

# COVID-19: Back to Normal?! Employer Considerations for In-Person Work with Vaccinated Employees

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# Presented By:



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# Overview

- Vaccination policy considerations – requiring versus encouraging employees to get vaccinated.
- Current orders and guidance related to workplace gatherings, quarantine, and social distancing.
- Changes to FFCRA leave, COBRA, and unemployment benefits in the new stimulus bill (“ARPA”).

# VACCINE POLICY CONSIDERATIONS: Mandating vs. Recommending

- Many employers are “highly recommending” the vaccine to employees
- Employer CAN choose to mandate the COVID-19 vaccine
  - Subject to disability (ADA) and religious accommodations (Title VII)
- Based on direct threat of significant risk of substantial harm to others.



# Trends in Vaccination Mandates

- **What do employees want?**
  - Business Insider: 60% of adults say employers should mandate
  - CNBC: 57% of workers support mandate for return to office
  - SHRM: 55% would be extremely likely or likely to get vaccine if mandate; 24% of workers would balk if employer mandates
- **What are employers doing?**
  - MLive: 6% plan to mandate; 67% encourage but not mandate
  - Mercer: 1% mandated; 20% considering; 75% will not mandate
  - SHRM: 35% businesses not sure; 61% will encourage, not mandate
- **... BUT – PENDING legislation in many states would prohibit employers from taking adverse action against unvaccinated employees, if passed.**

# Trends in Vaccination Mandates

- **University Mandates**
  - Oakland University has mandated vaccine for students to live on campus this fall; Grand Valley, Hope College, and MSU to follow?
  - Brown, Notre Dame, Rutgers mandating vaccine for staff to return on campus in fall
- **Vaccine Passports** – In Michigan, legislation may be introduced to ban use of this proposed government-mandated ID
  - New York – “Excelsior Pass” – A secure, digital proof of COVID-19 vaccination and negative test results
  - Sports stadiums require proof of vaccination/negative test for fans

## Trends in Michigan

- Michigan is state with second highest positivity rating over the last 7 days. As of April 12, 2021:
  - Idaho: 25.95%
  - Michigan: 17.48%
  - Recommended positivity: 5%
- Outbreak Reporting in Michigan (MDHHS)

Outbreaks by Setting	Region 2N (past week)	Total in Michigan (past week)
1. K-12 Schools	86	264
2. Manufacturing, Construction	43	160
3. Childcare/Youth Programs	26	79
4. Retail – Employee Associated	22	61
Offices	10	42

## Internal Considerations Prior to Decision to Mandate

- Will all employees be required to receive the vaccine?
- How will you document and track who is vaccinated?
- What accommodations may be available?
- How will you document your accommodation process?
- Prepare for resistance and hesitancy





# Wellness Program and Employer Incentives

- Under the ADA, Wellness Programs (health promotion and disease prevention programs and activities offered to employees as a benefit of employment) must be **voluntary**.

- *Question remains: How much is too much, such that it makes the program involuntary? Must be “de minimus” value (“water bottle or gift card of modest value”)*
- *2016: No more than 30% of total cost of employee-only coverage. Rule was vacated, but no other guidance in its place (yet!).*

- EEOC guidance has indicated that vaccination incentive programs constitute wellness programs.

- Vaccine incentives may also create a group health plan under ERISA because a vaccine constitutes medical care under ERISA. Consider modifications to plan documents and comply with HIPAA.



# How to Communicate a COVID-19 Vaccine Mandate or Recommendation

- Focus on Goal: **Safe workplace**
- Choose effective messenger
- Describe procedures for accommodation
- Prohibit harassment or retaliation
- Maintain confidentiality
- Explain process for administration of vaccine
- Explain requirement for proof of vaccination



# CURRENT ORDERS AND GUIDANCE

## FEDERAL

- CDC – COVID-19 Guidance for employers and individuals
- EEOC – [What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws](#) (December 2020)
  - [Pandemic Preparedness in the Workplace and the Americans With Disabilities Act \[PDF version\]](#) (March 2020)
  - Individualized assessment of direct threat before excluding someone from the workplace who may not be accommodated
- OSHA – Obligation to provide workplace free from **any direct threat** to the health and safety of individuals in the workplace



## MICHIGAN

- MIOSHA – Requirements for workplaces
- MDHHS – Requirement to wear masks; limitations on gatherings
- Laws – Prohibit retaliation; expand eligibility for unemployment



# CDC Guidance for Fully Vaccinated Persons – Ongoing Restrictions

- Fully vaccinated should continue to take the following precautions:
  - Wear properly fitted masks, maintain physical distance, and practice other prevention measures when visiting with unvaccinated people from multiple households, or if the unvaccinated person is at increased risk or someone from their household is.
  - Avoid medium and large-sized in-person gatherings
  - Get tested if you are experiencing COVID-19 symptoms
  - Follow guidance issued by individual employers
  - Follow CDC and health department travel requirements and recommendations



# CDC Guidance for Fully Vaccinated Persons – Loosened Restrictions

- Fully vaccinated individuals can:
  - Visit with other fully vaccinated people indoors without wearing masks or physical distancing
  - Visit with unvaccinated people from a single household who are at low risk for severe COVID-19 disease indoors without wearing masks or physical distancing
  - Refrain from quarantine and testing following travel or a known exposure if asymptomatic
  - Resume domestic travel and refrain from testing before or after travel or self-quarantine after travel
  - Refrain from testing before leaving the United States for international travel (unless required by the destination) and refrain from self-quarantine after arriving back in the United States.

