

ORGANIZATIONAL CULTURE: THE IMPACT OF REMOTE/HYBRID WORKPLACES

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I. THE PROS AND CONS OF MAINTAINING THE PRE-PANDEMIC CULTURE

A. Pros:¹

1. Consistency of expectations from employees.
2. Better communication.
3. Better collaboration.
4. Mentoring and training.
5. Control over work environment.
6. Hours worked is not the same as productivity.

B. Cons:

1. Productivity.
2. Flexibility.
3. Employees avoid “toxic” work cultures, although this seems to have evolved.²
4. No commute – the average American commute is 26 minutes each way. That time can be used to listen to podcasts or audio books, or to recharge with music.
5. Remote workers not on radar.³ Can create disparities in promotion, raises, etc. if on-site employees seen more favorably.
6. Trust issues may develop with remote workers.⁴

¹ <https://www.inc.com/dana-sitar/5-benefits-of-working-in-an-office-and-how-to-reclaim-them-with-a-remote-team.html>

² <https://www.lhh.com/us/en/organizations/our-insights/why-the-work-from-home-model-wont-fix-a-toxic-workplace>

³ <https://www.capita.com/our-thinking/wellness-in-the-time-of-covid-19>

⁴ <https://qatalog.com/blog/post/workplace-trust-crisis-press-release/>

- C. SHRM Study – What Remote Employees Miss About the Office:⁵
1. In-person workplace conversations. (cited by 61% of respondents)
 2. The regular and daily structure of reporting to a worksite. (42%)
 3. Lunches and happy hours with colleagues. (40%)
 4. Reduced interruptions during the workday. (37%)
- D. What is better for employees is not necessarily better for employer, but during labor shortage, employees may have the upper hand.

II. RETURNING TO WORK IN PERSON, REMOTE, OR HYBRID OFFICES

- A. Harvard Business Review published an article outlining options the author noticed based on his research in Australia.⁶
1. Clubhouse – hybrid model in which employees remain primarily at home but visit the office when collaboration is needed. The office is a social hub.
 - a. “Go to work” vs. “Doing the work”
 2. Office space used for conference/collaboration rooms, not individual office. Activity based or “hoteling” – no assigned seating; employees move from location to location (works well in environments with constant meetings or out of office work)
 - a. Survey by Gartner, Inc. in February 2021 showed 59% of people in finance and corporate real estate expected to use this arrangement.⁷
 - b. Requires coordination; reserving “hot” desk.
 3. Hub and spoke – no longer using central offices; employees work from smaller satellite offices in suburbs/neighborhoods closer to home.⁸

⁵ <https://www.shrm.org/about-shrm/press-room/press-releases/pages/-shrm-research-reveals-negative-perceptions-of-remote-work.aspx>

⁶ <https://hbr.org/2021/06/5-models-for-the-post-pandemic-workplace>

⁷ <https://www.gartner.com/en/newsroom/press-releases/2021-03-23-gartner-says-workplaces-with-shared-seating-will-be-the-new-normal-after-covid19>

⁸ <https://www.forbes.com/sites/bryanrobinson/2021/06/09/hub-and-spoke-the-new-office-model-of-the-future-expert-says/?sh=74c050542732>

- a. Allows people who moved during pandemic to remain connected through regional shared office space rather than one headquarters.

III. CREATING AND UPDATING COVID-19 PREPAREDNESS & RESPONSE PLANS

A. Post-Crisis.

B. OSHA Emergency Temporary Standard (ETS) Vaccine Mandate has Been Stayed.⁹

1. Be proactive in being compliant.

2. Covered Employers:

- a. Employers in workplaces already under OSHA authority with at least 100 employees firm- or corporate-wide.

3. NOT Covered:

- a. Employees already subject to the Federal Contractor Mandate or healthcare employees/support services already subject to the CMS Emergency Regulation.
- b. Employees “who do not report to a workplace where other individuals such as coworkers or customers are present, employees while they are working from home, or employees who work exclusively outdoors”

4. Timeline

a. Phase 1:

- i. All requirements other than testing for employees who have not completed their entire primary vaccination dose(s) must be implemented by December 5, 2021.
- ii. This deadline is likely not going to stand given the litigation surrounding the mandate and the injunction barring its implementation.

b. Phase 2:

⁹ <https://www.ca5.uscourts.gov/opinions/pub/21/21-60845-CV0.pdf>

- i. All employees must be fully vaccinated by January 4, 2021. Testing for employees who have not received all doses required for a primary vaccine must begin.

