TO: Indiana Public Libraries

FROM: Indiana State Library

RE: Employment Considerations & COVID-19 Vaccines

DATE: June 24, 2021

This memo addresses some of the employment questions the State Library has received about vaccinations during the COVID-19 public health crisis. This memo is intended to provide generally applicable information for local decision makers. However, open communication with your library attorney is recommended to help with decision making, especially with respect to considerations that may be unique to your library.

**Q.** Can we require our employees to get vaccinated?

**A.** Yes, technically. You can mandate that employees be vaccinated as a condition of employment, but Indiana’s “vaccine passport” law, IC § 16-39-11-5 (2021), prevents you from mandating that employees submit proof of vaccination. You must also make appropriate provisions for employees who do not choose to be vaccinated for legitimate reasons. Employees who work entirely remotely should not be subject to a vaccine mandate.

*Vaccine Passports Prohibited in Indiana*

The 2021 statute states that state and local units may not “require” anyone to provide “written, electronic, or printed information regarding” COVID-19 immunization status. It does allow you to maintain a record of employees’ immunization statuses – but only if the employees provide that information voluntarily. Indiana Attorney General Todd Rokita’s May 21, 2021, [memo](https://content.govdelivery.com/attachments/INAG/2021/05/26/file_attachments/1835542/Official%20Opinion.pdf) on the statute further clarifies:

The new law “does not . . . prohibit any entity from requesting [proof of vaccination], provided no negative consequence arises from not producing the record; if it did, then it would be a ‘requirement’ and not a mere request. The new law also does not prevent [state or local units] from requiring vaccination as a prerequisite for . . . employment, or other program or activity.” (Page 4)

*Appropriate Provisions/Exceptions*

If you have a policy requiring all employees to be vaccinated, some employees may have legitimate reasons for not getting the vaccine. These could include: pregnancy, disability, or a sincerely-held religious belief.

If employees will not receive the vaccine for one of these reasons, you must make reasonable accommodations for them. These could include:

* Allowing the employee to work from home
* Requiring the employee to wear a face mask
* Creating an environment where the employee can social distance from others while at work
* Requiring the employee to get periodically tested for COVID-19

If you have a question about whether an accommodation is reasonable or overly burdensome, please contact your library attorney.

*Purely Remote Work*

If an employee will never enter the physical workplace, you should not require that employee to be vaccinated.

**Q.** How can we enforce our vaccination requirement if we can’t require proof of vaccination?

**A.** You could have a policy stating the employees who choose not to voluntarily submit proof of having received the COVID-19 vaccination must be tested periodically for COVID-19. This is the path Purdue University took for its fall semester, and it was approved by the Attorney General in his (technically non-binding) legal memo. Your policy could also, or alternatively, mandate that all employees who choose not to submit proof of their vaccination wear masks (as long as you provide reasonable accommodations for those who can’t wear masks).

**Q.** Can we ask job applicants whether they have been vaccinated?

**A.** It’s not a good idea. The ADA prohibits employers from discriminating against potential hires because of their disabilities. If an applicant doesn’t get vaccinated because of a disability and must disclose this in the interview or application as a result of your question, you open yourself up to an ADA lawsuit.

However, you may inform prospective applicants about your library’s employee vaccine policy. After extending offers to job applicants, you may ask them about their COVID-19 vaccination status and, if dictated by your uniform policy as applicable to all employees, require them to be vaccinated (or work with you to come up with a reasonable accommodation for them) before the first day of non-remote work.

**Q.** How do we keep records of employee vaccinations?

**A.** You must keep all employee medical information in a confidential file *separate* from that employee’s personnel file. This includes any notes you make about the employee’s absence because of possible or determined COVID-19 infection, answers by employees to your questions about COVID-19 symptoms or vaccination status, and proof of vaccination voluntarily provided to you by the employee. Failing to keep medical information confidential or store it in an appropriate separate file is a violation of the Americans with Disabilities Act (ADA).

**Q.** Is asking employees whether they have been vaccinated permissible?

**A.** Yes, if you don’t ask too many follow-up questions. Generally, asking employees questions about their health status is tricky business because asking questions likely to disclose disabilities violates the ADA. However, the Equal Employment Opportunity Commission has stated that asking about COVID-19 symptoms or vaccination status does not violate the ADA because there are many factors that influence a person’s decision to be vaccinated that may have nothing to do with disabilities. Just be sure that you don’t ask follow-up questions likely to reveal a disability, such as “*Why* haven’t you been vaccinated?” And make sure to store all employee medical information, including answers to questions about COVID-19, in a secure place separate from the personnel file.

**Q.** Could vaccinated employees still need reasonable accommodations because of a disability?

**A.** Yes. If people are immunocompromised, for example, they may request extra protection from potential COVID-19 exposure because of the conditions or disabilities impacting their immune systems. They may request these accommodations even if they are fully vaccinated. You should work with employees making these requests as you would with any other employee who requested any other type of disability-related accommodation.

**Q.** What if we simply can’t make the accommodation(s) the employee wants?

**A.** The anti-employment-discrimination laws require you to make *reasonable* accommodations. An accommodation would not be reasonable if it would cause your library undue hardship. “Undue hardship” is defined differently depending on the law at play. Under the ADA, an accommodation causes undue hardship if it requires “significant difficult or expense.” Under Title VII, the accommodation causes undue hardship if its cost or burden on the employer is “more than minimal.”

If you feel a requested accommodation would cause your library undue hardship, you should propose some alternatives that might work for the employee. Only if no mutually-acceptable accommodation exists should you consider taking other steps.

**Q.** What if an employee refuses to be vaccinated for religious reasons?

**A.** You should generally honor the employee’s stated religious beliefs, even if you are unfamiliar with them, by making a reasonable accommodation. You may ask for some proof or evidence of the belief only if you have an objective basis for doubting that the employee’s reason is actually religious or is actually sincere. You are not required to make an accommodation if it would cause you undue hardship. Specific questions about this would be good ones to discuss with your library attorney.

**Q.** What are some appropriate accommodations we could make?

**A.** What is appropriate will depend on the individual and the circumstances, but here are some ideas:

* Allow the employee to work remotely.
* Adjust the employee’s position, shift, or job responsibilities to allow for more social distancing and less contact with other people.
* Provide glass barriers, masks, and other protective equipment.
* Permit the employee to take a temporary leave until conditions improve.

Additional Resources:

* Detailed FAQ from the EEOC: <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>
* Making Accommodations for COVID-19-related reasons: <https://askjan.org/topics/COVID-19.cfm>
* OSHA Guidelines on protecting workers: <https://www.osha.gov/coronavirus/safework>
* State Library Vaccine Webinar (Please note it was recorded prior to the passage of the vaccine passport law which prohibits asking for proof of vaccination:  <https://continuinged.isl.in.gov/covid-19-vaccination-policies-what-to-consider-1-leu/>.