

COVID-19 Vaccines in the Dental Workplace: FAQs for Employee Dentists

1. Can the dental practice I work for require me to get a COVID-19 vaccine?

Answer: The answer is likely yes, at least with respect to practice staff with direct patient contact in the operatory, including any employee dentists.* Yet, much remains to be determined, not the least of which includes how available vaccines are and will become (currently, the only vaccines authorized by the Food and Drug Administration are for emergency use and do not have final approval; in addition, they are not yet widely available). [See this FAQ page from the CDC for more information.](#) State health departments are in the process of prioritizing the classes of individuals to receive vaccines as and when they become available. Dentists are slated to be among the first to receive vaccines. That said, should a practice decide to require staff to be vaccinated, exceptions to the requirement may need to be considered from a legal and practical standpoint.

If the practice has 15 or more employees, any staff vaccination requirement would be subject to federal legal requirements to accommodate disabilities, including pregnancy-related disabling health conditions (e.g., preeclampsia, hyperemesis gravidarum) under the Americans with Disabilities Act (AwDA), as well as genuinely held religious beliefs and Title VII of the Civil Rights Act of 1964 (Title VII). On December 16, 2020, [the EEOC revised its March 17, 2020 initial COVID-19 technical assistance guidance to include new FAQs](#) on the circumstances under which an employer elects to require a COVID-19 vaccination as a condition of employment.

With respect to the AwDA, any vaccine requirement must be job-related, consistent with business necessity, and no more intrusive than necessary. Healthcare providers typically meet this standard with respect to COVID-19 as it is generally understood that an individual with COVID-19 might pose a direct threat to the health of the employee and others. Nevertheless, practices must reasonably accommodate staff members with disabilities unless the practice can demonstrate that doing so would pose an undue hardship (significant difficulty or expense) and no viable alternative exists. (See also, FAQs 2 and 3, below.) The parties must engage in an interactive process to determine whether and in what form a reasonable accommodation may be appropriate.

Under Title VII, when a practice is on notice that an employee's religious belief, practice or observance prevents the employee from receiving a vaccine, the employer must provide a reasonable accommodation unless doing so would cause more than a *de minimus* cost or burden. The requirement to accommodate does not require accommodation of personal beliefs that do not rise to the level of sincerely held *religious* beliefs (e.g., vaccine-aversion for other, non-medical personal reasons, personal doubt as to the existence or severity of COVID-19 infection, etc.).

State or local law may also inform the circumstances in which a healthcare employee may be required to receive a vaccination. Health departments may themselves require vaccinations for certain healthcare staff or essential workers. These laws – and the definition of which workers are included -- may vary between states and possibly even localities within a state. (Updated 1/6/21)

*The anti-discrimination laws do not apply to *properly-classified* independent contractors, so some of the legal concerns addressed in this FAQ may not apply. If you are an independent contractor, in other words, it may be easier for a practice owner to enforce a vaccine mandate.

2. What kind of disability/pregnancy-related accommodations should I expect my practice owner to consider in evaluating whether a reasonable accommodation is possible?

Answer: It is generally assumed that COVID-19 in the healthcare setting might pose a significant risk of substantial harm to the health or safety of the individual or others, at least with respect to staff members who have direct contact with patients in the operatory setting. For employee dentists, the question may come down to whether measures taken before the vaccine became available (i.e., masks, gloves, gowns, shields, protective barriers, social distancing, etc.) would constitute a reasonable accommodation to continue with respect to a disability or pregnancy-related condition that could be harmed by a vaccine.

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If the practice owner refuses to maintain the status quo, i.e., if prior measures are deemed insufficient, no longer effective or outdated, the practice should be prepared to document why and how circumstances have changed since the introduction of vaccines such that continuing with those practices would constitute an undue hardship to the practice. The practice must also consider whether other accommodations might be reasonable under the circumstances, including job-adjustment or reassignment, working from home if possible, or providing unpaid leave if the medical or pregnancy-related complication is resolvable over a reasonable time period. (Updated 1/6/21)

3. What kind of religious accommodations must my practice owner consider?

Answer: In the context of COVID-19, the same types of accommodation available for staff members with disabilities must generally considered. See FAQ 2, above.

