

Your questions, answered

By [Lauren Hirsch](#)

Reporter, DealBook

For executives planning to reopen offices in the coming months, Thursday was a doozy of a news day: The [Centers for Disease Control and Prevention](#) unexpectedly issued new mask rules, and [Delta](#) became the first major U.S. company to require the coronavirus vaccine for new employees.

The Covid-19 precautions companies must take to keep their workers safe can seem like a moving target.

Here's what we do know: Generally, employers are allowed to require employees to be vaccinated. The Equal Employment Opportunity Commission [issued guidance in December](#) stating that vaccine mandates are legal. But this is complicated by proposed legislation in a number of states that would restrict companies' abilities to set such requirements, and it may be further complicated by the fact that all the vaccines only have conditional approval for emergency use. Pfizer and BioNTech recently [applied for full approval](#) for their vaccine, but the process is likely to take months.

[Continue reading the main story](#)

ADVERTISEMENT



We also know, as reflected by DealBook readers' responses when The Times [wrote about the vaccine mandate dilemma](#), that opinions about the roles and responsibilities of companies vary widely. Whether executives are prepared to follow through on the implications of a vaccine mandate is also up for debate.

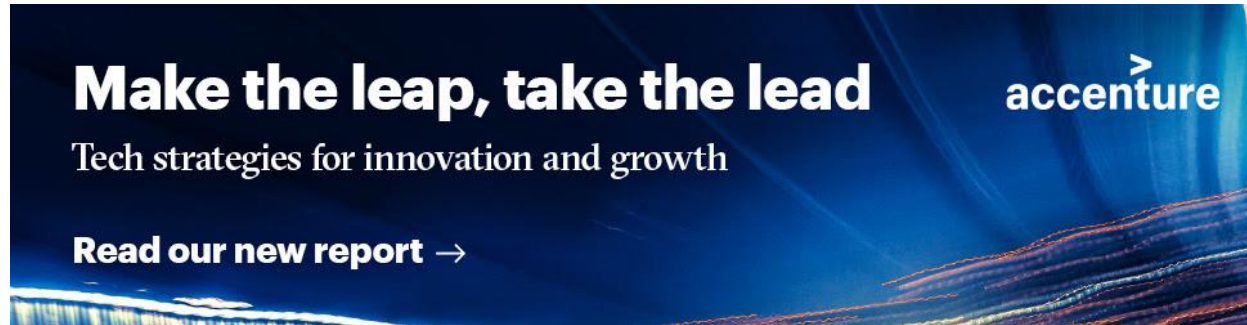
Some readers said employers should mandate vaccines to protect workers. "I have Type 1 diabetes, and if I catch Covid-19, it could potentially have serious consequences for me," wrote one reader. "I do not want to return to the office unless I know that everyone else around me has been vaccinated."

Others said companies that require vaccines are overstepping their boundaries.

For many readers, though, the whole issue just prompted more questions. Here are answers to four of the most common ones.

[Continue reading the main story](#)

ADVERTISEMENT



What does the new C.D.C. guidance on masks and distancing mean?

Justin McMath in Chicago asks, “Will employers (in part or in full) be responsible for ensuring all employees not wearing masks are in fact vaccinated?”

“If they want to permit employees to remove masks indoors, yes, I believe it does put the burden on the employer to verify,” said Kristin White, a lawyer at Fisher Phillips who specializes in workplace safety regulations.

Walmart employees can go mask-free starting May 18 by answering “yes” to a vaccination question that is part of a daily health assessment, top executives [wrote in a memo on Friday](#). “If you are not vaccinated, we expect you to answer ‘no’ and to continue to wear a face covering,” the memo said. Vaccinated customers are allowed to go maskless in areas that don’t have stricter mandates.

Ms. White said she advises clients to request proof of vaccination from employees. “We don’t recommend you just take people at their word,” she said.

[Continue reading the main story](#)

ADVERTISEMENT



The new C.D.C. guidance, which allows fully vaccinated individuals to go without a mask in most places, may serve as an incentive companies can offer to encourage vaccination. Walmart also said in its email — titled “Two new reasons to get vaccinated!” — that it would be giving \$75 to those who have gotten a shot. (To get the bonus, employees must show their original, completed vaccine cards.)

As of Friday afternoon, some lawyers said they were still awaiting guidance from the E.E.O.C. as to whether allowing vaccinated individuals to go mask-free indirectly reveals their status, which could be considered protected information under the Americans with Disabilities Act.

And while the C.D.C. sets the benchmark for all other guidance, Thursday’s announcement doesn’t mean all companies can go fully unmasked just yet, even if they require employees to be vaccinated. The C.D.C.’s advice doesn’t override local and state rules, and while some states have [begun to lift their mask mandates](#), others, including New York, said they would study the new guidance before deciding whether to adopt it.

The [White House](#) is also reviewing a new emergency standard on Covid workplace protections from the Occupational Safety and Health Administration. [Labor groups](#) have been pushing for new rules for about a year. OSHA currently suggests social distancing and masks in the workplace — but a temporary standard would establish requirements. Any new standard now needs to consider Thursday’s guidance.

Costco announced new policies on Friday allowing fully vaccinated customers to go mask-free in stores where state and local guidance allow.

Other companies told DealBook that, at least for now, workplace masks will remain in place. Some view the C.D.C. guidelines as aimed at the general public and not necessarily for workplaces optimizing for the protection of employees.

