

## Head Start of Lane County

### Frequently Asked Questions Regarding Vaccines— April 2022 Update

#### **Question No. 1: Who bears the cost of testing for unvaccinated employees?**

**Answer:** Generally, the Agency should pay for both the testing of unvaccinated employees (to the extent not covered by health insurance) and the time spent getting tested for Fair Labor Standards Act (FLSA) non-exempt employees. This presumes that the only unvaccinated employees will be those "unable" to be vaccinated because of a sincerely held religious belief, practice, or observance or legitimate ADA/medical reason. Please note that federal law requires insurers to fully cover the tests when ordered by a health care provider, but routine workplace tests are exempt from that provision. Presumably, there will be no other unvaccinated employees because the Agency is requiring vaccination of all employees, subject to religious and disability discrimination laws.

#### **Question No. 2: During the recruiting/screening/interview process, can we ask the employee if they are vaccinated?**

**Answer:** The requirement for vaccination is included in the job description and should be included in any posting or notice as a contingency to hire. During the interview, the interviewer can make a statement to the candidate that this position requires full vaccination to start and that documentation of vaccination will be required.

Generally, the interviewer should not directly ask the applicant of his or her vaccination status. Such a direct inquiry increases the likelihood for prompting disclosure of a religious or medical barrier to vaccination, thus implicating disability or religious discrimination concerns. When addressing the subject of vaccination, the interviewer might warn the job candidate not to provide any medical or religious belief information to avoid implicating the ADA or Title VII.

A request for proof of full vaccination is required at time of the conditional offer. The conditional offer should include information about making a request for an accommodation.

**Question No. 3: Are there potential SAIF claims related to COVID-19?**

**Answer:** Yes, but the employee would need to establish that COVID-19 resulted from workplace exposure. Establishing exposure could be difficult, especially with the Agency implementing and enforcing COVID-19 health and safety protocols (e.g., vaccines, facial coverings, social distancing, hand sanitizer use, cleaning, etc.).

SAIF guidance provides:

*Q. If an employee opts not to take the vaccine, or cannot take it for some reason, and they contract COVID during their work, will that affect coverage of their claim under worker's compensation?*

A. The Oregon workers' compensation system is a "no-fault" system, so if an employee contracts COVID-19 while in the course and scope of work, a choice to not receive the vaccine will not impact whether a workers' compensation claim is compensable.

*Q. If we require the vaccine at our workplace, and the employee has an adverse reaction, is that a compensable workers' comp claim?*

A. When the administration of the vaccine occurs within the course and scope of employment (often either because it's mandated as a condition of employment, controlled by the employer and/or at the employer's expense), treatment or disability associated with adverse effects may be a compensable workers' compensation claim. When the vaccine is voluntary, not controlled by the employer and/or not provided at the employer's expense, it is less likely adverse effects are work-related.

**Question No. 4: Can the Agency terminate an employee based on the employee's failure to vaccinate?**

**Answer:** Generally, yes, subject to reasonable accommodations and the lack of alternatives or if granting an exception would create an "undue hardship" on the Agency or a "direct threat" to the safety of the employee or others. The Agency should engage with the employee to determine if a reasonable accommodation—including without limitation strict facial

covering requirements and weekly COVID-19 testing or unpaid leave—is possible.

Below are some helpful definitions and legal standards to keep in mind when discussing these issues.

Under Title VII (think: religious accommodation), the term “undue hardship” means having more than a minimal cost or burden on the employer. This is an easier standard for employers to meet than the ADA’s under hardship standard, which applies to requests for accommodations due to a disability. Under the ADA, undue hardship means having a significant burden or expense on the employer.

A “direct threat” is a “significant risk of substantial harm” that cannot be eliminated or reduced by reasonable accommodation. This determination can be broken down into two steps:

1. Determining if there is a direct threat and
2. If there is, assessing whether a reasonable accommodation would reduce or eliminate the threat.

To determine if an employee who is not vaccinated due to a disability poses a “direct threat” in the workplace, an employer first must make an individualized assessment of the employee’s present ability to safely perform the essential functions of the job. The factors that make up this assessment are:

1. The duration of the risk.
2. The nature and severity of the potential harm.
3. The likelihood that the potential harm will occur; and
4. The imminence of the potential harm.

The determination that a particular employee poses a direct threat should be based on a reasonable medical judgment that relies on the most current medical knowledge about COVID-19. Such medical knowledge may include, for example, the level of community spread at the time of the assessment. Statements from the CDC provide an important source of current medical knowledge about COVID-19, and the employee’s health care provider, with the employee’s consent, also may provide useful information about the employee.

