

Should Employers Add Booster Shots to Their COVID-19 Vaccine Policies?

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This article has been updated.

All U.S. adults are now eligible to receive a COVID-19 vaccine booster, so long as a certain number of months have passed since their last dose. As employers revise their vaccination policies, they may be wondering if they should require workers to get an extra jab to be considered "fully vaccinated." Here's what employment law attorneys had to say.

At least for now, employment law attorneys recommend that businesses hold off on mandating booster shots.

"At this point, I think it is probably too soon to make those updates," said Jim Hermon, an attorney with Dykema in Detroit.

John Thomas Jr., an attorney with McGuireWoods in Tysons, Va., noted that employers are focused on helping their employees get over the hurdle of initial vaccination. "Some geographic areas—and some industries—are still struggling to reach a critical mass of people willing to get the shot in the first place."

FEATURED RESOURCE CENTER

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

Boosters Approved for All Adults

The FDA initially authorized a single booster shot of the Pfizer-BioNTech and Moderna COVID-19 vaccines for specific high-risk individuals. On Nov. 19, however, the FDA and the U.S. Centers for Disease Control and Prevention (CDC) gave the green light for all adults to receive a booster shot six months after their second jab.

Since October, the FDA and CDC have recommended a second vaccination for recipients of the Johnson & Johnson vaccine, at least two months after their first dose.

Notably, the CDC still defines "fully vaccinated" (<https://www.cdc.gov/coronavirus/2019-ncov/vaccines/different-vaccines.html>) as follows:

- Two weeks have passed since the person's second dose in a two-dose series, such as the Pfizer or Moderna vaccines.
- Two weeks have passed since the person received a single-dose vaccine, such as Johnson & Johnson's Janssen vaccine.

"Although skepticism abounds about whether the definition of 'fully vaccinated' will evolve to require boosters, right now boosters are optional," Thomas noted. "Employers have relied on public health guidance from the CDC and state health departments to educate their employees on the effectiveness of the vaccine, and I expect those will remain the most common sources of information regarding the booster."

For now, the CDC said that the approval of booster shots "should not distract from the critical work of ensuring that unvaccinated people take the first step and get an initial COVID-19 vaccine."

Thomas said employers in certain industries should pay particular attention to the public health guidance surrounding boosters. These industries and jobs include first responders, education, food and agriculture, manufacturing, corrections, public transit, and grocery stores. Workers in these industries face a higher risk of exposure and transmission.

Vaccine Directives Face Legal Challenges

Employers with at least 100 employees should pay close attention to whether the COVID-19 Emergency Temporary Standard from the Occupational Safety and Health Administration takes effect. The rule has been halted during a legal challenge (www.shrm.org/ResourcesAndTools/legal-and-compliance/employment-law/pages/sixth-circuit-to-review-osa-workplace-vaccine-or-testing-rule.aspx), but if the rule is upheld, it will require covered businesses to ensure their workers get vaccinated or show proof of a negative COVID-19 test each week.

Additionally, federal contractors have to receive their shots by Jan. 4 (www.shrm.org/ResourcesAndTools/legal-and-compliance/employment-law/pages/coronavirus-federal-contractor-employees-must-be-fully-vaccinated.aspx) to be considered fully vaccinated by Jan. 18, according to guidance from the Biden administration. This requirement, as well as state and local rules, are not affected by the litigation over the emergency temporary standard, but separate lawsuits have been filed that challenge other vaccination and COVID-19 testing rules.

These directives generally require two doses of the Pfizer or Moderna vaccinations or one dose of the Johnson & Johnson vaccine. Governors in some states, however, have said they are considering changing the definition (<https://www.axios.com/coronavirus-vaccines-boosters-fauci-america-c0f4e198-9a2f-42c4-ba74-3fa06ce1d811.html>) of "fully vaccinated" to include a booster.

Start Planning

Although it may be too soon for many employers to add booster shots to their vaccination policies, attorneys said workplace leaders can start planning now.

"I think it is company-specific," said Katherine Dudley Helms, an attorney with Ogletree Deakins in Columbia, S.C. Some workplaces have seen a high percentage of employees get vaccinated, she said, so it might make sense to add the boosters to their recommendations as the shots are authorized.

On the other hand, she noted, if the workforce vaccination rate is low or vaccination has been a battle for the employer, it may be wiser to try to focus on raising the rate of initial vaccination rather than adding the booster on top of that. Even with this approach, she said, an employer can certainly support and encourage employees who are eligible and wish to get the booster shot.

"My experience is that those who do not mandate vaccinations are preparing policies and practical plans for the likelihood that they may become mandatory either because of federal requirements or because the timing is right," Helms observed.

Just as with the initial vaccinations, she said, employers should let workers know if the company will pay for the costs associated with getting the booster, including the time spent getting the shot. Employers should also address how time off will be treated if employees have a reaction.

Employees who were given incentives to get the initial shots may want to know if there is an additional incentive for the booster, Helms noted. "As with the original vaccinations, it will be helpful to provide employees with logistical information about booster shots, such as where they can get one and whether it is covered by insurance or if there is any cost."

Keep Communicating

If employers expect their policies to change, Thomas suggested that they start educational campaigns. "Employers who can persuade or incentivize workers to vaccinate or get boosters will have an easier time enforcing a mandate once their policy changes. Leadership starts at the top, and company leaders will need to model the behavior they expect employees to follow."

Hermon noted that successful employers during the pandemic have made it a point to communicate frequently with their employees, using e-mail, large-scale Web calls, video announcements and any other mechanisms they have at their disposal. "Employers should continue to use those mechanisms to encourage employees to get vaccinated, to inform them about booster shot availability, and to answer questions that may arise from employees as they return to the office."

Visit SHRM's resource hub page on the coronavirus and COVID-19 (www.shrm.org/resourcesandtools/pages/communicable-diseases.aspx).

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