A Shot in the Arm or a Shot in the Foot? How to Think about Employee Vaccination Policies

Thursday, February 18, 2021

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Speakers & COVID-19 Resources

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The Troutman Pepper Vaccine Task Force maintains a COVID-19 Vaccine Frequently Asked Questions site to help our clients. If you have questions specific to your business or COVID-19 vaccination policies, please feel free to contact us or visit the Troutman Pepper COVID-19 Resource Center.

### COVID-19 Vaccine Tracker

<table>
<thead>
<tr>
<th>DEVELOPER</th>
<th>TYPE</th>
<th>STAGE</th>
<th>OTHER INFORMATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Moderna</td>
<td>mRNA</td>
<td>EUA</td>
<td>• 2 doses; 95% effective</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• Freezer/refrigerator</td>
</tr>
<tr>
<td>Pfizer/BioNTech</td>
<td>mRNA</td>
<td>EUA</td>
<td>• 2 doses; 95% effective</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• Ultra-cold storage</td>
</tr>
<tr>
<td>Johnson &amp; Johnson, Janssen</td>
<td>Adenovirus Vector</td>
<td>Phase 3 Trials, EUA request</td>
<td>• Single dose; 72% effective</td>
</tr>
<tr>
<td></td>
<td></td>
<td>submitted February 2021</td>
<td>• Refrigerator storage</td>
</tr>
<tr>
<td>AstraZeneca</td>
<td>Adenovirus Vector</td>
<td>Phase 3 Trials underway</td>
<td>• Single dose</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• Refrigerator storage</td>
</tr>
<tr>
<td>Sanofi</td>
<td>Recombinant protein/adjuvant</td>
<td>Phase 2 trials scheduled to start February 2021</td>
<td>• 2 doses</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• Refrigerator storage</td>
</tr>
<tr>
<td>Novavax</td>
<td>Recombinant protein/adjuvant</td>
<td>Phase 3 trials underway</td>
<td>• 2 doses, 21 days apart</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• Refrigerator storage</td>
</tr>
</tbody>
</table>

**Employer Considerations**

- **Eligibility**
- **Essential vs Non-Essential**
- **Logistics of Distribution**

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COVID-19 Vaccination Recommendations

- On Dec. 1, 2020, ACIP recommended that health care personnel and long-term care facility residents be offered COVID-19 vaccination first (Phase 1a).


- On Dec. 20, 2020, ACIP updated interim vaccine allocation recommendations. In Phase 1b, COVID-19 vaccine should be offered to people aged 75 years and older and non–health care frontline essential workers, and in Phase 1c, to people aged 65-74 years, people aged 16-64 years with high-risk medical conditions, and essential workers not included in Phase 1b.

Learn more about ACIP and CDC recommendations for COVID-19 Vaccines.

<table>
<thead>
<tr>
<th>Location</th>
<th>Phase 1a Prioritization</th>
<th>Phase 1b Prioritization</th>
<th>Phase 1c Prioritization</th>
<th>Congregate Settings Included?</th>
<th>Current Phase of Vaccine Distribution</th>
</tr>
</thead>
<tbody>
<tr>
<td>United States</td>
<td>Follows ACIP Recommendations:33; Varies from ACIP Recommendations: 18</td>
<td>Follows ACIP Recommendations:7; Varies from ACIP Recommendations: 41; Not updated: 3</td>
<td>Follows ACIP Recommendations:10; Varies from ACIP Recommendations: 24; Not updated: 17</td>
<td>Includes congregate settings: 26; Does not include congregate settings: 25</td>
<td>Phase 1a: 17; Phase 1b: 28; Phase determined by counties: 6</td>
</tr>
<tr>
<td>Alabama</td>
<td>Follows ACIP Recommendations</td>
<td>Follows ACIP Recommendations</td>
<td>Follows ACIP Recommendations</td>
<td>Phase 1b includes those living in congregate settings (homeless shelters, group homes, prisons, jails)</td>
<td>Phase 1b</td>
</tr>
<tr>
<td>Alaska</td>
<td>Follows ACIP Recommendations</td>
<td>Includes ACIP recommended groups plus: people ages 55-74; people ages 50-54 with 2 or more high-risk health conditions; people ages 16-54 in “unserved communities”</td>
<td>Not updated</td>
<td>Phase 1b includes residents in congregate settings (homeless shelters, group homes, etc) and correctional facilities</td>
<td>Phase 1b- administering to people ages 65+ only</td>
</tr>
<tr>
<td>Arizona</td>
<td>Follows ACIP Recommendations</td>
<td>Follows ACIP Recommendations</td>
<td>Follows ACIP Recommendations</td>
<td>Phase 1b includes adults with high-risk conditions living in congregate settings; Phase 1c includes</td>
<td>Most counties are in Phase 1c; one remains in Phase 1a</td>
</tr>
</tbody>
</table>

What is an Emergency Use Authorization and what does it mean for employer vaccine programs?

[Link](https://penntoday.upenn.edu/news/five-things-know-about-emergency-use-authorization-pfizer-biontech-vaccine)

Exceptions to an Employer Vaccine Mandate

- SINCERELY HELD RELIGIOUS BELIEF OR PRACTICE
- MEDICAL CONDITION
- UNDUE HARDSHIP
Incentives

Companies offering cash to encourage workers to get COVID-19 vaccine as Chicago timeline revealed


Trader Joe’s, Dollar General And Others Are Paying Workers To Get Vaccines

https://www.npr.org/2021/01/21/958849642/grocers-have-a-strategy-to-get-their-workers-vaccinated-against-covid-19-pay-them

Liability for Adverse Events

The Public Readiness and Emergency Preparedness Act (PREP Act) authorizes the Secretary of the Department of Health and Human Services (Secretary) to issue a PREP Act declaration. The declaration provides immunity from liability (except for willful misconduct) for claims:

- of toxic or biological agents, relating to, or resulting from administration or use of countermeasures to diseases, threats and conditions
- determined by the Secretary to constitute a present, or credible, risk of a future public health emergency
- to entities and individuals involved in the development, manufacture, testing, distribution, administration, and use of such countermeasures

A PREP Act declaration is specific for the purpose of providing immunity from liability, and is different from, and not dependent on, other emergency declarations.
Cost

Do employers have to pay for vaccines?

Employer Risk Assessment

1. Purpose
2. Rationale
3. Safety Assessment
5. Mandatory vs Voluntary

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Privacy Considerations for Employee Vaccination Status

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How does a vaccine program impact an employer’s other COVID-19 workplace safety measures?

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COVID-19 Resources

- Department of Labor - https://www.dol.gov/coronavirus

Thank You & Questions

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