A spokeswoman for Wells Fargo said that its U.S. employees and customers would be required to continue wearing masks as the company reviews state and local guidance. Larry Lynch, an official with the National Restaurant Association, said the group will not be immediately updating its guidance, which currently recommends that even fully vaccinated customers wear masks indoors.

As vaccination numbers rise and the number of Covid-19 cases drop, it's natural for companies to rethink their workplace plans, said Joseph Allen, who is the director of Harvard's Healthy Buildings Program and advises companies on Covid-19 strategy.

"What was state-of-the-art last year is not state-of-the-art right now," he said. "The science has changed, the plans should change."

"If you've made the [return to work video](#) and things have changed, make the new video," Mr. Allen said. "If you have an 80-page plan that was around how we used to think about things last year, make the new plan based on the new science."

Are companies liable if employees are exposed to Covid-19 at work?

Elihu Rose in Flower Hill, N.Y., wants to know what liability a company has if unvaccinated employees infect their co-workers. "Did the employer provide a 'safe work environment?'" she asks.

In addition to abiding by OSHA standards, “if they’re following C.D.C. and local guidelines, they’re probably in pretty safe territory,” said Evandro Gigante, a partner in the labor and employment group at the law firm Proskauer Rose.

Meeting the requirement to provide a safe work environment does not require mandating vaccines, because employers can follow [C.D.C. guidelines](#) without doing so. But employers need to follow C.D.C. guidelines such as actively encouraging sick employees to stay home and need to comply with local regulations such as social distancing and mask mandates.

On the broader issue of employee lawsuits over contracting Covid-19 on the job, litigation has generally been less of a concern than what employers had feared at the beginning of the pandemic, lawyers say. That’s in part because employees would need to prove they contracted Covid-19 at work to win such a lawsuit, and that can be difficult.

In addition, many courts are not entertaining lawsuits related to contracting Covid-19 at work. Courts have instead told plaintiffs to seek relief through workers’ compensation, an insurance program that provides wages and medical benefits for those injured on the job.

Frontline workers accounted for most of the workers’ compensation claims related to Covid-19 last year, according to the [National Association of Insurance Commissioners](#). How these claims will play out for those who catch Covid-19 in a newly reopened office remains mostly untested.

Can companies require employees who aren’t vaccinated to take Covid-19 tests?

Patricia Ripley in New York City says her company requires employees who do not get vaccinated to be tested weekly and submit the results to the human resources department. Are other companies doing that?

Some are. The Cosmopolitan, a casino and resort in Las Vegas, for example, requires weekly Covid-19 testing for employees who do not get vaccinated. It pays for the tests and offers them at its on-site clinic.

“I don’t know if it’ll solve it in the long run,” said Mr. Gigante of Proskauer Rose. “But I do think that’s what we’re talking to people about and talking to clients about.”

Requiring tests before an employee can come to work doesn’t [fully protect other employees from contracting the disease](#). Tests vary in accuracy, and results refer only to the moment tests were administered. The more frequent the tests, the more informative they are. Mr. Gigante said he most commonly hears of companies mandating tests twice a week, though some situations, like a movie set or a courtroom, may require daily testing.

Some companies may not want to deal with considerations that come with such a program — like the cost, the need to figure out where and how to administer the tests, and the headache of keeping track of the results.

“Logistics and costs were making it less likely to be relied on by employers as an avenue, but as tests are becoming more available and less expensive, employers are looking at testing as a good layer of protection,” said David Schwartz, who runs the labor group at the law firm Skadden, Arps, Slate, Meagher & Flom.

Can employee wellness programs reward vaccinations?

Laura Godfrey in Saugatuck, Mich., is curious about the relationship between vaccinations and employee health care plans. “Companies have been focused on wellness to a determined level,” she writes. “So to ask for a vaccine seems reasonable.”

“It’s definitely something that’s on a lot of employers’ minds,” said Emily Zimmer, a partner who specializes in employee benefits at the law firm Troutman Pepper.

That's particularly the case for companies with established wellness programs, she said. For example, if a company already rewards employees who receive annual flu shots, it would be easier to do the same for employees who receive the Covid-19 vaccine.

But not *that* much easier. Incentives like these come with complications.

If an employer offers incentives as part of a group health plan, then the program is [covered by HIPAA](#), the federal regulations that protect confidential health information. Under HIPAA's nondiscrimination rules, employers cannot offer an incentive that is "too high" (generally 30 percent of the total cost of medical plan coverage). HIPAA also requires that employees who can't participate in an incentive program due to an "adverse health status factor," such as an allergy that prevents them from being vaccinated, be allowed to earn the incentive in some other way. In the case of Covid-19 vaccines, that could mean taking an educational course about stopping the spread of the disease.

It gets even trickier if an employer offers vaccinations on-site or through a partnership with another company, because the questions that precede a vaccination, such as, "Do you have an allergy?," would be considered a disability screening. That means the program would need to abide by the Americans With Disabilities Act. The E.E.O.C., which enforces the law, has yet to weigh in on what would be allowed. Companies are eager to find out: Trade groups, including the Blue Cross Blue Shield Association, National Association of Manufacturers and the Chamber of Commerce, [wrote to the agency in February](#) requesting guidance.

As with mandating vaccines, giving workers an inducement to get vaccinated can be complex and could potentially force an employer to wade into personal territory it would rather avoid.

Companies must "think through how could they encourage employees to take that step," said Ms. Zimmer, "but do it in a way that doesn't trip up, you know, this minefield of regulation."