Additionally, the assessment of direct threat should take account of the type of work environment, such as:

- Whether the employee works alone or with others or works inside or outside.
- The available ventilation.
- The frequency and duration of direct interaction the employee typically will have with other employees and/or non-employees.
- The number of partially or fully vaccinated individuals already in the workplace.
- Whether other employees are wearing masks or undergoing routine screening testing; and
- The space available for social distancing.

If the assessment demonstrates that an employee with a disability who is not vaccinated would pose a direct threat to self or others, the employer must consider whether providing a reasonable accommodation, absent undue hardship, would reduce or eliminate that threat.

Potential reasonable accommodations could include:

- Requiring the employee to wear a mask,
- Requiring the employee work a staggered shift,
- Making changes in the work environment (such as improving ventilation systems or limiting contact with other employees and non-employees),
- Permitting telework if feasible, or
- Reassigning the employee to a vacant position in a different workspace.

Such assessments should involve advice and consultation with a medical or public health professional on an individualized or case-by-case basis.

Please note that the current Oregon Bureau of Labor and Industries (BOLI) guidance provides:

*Q. My employer has mandated a vaccine, but I don't want to get one - what do I do?*

*A. With a few exceptions, employers have a right to require a COVID-19 vaccination. If the reason you don't want to get vaccinated arises out of a sincerely held religious conviction or a disability, you can request a reasonable accommodation from your employer.*

*Q. My employer has mandated a vaccine, but I am unable to get one because I am allergic - what do I do?*

There are two different COVID-19 vaccinations available now with more on the way. Depending on your allergy, it is possible one of the other formulations may be tolerable. If not, discuss your concern with your employer to work out what other accommodations may be possible.

*Q. We have an employee that has already told us that they have a disability that would prevent them from getting a vaccine.*

A. Under EEOC guidance, "If an employer determines that an individual who cannot be vaccinated due to disability poses a direct threat at the worksite, the employer cannot exclude the employee from the workplace—or take any other action—unless there is no way to provide a reasonable accommodation (absent undue hardship) that would eliminate or reduce this risk, so the unvaccinated employee does not pose a direct threat." Employers should not assume a termination is required—a conversation with the affected employee may turn up viable alternatives.

<https://www.oregon.gov/boli/workers/Pages/covid-vaccine.aspx>.

**Question No. 5: What are examples of accommodation that, absent undue hardship, may eliminate (or reduce to an acceptable level) a direct threat to self?**

**Answer:** Accommodations may include the following:

- Additional or enhanced protective gowns, masks, gloves, or other gear beyond what the employer may generally provide to employees returning to its workplace.
- Periodic tests for COVID-19; (please note that the Agency intends to require frequent testing of unvaccinated employees.).
- Additional or enhanced protective measures, for example, erecting a barrier that provides separation between an employee with a disability and coworkers/the public or

increasing the space between an employee with a disability and others.

- Elimination or substitution of particular “marginal” functions (less critical or incidental job duties as distinguished from the “essential” functions of a particular position).
- Temporary modification of work schedules (if that decreases contact with coworkers and/or the public when on duty or commuting) or moving the location of where one performs work (for example, moving a person to the end of a production line rather than in the middle of it if that provides more social distancing); and
- Reassignment.

*Please note that current EEOC guidance encourages employers to be flexible:*

*Identifying an effective accommodation depends, among other things, on an employee’s job duties and the design of the workspace. An employer and employee should discuss possible ideas; the Job Accommodation Network ([www.askjan.org](http://www.askjan.org)) also may be able to assist in helping identify possible accommodations. As with all discussions of reasonable accommodation during this pandemic, employers and employees are encouraged to be creative and flexible.*

**Question No. 6: If an employee is required to quarantine, is that time off paid by the Agency?**

**Answer:** Employees that are exposed to COVID 19 at their workplace will be eligible to use Agency Closed paid leave. If an employee is exposed to COVID 19 outside of the workplace or is caring for a family member affected by COVID 19, they will be required to use their own available sick time. If no paid leave is available, employees will need to follow the Agency’s Unpaid Leave request process.

**Question No. 7: What does “fully vaccinated” mean?**

**Answer:** In general, people are considered fully vaccinated:

- Two weeks after their second dose in a 2-dose series, such as the Pfizer or Moderna vaccine, or
- Two weeks after a single-dose vaccine, such as Johnson & Johnson's Janssen vaccine.

If a person does not meet these requirements, regardless of the person's age, the person is NOT fully vaccinated.

**Question No. 8: According to the CDC, “fully vaccinated” does not include a booster. Why is Head Start requiring boosters?**

**Answer:** While the CDC's definition of fully vaccinated has not changed and does not include a booster, fully vaccinated, however, is not the same as having the best protection. People are best protected when they stay up to date with COVID-19 vaccinations, which includes getting a booster when eligible.

