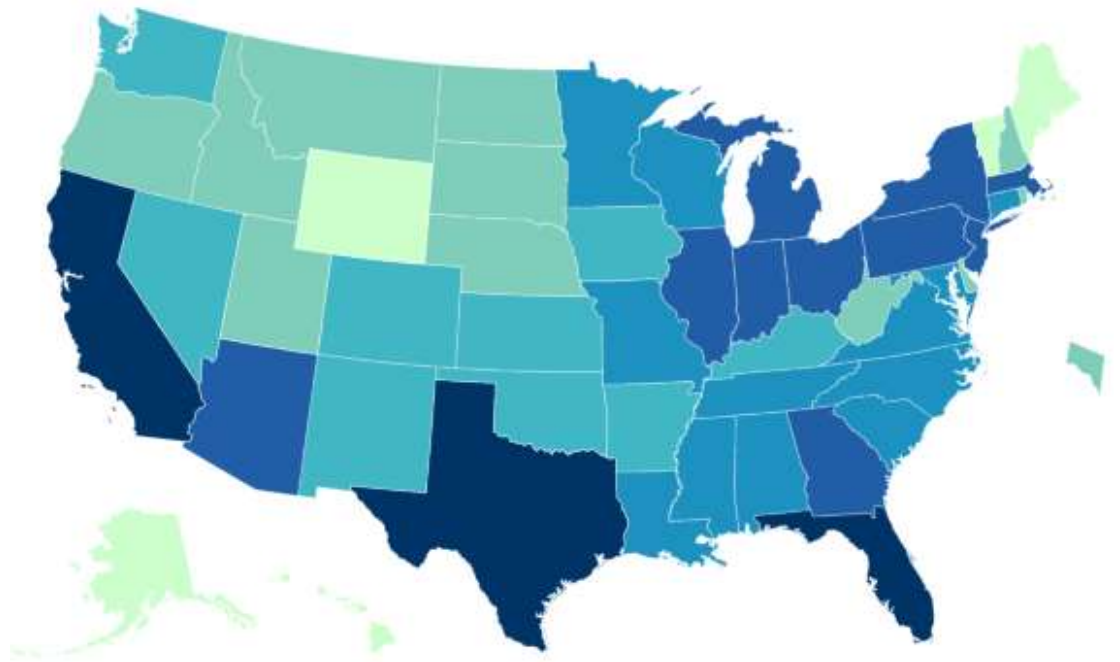


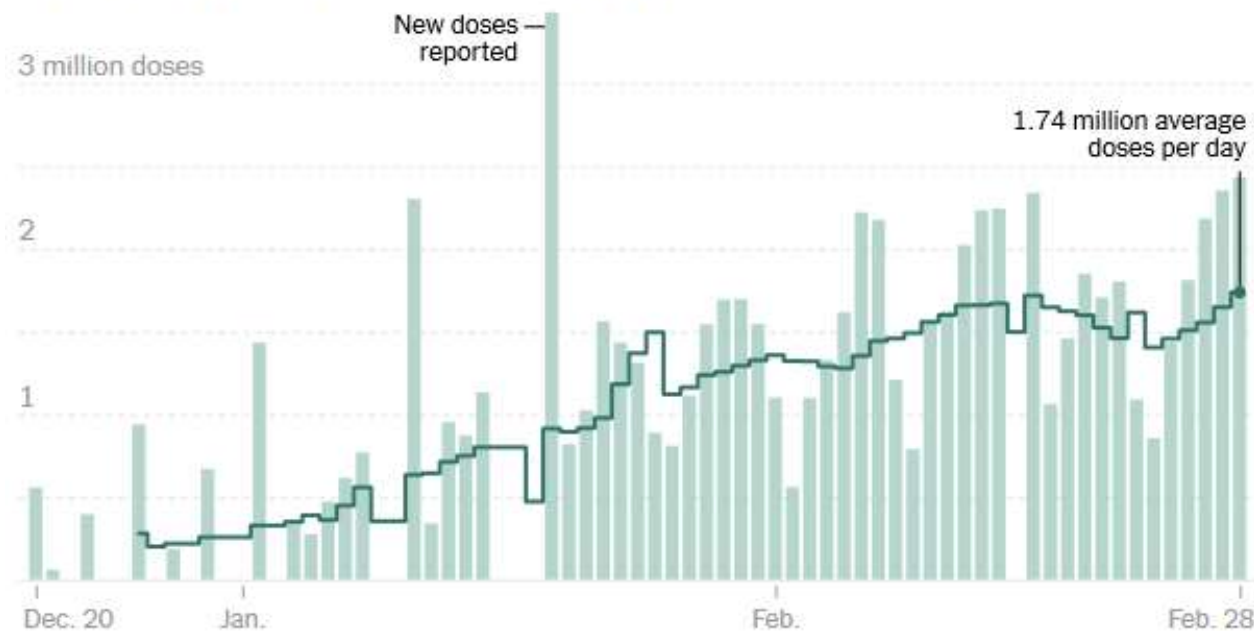
COVID-19

- As of February 22, 2021, more than 500,000 people have died from COVID-19 in the U.S.
- The pandemic's deadliest day in the U.S. was January 12, 2021 when 4,400 people died



Vaccine Rollout

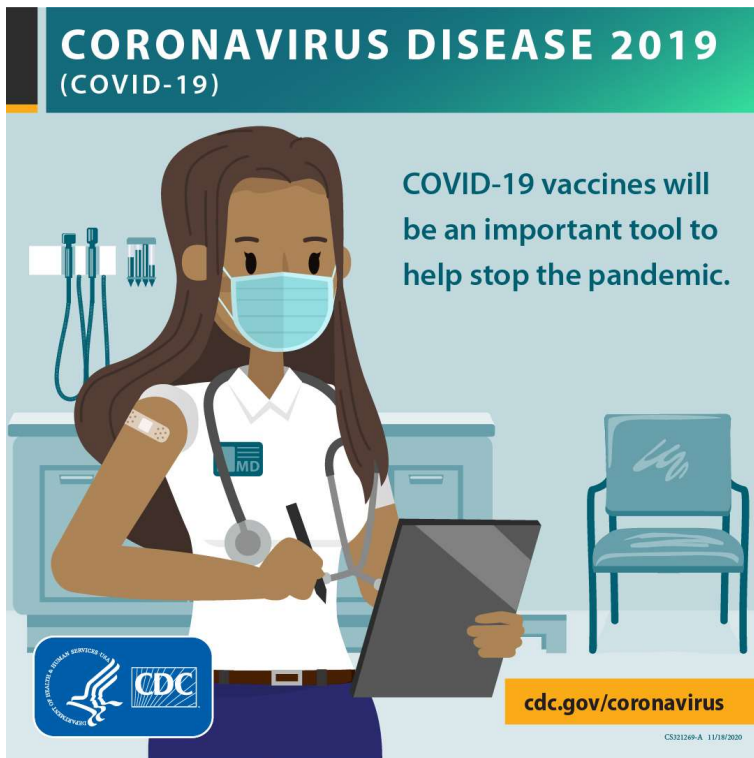
New reported doses administered by day



Source: Centers for Disease Control and Prevention | Note: Line shows a seven-day average. Data not updated on some weekends and holidays.

- The U.S. is administering an average of 1.7M doses of vaccine per day
- As of March 1, 2021, 15.1% of the U.S. population has received at least one dose of vaccine and 7.5% are fully vaccinated

FDA Approved Vaccines



- Pfizer:
 - As of December 11, 2020
 - For ages 16+
 - 95% effective in preventing disease
 - Two doses 3 weeks apart
- Moderna:
 - As of December 18, 2020
 - For ages 18+
 - 94% effective in preventing disease
 - Two doses 1 month apart
- Johnson & Johnson
 - As of February 27, 2021
 - For ages 18+
 - 85% effective in preventing critical disease
 - One dose

Challenges of Returning to the Workplace

1. Employees who refuse to receive the vaccine

- 40% of U.S. workers say they probably or definitely won't get the vaccine

2. Employees who would prefer to continue working remotely

- 52% of U.S. workers would continue to work remotely permanently if given the option post-pandemic



Which Employers Can Require Vaccination?



- Almost every employer can require that its employees receive the vaccine before returning to the work
- Customer-facing industries have more business reasons to mandate vaccination:
 - Protect vulnerable co-workers and clients
 - Return to normal operating conditions

When Can Employers Require Vaccination?