4. If I am required to get a vaccine, what kind of proof can my practice owner ask me to provide?

Answer: All the practice needs to know is your name and whether a vaccine has been administered (completely in the case of multi-dose vaccines). You should not be asked any for verification that reveals any of other of your personal medical information.

5. If I am required to get vaccinated, who pays for the vaccine? If I have to take off time from work to get the vaccine must the practice owner pay me for that time? What if I need time off from work due to side effects of the vaccine?

Answer: The practice owner, as appropriate. While the vaccine itself is provided by the federal government through 2021, there may nevertheless be costs associated with administering the vaccine. If staff members are not permitted to opt out of the vaccine requirement, the practice would be responsible for paying the cost of administration as well as any time the employee is required to spend off-duty hours under federal and state wage and hour laws. Some practices may opt to engage a third-party vendor to provide vaccines on-site during regular working hours to defray costs. If you do experience side effects, whether you are entitled to paid sick leave would depend on the practice's policies or whether the side effects could be considered a compensable state workers' compensation law claim.

6. What if I refuse to be vaccinated for personal reasons? Can I be fired or re-assigned to another position?

Answer: If you refuse a required vaccination, you should be prepared to advise the practice owner of the reason(s) for the objection and provide any supporting documentation. If the reason for the refusal constitutes a disability or religious belief (and your practice has 15 or more employees), you and the practice owner must discuss whether a reasonable accommodation is possible. See FAQs 2 and 3, above. A practice cannot retaliate against a staff member who exercises their legal right to a reasonable accommodation, nor can it treat similarly-situated classes of employees differently because of their race, gender, etc. If you resist vaccination for non-disability-related or non-religious, personal reasons, you may nevertheless wish to discuss whether an accommodation might still be reasonable under the circumstances. If the practice owner does not agree, however, it could terminate the staff member.

7. What if I receive a vaccination and suffer an adverse reaction?

Answer: If a practice requires vaccination as a condition of continued employment, adverse consequences would be compensable to staff under state workers' compensation laws. Properly-classified independent contractors are not generally entitled to workers' compensation, in which case the practice may be liable if the vaccine was administered recklessly or negligently.

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8. If I get the vaccine, can I stop wearing a mask and socially distancing?

Answer: Not for a while. The reality is, it may take weeks for the vaccine to take full effect, particularly in the case of a multi-dose vaccine. If a person is vaccinated while already infected by COVID-19, the vaccine may not prevent the spread of the virus to others. The data also suggests that while the vaccines are seemingly highly effective, none of them have been shown to be 100% effective, meaning there still is a chance of contracting COVID-19. Moreover, we do not yet know how effective or long-lasting the vaccine will prove in the long term, or whether someone who receives the vaccine may nevertheless spread the infection to others.

9. Can I tell patients if my staff members are vaccinated?

Answer: If all practice staff have been vaccinated, the practice is generally free to answer “yes,” unless consent is required under applicable law (for example, if the data is protected by HIPAA). However, not all staff may be eligible to receive the vaccine at present, some may have legal rights to refuse the vaccine (e.g., disability issues or conflicts with religious beliefs as discussed in FAQs 1-3, above), and perhaps some have only received one dose of a 2-dose vaccine. Practices should not reveal who has or has not been vaccinated, but could simply state something to the effect of “those who have been able to receive the full vaccine regimen have done so.” If required by law, practices should request all staff members’ written consent before disclosing to patients. In most cases, employees are not required to sign such forms, and cannot generally be retaliated against for refusing to do so under applicable laws. In that case, the practice cannot disclose who refused to sign the consent or why.

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