

IFA WEBINAR SERIES

LABOR & HIRING

Legal Implications and Implementations
Around Returning To Work

August 25, 2021

Presented By:



BRUCE SARCHET

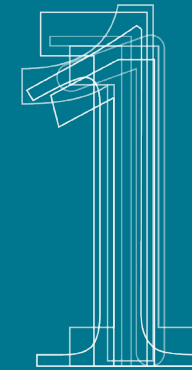
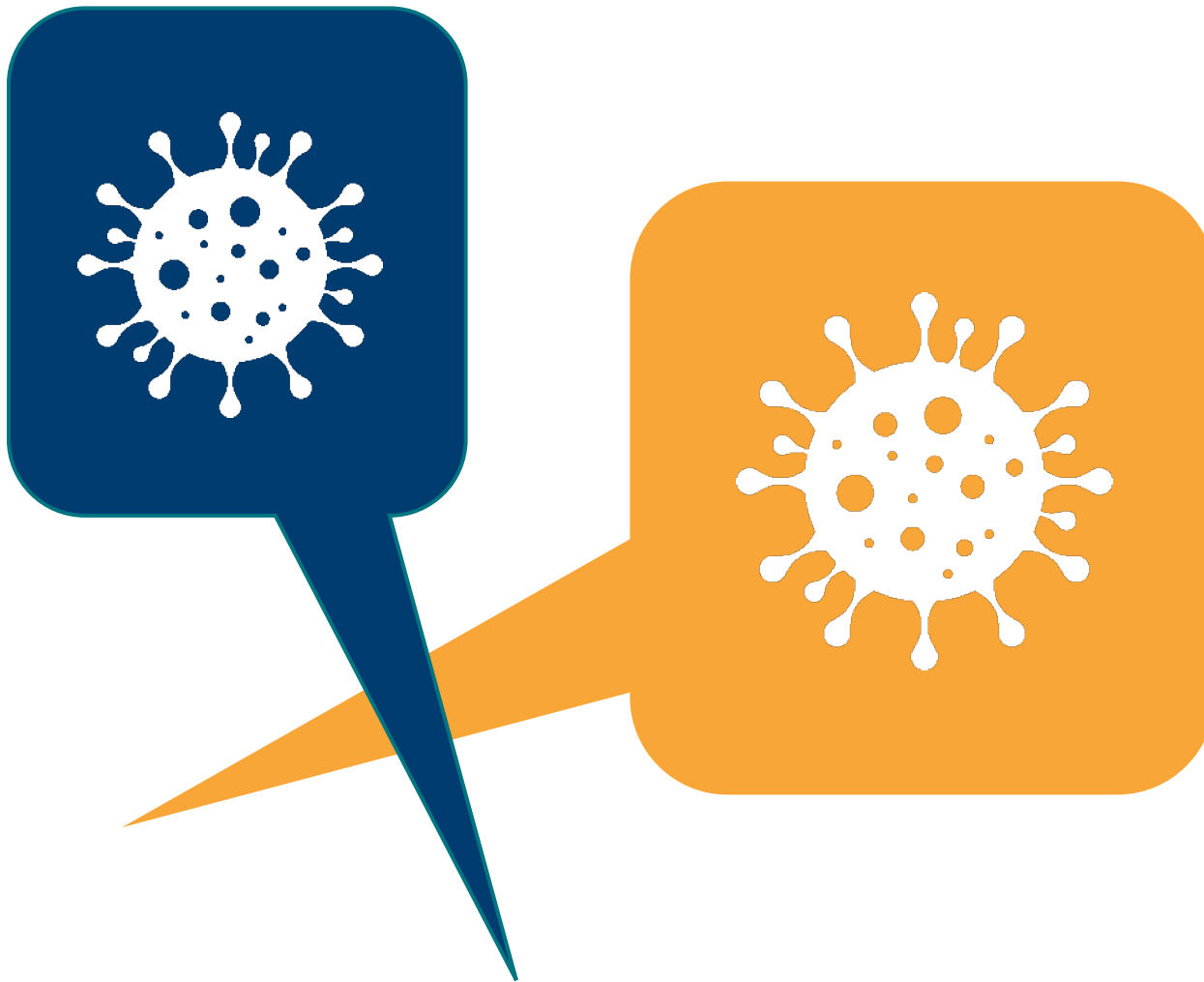
Shareholder
Littler, Sacramento