- Employers may require employees be vaccinated before returning to work as long as the employee has no ***medical condition or genuinely-held religious belief*** that would prevent them from being vaccinated.
- Employers must be consistent with enforcement and avoid coercion.



What Is a “*Direct Threat*”?



- A direct threat means the unvaccinated employee poses a “significant risk of substantial harm to the health and safety of the employee and others.”
- If an employer decides an employee poses a direct threat, then the employer must decide whether a reasonable accommodation can be made.

What is an Undue Hardship?

- Title VII requires an employer to accommodate an employee's disability or sincerely held religious belief unless it would cause an undue hardship on the employer.
- An undue hardship occurs when the accommodation has more than a *de minimis* effect on the employer.

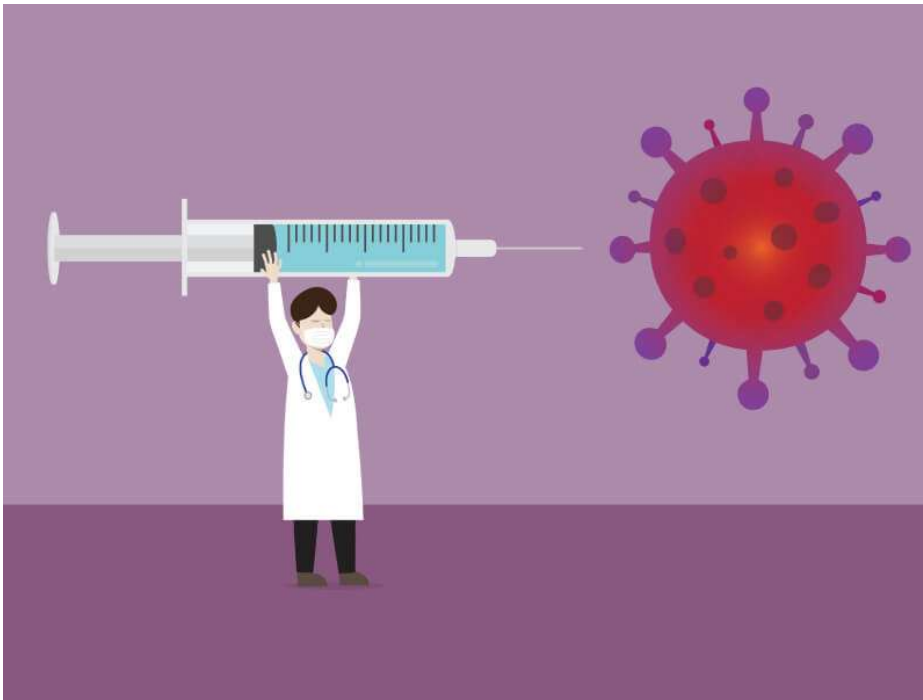


Exploring Potential Accommodations



- What are the employee's job functions?
- How important it is to the employer's operations that the employee be vaccinated?
- Is there is an alternative job that the employee could do that would make vaccination less critical?
- Can the employee work remotely until herd immunity is reached?
- Can the employee work at an isolated workstation?
- Can the employee take a leave of absence?

What If No Accommodation Can Be Made?



- Employers should determine whether employees are eligible for leave under the Families First Coronavirus Response Act, FMLA, or the employer's own policies and offer such leave
- If not, then layoff, furlough, or termination may occur

COVID-19 and The ADA



- Because the CDC and state/local health authorities have acknowledged community spread of COVID-19 and issued attendant precautions, employers may measure employees' body temperature even though it is a medical examination under the ADA
- Similarly, employers are allowed to ask employees if they are experiencing symptoms of COVID-19
- However, employers must maintain COVID-19 temperature-check logs and other medical information separately from personnel files