## QUESTION FOR EMPLOYERS:

- **How will you adapt your COVID-19 Preparedness and Response Plan to accommodate these changes?**





# CDC Recommendations for Workplace Vaccination Program

- Options for vaccinating workforce
  - On site at the workplace
    - Existing occupational health clinics
    - Employer-run temporary vaccination clinics
    - Mobile vaccination clinics at the workplace
  - Off site in the community
    - Mobile/temporary vaccination clinics set up at community locations (closed or open to the public)
    - Pharmacies enrolled in the Federal Retail Pharmacy Program
    - Hospitals and healthcare provider offices
    - Federally qualified health centers and other community clinics
  - Michigan: 16+ now eligible for vaccine



## Other Federal Guidance and Orders

- [Guidance for Businesses and Employers – updated March 8, 2021](#)
  - Prevent and reduce transmission
  - Maintain healthy business operations
  - Maintain healthy work environment
  - Workplace controls by industry
- [CDC/EPA Cleaning & Disinfecting Guidance – updated April 5, 2021](#)
  - When to clean and disinfect



# MIOSHA Order

- Extended to October 14, 2021.
  - Requires Employers to have a COVID Preparedness and Response Plan
  - Requires cleaning, health surveillance, and workplace control procedures
  - Prohibits in-person work to the extent it can be “feasibly” completed remotely
  - Specialized rules for specific industries
- Likely to be changed before October, 2021
  - Governor’s Return-to-Office Workgroup to give recommendations on how to return people to offices safely
- Note: Michigan state employees who can perform work remotely were told to expect to continue remote work through at least mid-July 2021.



# MDHHS Epidemic Order

- Current Order is effective March 22 – April 19, 2021
  - Face mask requirement
  - Restrictions on gatherings do not apply to workplace gatherings that occur consistent with MIOSHA Order.
  - Specialized rules for retail and personal services, recreation and entertainment, outdoor stadiums and arenas, food service, exercise facilities and youth sports.
- Michigan Senate Bill 250 – Senate passed to limit authority of MDHHS; currently pending in House

# Michigan Laws

- **Employers are prohibited from discharging, disciplining, or otherwise retaliating against an employee** who does any of the following:
  - Stays home from work because they contracted COVID-19 or because they are experiencing the principal symptoms of COVID-19 even if they later test negative (the employee must seek a test within three days).
  - Opposes a violation of the act.
  - Reports health violations related to COVID-19.
  - \* The Act does not apply to certain healthcare workers, correctional facility workers, and first responders and others. **MCL 419.401 – 419.413**
- **Eligibility for unemployment benefits expanded** to consider leaving work as involuntary for:
  - Medical reasons related to isolation/quarantine based on immunocompromised status;
  - Displaying common symptom of COVID-19 not associated with other condition of individual;
  - Contact in last 14 days with individual confirmed as positive for COVID-19;
  - Care for individual diagnosed with COVID-19; or
  - Family care responsibility resulting from government directive. **MCL 421.29**

# AMERICAN RESCUE PLAN ACT

- **FFCRA Leave**

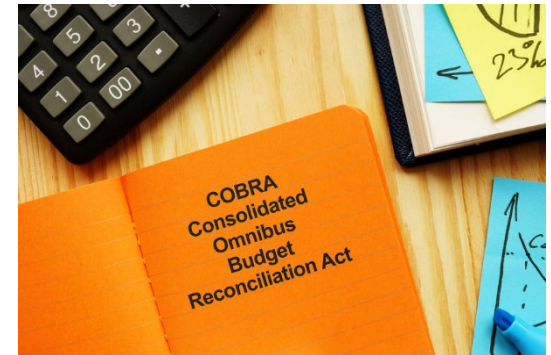
- Mandate ended December 31, 2020
- Extends employer payroll tax credits through September 30, 2021
- Expanded eligibility criteria for paid sick leave and family leave

- **COBRA**

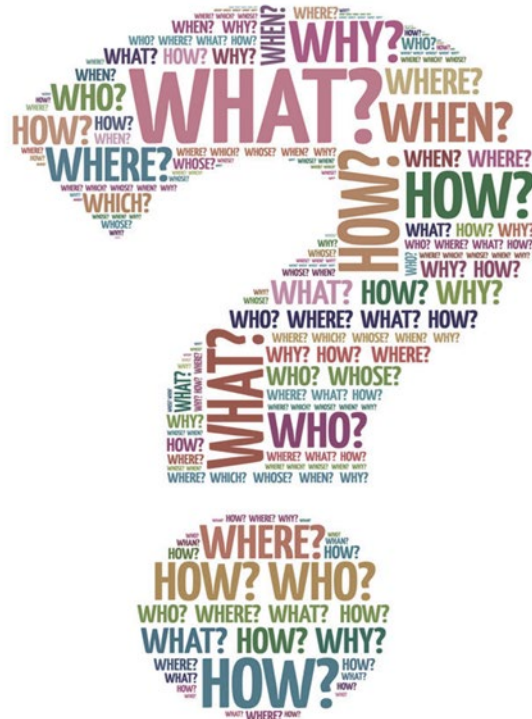
- Provides 6 month federally financed COBRA subsidy covering the full COBRA premium for eligible individuals starting April 1, 2021
- Subsidy ends on September 30, 2021

- **Unemployment Benefits**

- Reauthorizes and expands unemployment benefits (PUC, PUA, PEUC, MEUC) through September 4, 2021
- Provides additional \$300 for PUA individuals



# QUESTIONS?



# Thank you!



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