Agenda

1. Calling Workers Back To The Office
2. COVID-Vaccinations (and face coverings)
3. Workplace Cleaning Protocols
4. What happens if my employee gets sick?
 - Exclusion
 - Leave of absence
 - Notification of interested parties
5. Remote Work Issues/Opportunities





RETURN TO OFFICE: Responding To Employee Concerns

Come On Back # 1

Supervisor: “Our office is reopening, and we are expecting employees to report back to the office.”

Employee: “But I am more productive at home. Can I just continue to work remotely?”

“I am more productive at home”

– Manager’s Talking Points

- There are pros and cons to everything.
- Many workers report that they actually are less productive at home.
- We value the camaraderie and synergy from having people meet in person.
- We are operating a safe and healthy workplace.
- So, we are going to need you to report to the office.

Come On Back # 2

Supervisor: “Our office is reopening, and we are expecting employees to report back to the office.”

Employee: “Even though I am vaccinated, I am afraid that I will catch COVID. Can I just continue to work remotely?”

“I’m afraid I might get it” – Manager’s Talking Points

- We are operating a safe and healthy workplace.
- Our protocol for masking is _____.
- We are wiping down surfaces as follows _____.
- Our ventilation system plan is _____.
- If anyone, vaccinated or not, is in close contact or tests positive, they will not be reporting to work for _____ days.

Come On Back # 3

Supervisor: “Our office is reopening, and we are expecting employees to report back to the office.”

Employee: “Well, I have young children, they can’t get vaccinated. Even though I’m vaccinated, I’m worried I will catch it and carry it home to them..”

“Young children at home” – Manager’s Talking Points

- We are operating a safe and healthy workplace.
- Our protocol for masking is _____.
- We are wiping down surfaces as follows _____.
- Our ventilation system plan is _____.
- If anyone, vaccinated or not, is in close contact or tests positive, they will not be reporting to work for _____ days.

Come On Back # 4

Supervisor: “Our office is reopening, and we are expecting employees to report back to the office.”

Employee: “Oh, I have a medical condition and I can’t get the vaccine. I think I should continue to work from home.”

“Medical Condition” – Manager’s Talking Points

- I understand. But it now may be an essential function of your job to report to the office.
- Therefore we need to engage in the **interactive process** to determine if a reasonable accommodation is possible which will allow you to continue to perform the essential functions of your job.
- Let’s schedule a meeting to do that.
- (**NOTE:** proving that it is an undue hardship to the Company for an employee to work from home is much more difficult where the employee has been successfully working from home for months.)

Come On Back # 5

Supervisor: “Our office is reopening, and we are expecting employees to report back to the office.”

Employee: “Oh, I have a sincerely held religious belief and I can’t get the vaccine. I think I should continue to work from home.”

“Religious Belief” – Manager’s Talking Points

- I understand. But it now may be an essential function of your job to report to the office.
- Therefore we need to engage in the **interactive process** to determine if there is a religious accommodation which will allow you to practice your religion.
- Let’s schedule a meeting to do that.
- (**NOTE:** proving that it is an undue hardship to the Company for an employee to work from home is much more difficult where the employee has been successfully working from home for months.)



BACK AT THE OFFICE:

Vaccinations and
Face Coverings

At The Watercooler...

Employee # 1:

“Why don’t you get your vaccine, man? I only have to wear this stupid mask because you won’t get vaccinated.”

Employee# 2:

“Hey, it’s none of your beeswax what I choose to not put in my body.”

Backlash!

- This conflict is happening all over the U.S.
- Take proactive steps to address it before it happens.
- “We are all on the same team. The safe workplace team!”