**Question No. 9: What does “up to date” mean?**

**Answer:** At Head Start, people are considered up to date:

- If they have received the primary COVID-19 vaccination series (Pfizer-BioNTech, Moderna, or Johnson & Johnson/Janssen; *and*
- Two weeks have passed since they received the additional recommended booster(s) based on their age and/or medical condition.<sup>1</sup>

If a person does not meet these requirements, regardless of the person's age, the person is NOT “up to date.”

**Question No. 10: Who is eligible for an “initial booster dose?”**

**Answer:** Everyone ages 12 years and older who have completed their primary COVID-19 vaccination series, which is 5 months after the second dose for Pfizer-BioNTech and Moderna vaccines, or two months after the J&J/Janssen vaccine. After this

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<sup>1</sup> As of March 29, 2022, the following individuals are eligible for a *second* mRNA booster dose:

- Certain immunocompromised individuals and people over the age of 50 who received an initial booster dose at least 4 months ago; and
- Adults who received a primary vaccine and booster dose of Johnson & Johnson's Janssen COVID-19 vaccine at least 4 months ago.

period, people need to get 1 booster to be considered up to date, unless they are also eligible for a second booster dose.

Here’s a table from the CDC that explains who can get a booster: (table on next page)

<p>PRIMARY SERIES COVID-19 VACCINE</p> <p><b>Pfizer- BioNTech</b></p>	<p><b>Who should get one booster:</b></p> <p>Everyone 12 years and older</p> <p><b>Who can get a second booster:</b></p> <p>Adults 50 years and older</p>	<p><b>When to get your booster:</b></p> <p>At least 5 months after completing your primary COVID-19 vaccination series</p> <p>If eligible for a second booster, at least 4 months after your first booster</p>	<p><b>Which booster can you get:</b></p> <ul style="list-style-type: none"> <li>Adults 18 years and older should get an mRNA COVID-19 vaccine (Pfizer-BioNTech or Moderna) for the first booster in most* situations</li> <li>The second booster must be an mRNA COVID-19 vaccine</li> <li>Teens 12–17 years old may only get a Pfizer-BioNTech COVID-19 vaccine booster</li> </ul>
<p>PRIMARY SERIES COVID-19 VACCINE</p> <p><b>Moderna</b></p>	<p><b>Who should get one booster:</b></p> <p>Adults 18 years and older</p> <p><b>Who can get a second booster:</b></p> <p>Adults 50 years and older</p>	<p><b>When to get your booster:</b></p> <p>At least 5 months after completing your primary COVID-19 vaccination series</p> <p>If eligible for a second booster, at least 4 months after your first booster</p>	<p><b>Which booster can you get:</b></p> <p>For the first booster, an mRNA COVID-19 vaccine (Pfizer-BioNTech or Moderna) is preferred in most* situations</p> <p>The second booster must be an mRNA COVID-19 vaccine</p>
<p>PRIMARY SERIES COVID-19 VACCINE</p> <p><b>Johnson &amp; Johnson’s Janssen*</b></p>	<p><b>Who should get a booster:</b></p> <p>Adults 18 years and older</p> <p><b>Who can get a second booster:</b></p> <p>Anyone who received a J&amp;J/Janssen COVID-19 vaccine for both their primary dose and booster</p> <p>Adults 50 years and older who first received a J&amp;J/Janssen COVID-19 vaccine, regardless of what type of booster they received</p>	<p><b>When to get your booster:</b></p> <p>At least 2 months after receiving your J&amp;J/Janssen COVID-19 vaccination</p> <p>If eligible for a second booster, at least 4 months after your first booster</p>	<p><b>Which booster can you get:</b></p> <p>For the first booster, an mRNA COVID-19 vaccine (Pfizer-BioNTech or Moderna) is preferred in most* situations</p> <p>The second booster must be an mRNA COVID-19 vaccine</p>

**Question No. 11: Who is eligible for a “second booster dose?”**



**Answer:** As of March 29, 2022, the following individuals are eligible for a *second* mRNA booster dose:

- Certain immunocompromised individuals and people over the age of 50 who received an initial booster dose at least 4 months ago; and
- Adults who received a primary vaccine and booster dose of Johnson & Johnson's Janssen COVID-19 vaccine at least 4 months ago.

**Question No. 12: Why do we need a booster if vaccines are working?**

**Answer:** COVID-19 vaccines are working well to prevent severe illness, hospitalization, and death. However, public health experts are starting to see reduced protection over time against mild and moderate disease, especially among certain populations.