C. What Employers Need to Do to Comply:

1. Establish and implement a vaccination policy.
 - a. GINA.¹⁰ The Genetic Information Nondiscrimination Act (GINA) prohibits employers from asking employees medical questions about family members, including their vaccination status. GINA, however, does not prohibit an employer from asking employees whether they have had contact with anyone diagnosed with COVID-19 or who may have symptoms associated with the disease.
2. Provide information to employees regarding the vaccine and your policy, including:
 - a. The OSHA ETS requirements;
 - b. Company policies and procedures established to implement the ETS; and
 - c. COVID-19 vaccine efficacy, safety, and benefits of vaccination by providing - Key Things to Know About COVID-19 Vaccines.¹¹
3. Determine vaccination status of each employee, obtain acceptable proof of vaccination, maintain records and roster of vaccination status. These records are confidential medical information under HIPPA and the ADA.
 - a. Acceptable proof means:
 - i. Record of immunization from a healthcare provider or pharmacy;
 - ii. A copy of the COVID-19 Vaccination Record Card;
 - iii. A copy of medical records documenting the vaccination;
 - iv. A copy of immunization records from a public health, state, or tribal immunization information system; or
 - v. A copy of any other official documentation verifying vaccination with information on the vaccine name, date(s) of administration, and the name of healthcare professional or clinic site administering the vaccine.

¹⁰ <https://www.jdsupra.com/legalnews/gina-and-covid-19-6387877/>

¹¹ <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/keythingstoknow.html>

- b. Support vaccination by providing *reasonable time*, including up to four (4) hours of paid time to receive each dose of the vaccine and reasonable time and paid sick leave to recover from the side effects
 - i. Employers cannot require employees to use other accrued leave time
 - ii. Employers must provide up to four hours of paid time/allow employees to get vaccinated during work hours
 - (A) However, if an employee chooses to get vaccinated outside of work hours, the employer does not have to compensate the employee
 - 4. Create a policy for employees who test positive.
 - 5. Report work-related fatalities within eight (8) hours of learning of them; report work-related hospitalizations within twenty-four (24) hours of learning of them.
 - 6. Ensure employees who are not fully vaccinated wear face coverings when indoors or when occupying a vehicle with another person for work purposes.
 - a. Make records available for inspection by OSHA.
- D. Mandatory v. Test Out Option.
- 1. Mandatory Vaccination Policy:
 - a. Mandatory vaccination policy is defined under the rule as: “an employer policy requiring each employee to be fully vaccinated.” This means all employees must be vaccinated other than those employees:
 - b. For whom a vaccine is medically contraindicated;
 - c. For whom a medical necessity requires a delay in vaccination status; or
 - d. Who are legally entitled to a reasonable accommodation under federal civil rights laws due to a disability or sincerely held religious belief that conflicts with the vaccination requirement.
 - e. What does this mean? Test for “reasonable accommodation” for religious exemptions are generally the same as the ADA. It is unclear whether weekly testing will be required for those employees covered under the religious belief exemption.
 - 2. Test Out Option:
 - a. An employer is required to establish and implement a mandatory vaccination policy unless the employer establishes, implements, and enforces a written policy allowing

employees not subject to a mandatory vaccination policy to choose “either to be fully vaccinated against COVID-19 or provide proof of regular testing for COVID-19” and wear a face covering while at work or in a vehicle with another person for work purposes.

- b. Unvaccinated employees must wear face coverings while indoors or occupying a vehicle with work persons.
- c. Employees who have tested positive for COVID-19 should refrain from getting tested for 90 days following a positive diagnosis.
- d. Employers must maintain a copy of all test results and treat those results as “employee medical records.”
- e. Employees who have only received one dose of a two-dose series must comply with testing requirements until they are “fully vaccinated.”

E. Other Considerations.

- 1. Employees who work 100% remote are not required to comply with the company’s vaccine policy (even if the company has a mandatory vaccine policy).
- 2. Exempt employees under ETS:
 - a. Remote employees who work from home.
 - b. Employees who do not report to a workplace where other individuals (e.g., co-workers, customers are present)
 - c. Employees who work exclusively outdoors with only de minimis indoor access
- 3. Individual employees who work at facilities covered under the CMS Rule or the Federal Contractor Guidelines may be subject to different restrictions.

F. Intersection of the Requirements – Priority.

- 1. It is clear the OSHA requirement is the catchall. This only applies if the employer is not otherwise subject to the CMS or Federal Contractor mandate.
 - a. If Medicare- or Medicaid-certified provider or supplier falls under the requirements of CMS Rule, it should look to CMS first
 - i. Health care facilities are generally subject to new federal vaccination requirements based on primacy.
 - b. If facilities participate in and are certified Medicare and Medicaid programs and are regulated by the CMS health and safety standards known as the Conditions of Participation (CoPs), Conditions for Coverage (CfCs), and Requirements for

Participation, then they are expected to abide by the requirements established in the CMS Rule. This rule takes priority over other federal vaccination requirements.

- i. CMS's oversight and enforcement will exclusively monitor and address compliance for provisions outlined in CMS Omnibus Staff Vaccination Rule.
- c. In rare situations the Federal Contractor or OSHA mandate will also apply to staff who are not subject to vaccination requirements outlined in the CMS Rule. Those facilities should review these regulations and comply with any other federal requirements as necessary.
- d. If facilities are NOT certified under Medicare and Medicaid programs and therefore not regulated by CoPs, then Federal contractor or OSHA mandate applies.