

Best Practices for Inquiring about Vaccination Status During the Hiring Process

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More and more employers are requiring employees to be fully vaccinated against COVID-19—either due to a legal mandate or pursuant to an internal policy. These requirements beg the question of how to handle inquiries and disclosures about vaccination status during the hiring process.



That is, must the employee be fully vaccinated? Is there an option for weekly testing? What accommodations might be accepted? By including the source of the requirement, applicants can even better understand the requirements. That is, is the requirement pursuant to an

OHA rule, a federal Executive Order or an internal policy?

Employers should avoid advertising positions with the short-hand “vaccination required,” as this is an oversimplification of most requirements and does not address possible exceptions for medical or religious reasons. Rather, for example, if an employer is hiring a healthcare worker, they could state: “Pursuant to OHA rule, prior to beginning work, individuals in this position must be fully vaccinated against COVID-19 or submit a religious or medical exception.” This puts applicants on notice of the requirement, as well as the source of the requirement (the OHA rule), what will be required (vaccination or an exception for religious or medical reasons) and when it is required (before beginning work).

Inquiring about Compliance During the Hiring Stage

While it may be tempting to ask applicants if they are fully vaccinated, employers should not be asking for proof of vaccination in a job interview. Standard practice when asking an applicant if they can meet a job requirement is to describe the requirement and inquire simply whether the individual can

meet the requirement, with or without accommodation. Similarly, rather than asking an applicant if they are fully vaccinated, the best practice would be to ask in writing: “If selected for the position, being fully vaccinated will be a condition of employment. Are you able to meet this requirement with or without reasonable accommodation?” By asking applicants to respond with a simple yes or no answer without providing additional information, you can avoid inadvertently soliciting protected information about a medical condition or religious beliefs.

What to Do with Voluntary Disclosures

Despite taking all of the above precautions, some applicants will voluntarily provide information about their vaccination status that is not requested. If an applicant includes in their application or blurts out in an interview that they are fully vaccinated, that information should be recorded as a “yes” to the above question about being able to meet the vaccination requirement, with or without accommodation. This applicant should then be considered in the same way as all other applicants answering “yes.” Similarly, if an applicant states that they will need a medical or religious accommodation, they should be treated the same as all the other “yes” answers without the additional information being recorded. However, if an applicant voluntarily discloses that they refuse to get vaccinated and will not be requesting a medical or religious accommodation, the employer can decline to advance the candidate in the hiring process based on the refusal to

comply with a condition of the position.

Requiring Proof of Vaccination or an Exception

Once a conditional offer of employment has been made, the employer can then ask the successful applicant to provide proof of vaccination or to submit a request for an accommodation. Both proof of vaccination and any accommodation requests and supporting documents should be maintained as confidential and stored separately from the individual’s personnel file. Any accommodation request should follow the employer’s usual interactive process. In the event the employer is unable to accommodate an exception to a vaccination requirement because it would create a direct threat to the unvaccinated individual or others in the workplace and there is no reasonable accommodation that would not result in an undue hardship on the company, the employer may withdraw the offer of employment. Additionally, if the potential new employee is not able to timely comply prior to the stated start date, the employer could delay the start date or withdraw the job offer if there is a need to fill the position immediately. Employers should partner with employment counsel before withdrawing a job offer.

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