employees should get the COVID-19 vaccine, unless they can show a religious, medical or disability-related reason for not doing so.

However, 40 percent of U.S. workers say they probably or definitely won't get the vaccine, even though it reduces the spread and severity of COVID-19. Seventy percent of that group say they won't get the vaccine even if their employer requires it and their refusal would mean losing their jobs.

Those recent findings from Society for Human Resource Management (SHRM) research (<https://pages.shrm.org/futurework>) present obvious challenges for workplace managers: They need to be armed with facts about the vaccine based on science, understand the legal issues of requiring employees to be vaccinated, and be prepared to listen to and counsel workers who are nervous about getting the vaccine.

"While 60 percent of organizations say they will not require the vaccination, I believe we will see employers strongly encourage vaccination in a broad range of enterprises and even consider offering employee incentives [to be vaccinated]," said SHRM President and Chief Executive Officer Johnny C. Taylor, Jr., SHRM-SCP. "Creating a safe workplace will be a collaborative effort between HR, business leaders and employees."

Feedback

Challenges to Returning to Work

Organizations that want to bring their staffs back to the workplace face two challenges: workers who are reluctant to take the vaccine and workers who'd rather continue to work from home.

The most commonly reported reasons why U.S. workers probably or definitely won't get vaccinated, according to the survey, are that they are concerned about possible side effects (69 percent), they plan to wait and see if it's safe and then possibly get it later (58 percent), and they don't trust COVID-19 vaccines (41 percent).

The survey also found that while 27 percent of organizations plan to bring all employees back to the worksite when the COVID-19 vaccine becomes more widely available, more than half of U.S. workers would permanently work from home full time if they were given the option (52 percent). Within this group, 45 percent would accept up to a 5 percent cut in salary to work from home full time, and 8 percent would accept a cut of up to 20 percent or more.

"The number of employees who indicate they will not get the vaccine, even at the risk of losing their job, coupled with the large number of employees who said they would be willing to accept a reduction in salary in exchange for permanently working from home, raises a series of important questions for organizations," said SHRM Chief Knowledge Officer Alex Alonso, Ph.D., SHRM-SCP.

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COVID-19 Vaccination Resources

(www.shrm.org/hr-today/news/hr-news/Pages/COVID-19-Vaccination-Resources.aspx)

Vaccines: The Facts and the Law

If a company requires workers to get a COVID-19 vaccine, a manager is one of the first people a worker will go to with concerns or questions, say several workplace experts.

"Employees trust medical professionals, faith leaders and their employers far more than they trust politicians or 'big pharma,'" said A. Kevin Troutman, a member of Fisher Phillips' COVID-19 task force. "Hearing why their employer thinks [vaccination is] important for the business is critical to helping employees understand" why they should get a vaccine.

Managers need to be armed with facts about the vaccine based on science from reputable authorities such as the U.S. Centers for Disease Control and Prevention, the World Health Organization, and local health authorities.

"Don't practice medicine if you are not licensed, but provide good resources with known expertise," advised Katherine Dudley Helms, the office managing shareholder of the Columbia, Ohio, office of Ogletree Deakins. "The FDA [U.S. Food and Drug Administration] is a good resource about the vaccines themselves and reactions. Don't go find random things on the Internet that cannot be verified."

Managers should also be prepared to tell employees the business justification for getting a vaccine. Those justifications need to be agreed upon by HR and senior leaders and might include information about returning to the workplace, increased productivity, protection of co-workers and return to normal operating conditions.

From a legal standpoint, an employer can take disciplinary action against an employee who refuses a vaccine, unless the worker refuses the vaccine on religious, pregnancy or disability-related grounds (www.shrm.org/resourcesandtools/legal-and-compliance/employment-law/pages/if-workers-refuse-a-covid-19-vaccination.aspx), in which case the employer may need to explore an accommodation with the employee, said Amanda Sonneborn, a partner in King & Spalding's Global Human Capital & Compliance practice in Chicago. For instance, the manager may want to explore whether the employees can work remotely or at a workstation that is isolated from other employees.

"All efforts should be made to reassign the employee to a remote-work position or have them work in a physical space that does not endanger others," said Rod Robertson, owner of Briggs Capital, a boutique international investment bank. "Each step in this process should be documented, and management should have the non-complying employee sign off on each step in this process."

