

COVID-19 VACCINATION AND MASKING IN WISCONSIN: June 2021
Can an Employer Really Mandate the Vaccine and Masks?

By: The Previant Law Firm Labor Practice Group

Employers have an obligation to provide a safe workplace for their employees. As a result, many employers are implementing mandatory covid vaccination policies and continue to require face masks. Below we provide answers based on the best information currently available to some of the most frequent questions we receive.

Q: State and local mask mandates have ended, can my employer still require masks at work?

Employers may still require employees to wear masks. No rule or regulation prevents employers from requiring masks. The CDC now recommends that even vaccinated individuals mask when they cannot socially distance in high transmission areas and that unvaccinated individuals mask, generally. OSHA has adopted these recommendations. The CDC and local health department recommendations are sufficient to support an employer requirement that employee PPE must include a suitable face mask. Ultimately, employers retain their authority to require PPE in the workplace.

Q: Can an employer require employees to get vaccinated for COVID-19?

A: Yes, with narrow exceptions related to 1) the existence of a CBA that prohibits such a requirement or 2) an employee's disability that prevents that person's vaccination or, possibly, a sincerely held religious belief. Depending on the circumstances and reason the employee cannot or will not get vaccinated, the refusing employee may be subject to termination or other disciplinary action.

While employers have an obligation to maintain a safe workplace, they cannot impose a vaccination requirement that discriminates against employees who are unable, for medical reasons, or unwilling due to religious beliefs, to obtain a vaccine and instead may be required to make reasonable accommodations for such employees. Reasonable accommodations may include teleworking, imposing more stringent PPE requirements, or reassigning the employee.

Q: Can my employer ask if I've been vaccinated?

Yes. An employer does not violate Title VII, the ADA or HIPAA if it asks employees about their vaccination status or requires proof of vaccination. Employees are also obligated to respond to these questions. Employees who refuse to respond or are dishonest in responding may be subject to discipline for dishonesty.

Q. Can my employer require me to show proof of vaccination?

A: Yes. An employer may request proof of vaccination but is limited in the follow up questions it may ask. An employer should not ask questions or require proof that could information about an employee's medical conditions or disability. The EEOC has concluded that the CDC's Covid-19 card vaccination record/card is appropriate proof as it does not contain other confidential medical information.

Employers may offer incentives to employees who show their proof of vaccination.

Q: Can an employer require unvaccinated employees to wear masks if it allowed vaccinated employees to work without masks?

A: Yes. An employer can require unvaccinated employees to take extra precautions, such as continued mask wearing, distancing, or reassignment in order to protect the health and safety of other its other employees and customers.

Q: What if the project owner requires that all employees on the job site be vaccinated?

A A project owner may require that anyone on the job site be vaccinated and may refuse to allow unvaccinated employees of subcontractors on the site. In such a situation, and as long as the policy is not discriminatory, the employer may not be able to permit unvaccinated employees on the job site.

Q: Can an employee be terminated or disciplined for lying about getting the vaccine?

A: Yes. Employers are allowed to ask employees about their vaccination status without violating the ADA or Title VII. If the employee engages in dishonestly in responding to the employer's question about vaccination status, the employer could discipline the employees for their dishonesty.

Q: Can the employer require the employee to undergo a temperature check, complete a symptoms questionnaire, or submit to other COVID-19 screenings before beginning work?

Yes. Because of the hazards posed by having employees and clients exposed to COVID-19, employers can require employees to undergo brief mandatory screenings before working each day.

These FAQs are based on the best available information as of August 16 2021, and should not be construed as legal advice. We will make every effort to update this document as new information becomes available or the information changes. As with any question, the answer or end result may vary based on the specific circumstances of a particular situation.