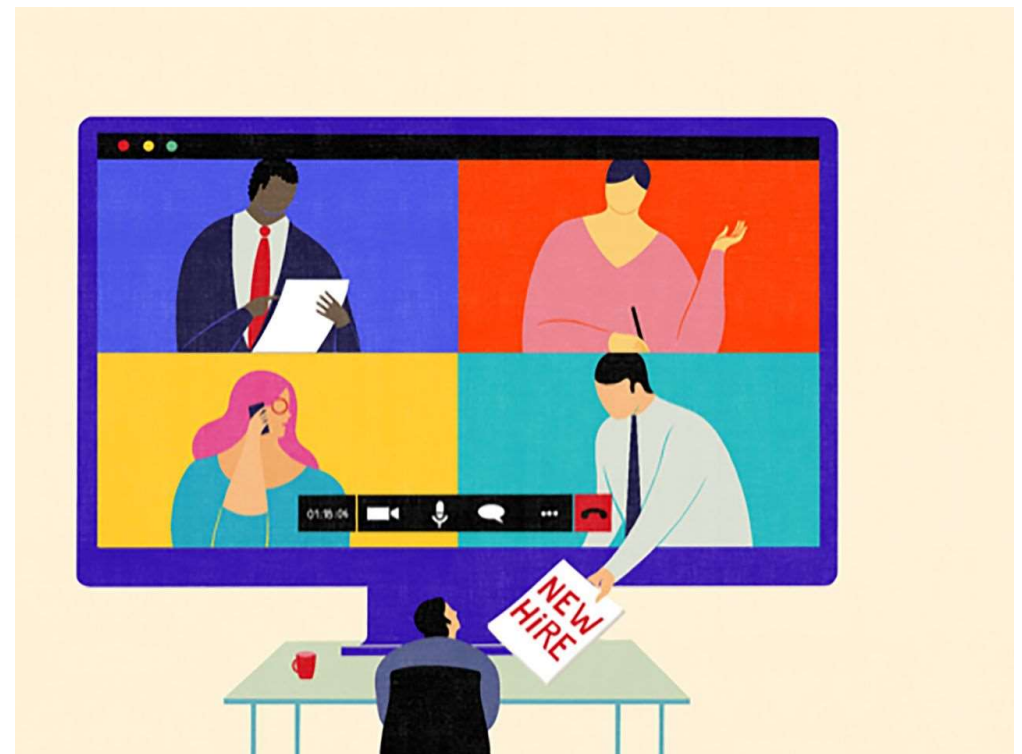
What Questions Can Employers Ask?

- If an employer requires the vaccine and provides it directly to its employees:
 - Pre-screening disability-related questions may be asked, as long as they are *job-related and consistent with business necessity*
 - Be careful though not to ask questions that elicit protected health information
- If an employer requires the vaccine but does not provide it to its employees:
 - Employers may ask whether an employee received the vaccine and to show proof that they received it
- If an employee voluntarily receives the vaccine:
 - Pre-screening questions need not be job-related and consistent with business necessity



Applicants and New Hires

- Applicants may be screened for COVID-19 symptoms
- Employers may require that all new employees be vaccinated
- Start date may be delayed if the new employee has COVID-19 symptoms
- However, employers may not unilaterally rescind employment offers or postpone the start date solely because the new employee is in a high risk category (65 or older, pregnant, etc.)



Personal Protective Equipment

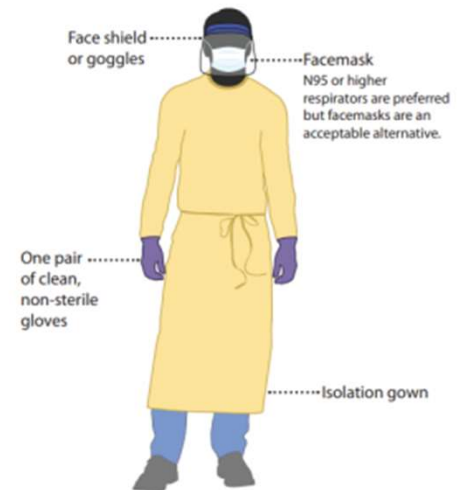
- Employers may require employees to wear protective gear and observe infection control practices
- Employers who require employees to wear should provide such PPE to employees, or inspect employees' own PPE to ensure adequacy

COVID-19 Personal Protective Equipment (PPE) for Healthcare Personnel

Preferred PPE – Use N95 or Higher Respirator



Acceptable Alternative PPE – Use Facemask



[cdc.gov/COVID19](https://www.cdc.gov/COVID19)

Contracting COVID at Work

- An employer may be liable for failing to require employees be vaccinated
- Employees may allege that the employer failed to provide a safe work environment per OSHA





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