Managers should also be trained to recognize an accommodation request, noted Howard Lavin, a partner in the New York City offices of Stroock.

"Employees typically don't use the word 'accommodation,' but that doesn't relieve the company from making an individualized accommodation determination," he said.

And managers must be consistent, not arbitrarily allowing some workers to refuse the vaccine while requiring it for others. Once the employer is making judgments about who should be exempt from the vaccine for reasons other than legal protections, workers may raise potential disparate treatment claims.

" 'Mandatory' means you don't make an exception for your best employees and top performers," Dudley Helms warned. "I once had a case with a client who made the flu vaccination mandatory and, lo and behold, the head of HR refused to take it."

Perhaps most importantly, Robertson said, "perceived employee coercion must be avoided at all costs. Every step must be documented with employee sign-off. Lawsuits will come as soon as employees who feel pushed out by the firm seek reimbursement."

TIPS FOR MANAGERS HANDLING VACCINE-SHY WORKERS

Rod Robertson, owner of Briggs Capital, a boutique international investment bank, and Condon A. McGlothlen, a partner in the labor and employment practice at Seyfarth in Chicago, offer these tips for talking with workers who refuse the COVID-19 vaccine for reasons other than those related to religion, medical conditions or a disability.

1. Offer employees the opportunity to ask questions without an audience around—such as in a company-wide forum. Instead, a manager can meet with the worker one-on-one.
2. “As part of management, I would set up an internal committee with human resources and the individual's supervisor to review the concerns,” Robertson said. “The employee would meet with them, and a decision would be made about whether their position allowed for remote work through the end of 2021, or at the point when the government declared herd immunity and they would be able to rejoin the workforce. This time lag would allow for government guidelines to come out on moving forward.”
3. Listen to and validate the worker's concerns. For example, you might say, “You're right to be thinking these vaccines sound awfully new and different. They are,” McGlothlen noted. Or, “You're right to be skeptical of some big pharmaceutical companies involved. I know I am when the pharmacist tells me the generic price versus the brand name price. But did you know one vaccine was developed by a husband and wife team of brilliant scientists working mostly by themselves, and another came from Oxford University?”
4. Ask if the employee is interested in more information. “About half will say yes,” McGlothlen predicted. “If they say yes, ask what might make a difference to them: Hearing from doctors? Hearing from co-workers who've been vaccinated? Hearing from somebody vaccinated a month ago? Then have at the ready resources who can answer their questions or address particular concerns.”
5. Encourage them to speak with a doctor, especially their own doctor if they have one, McGlothlen said. If not, have multiple physicians' contact information on hand. “Physicians and public health officials are far more respected than politicians and lawyers these days.”
6. Emphasize the positives of moving beyond COVID-19. “Fear and guilt don't motivate people,” McGlothlen said. “Positive experiences do: being with family and loved ones; spending time with friends; going out to celebrate a birthday or anniversary. Maybe ask the employee what he has missed the most during lockdown.”

Feedback

Walking the Talk

Because employees place great stock in the examples set by their leaders, it would not be unreasonable for companies to ask managers to take the vaccine, subject to medical and religious accommodation issues, Sonneborn said.

"As with all employment policies, managers carry the burden of not just talking the talk, but walking the walk," she said. "Vaccinations are no different. Managers need to buy in at the start if the employer is going to have a more effective chance of convincing skeptical employees to voluntarily vaccinate as well."

However, this approach might backfire, warned Condon A. McGlothlen, a partner in the labor and employment practice at Seyfarth in Chicago.

"Even if the manager wants to lead by example ... some health care workers got upset when executives 'rolled up their sleeve' and were seen as taking vaccines away from front-line workers who needed it. Just remember—and politely remind others—not all good intentions are good ideas."

Plan Ahead for Time Off

Finally, managers can't know how a worker might react to the vaccine, so it's wise to prepare for some workers to take time off if necessary—even if they are relatively young and healthy, Dudley Helms said.

"My 86-year-old father said that other than a tiny bit of soreness at the injection site, he could not tell that he got" the vaccine, she said. "On the other hand, it put my very fit sister in bed for a day and a half. [Managers] need to decide ahead of time if employees do have side effects, will the employee take regular sick time, or will there be a special category to allow time off? If an employee has an attendance issue, he or she might not want to take the vaccine if any absence would put him or her over the allowable time out of work."

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