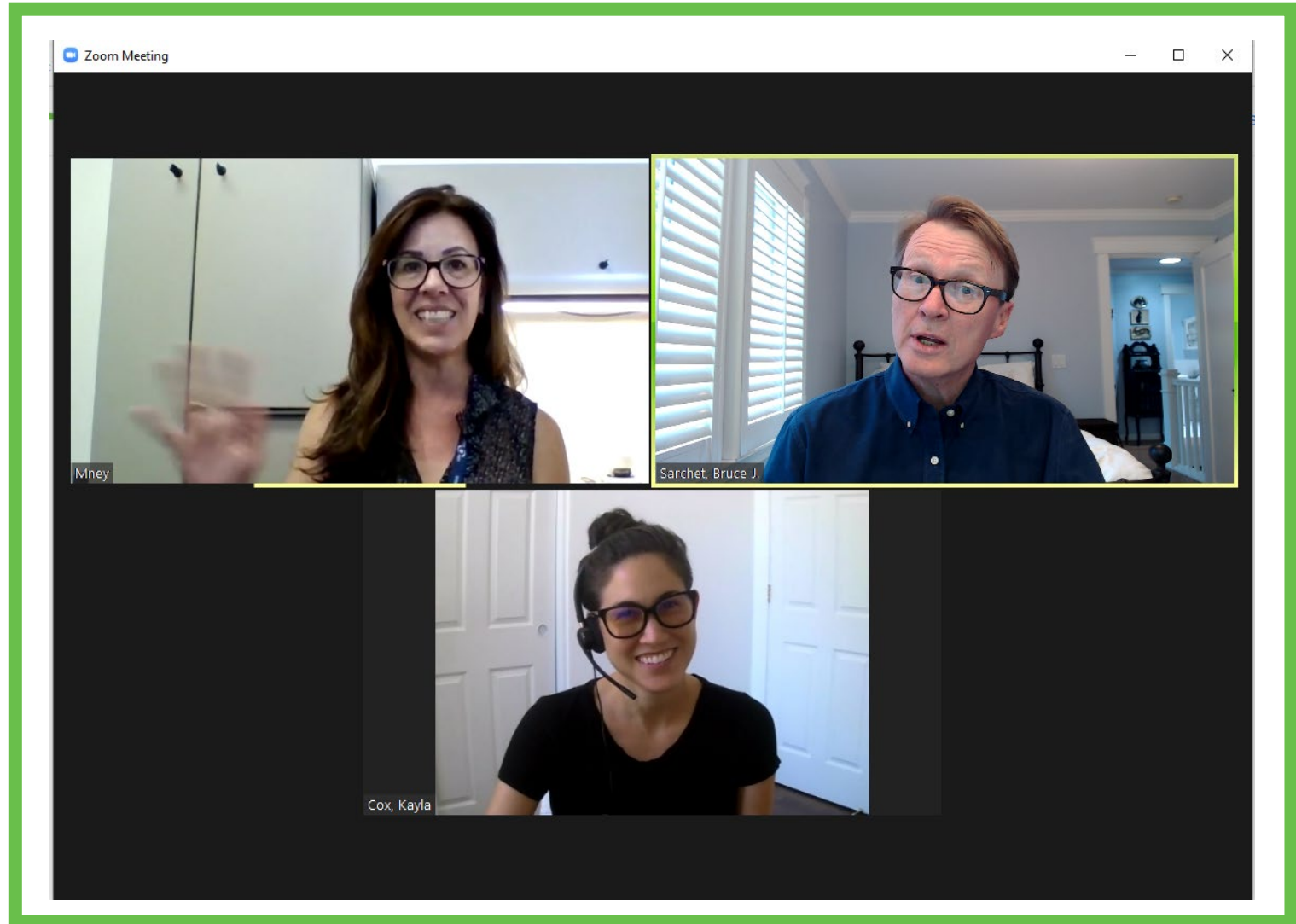
The Policy Of The Safe Workplace Team

“Please refrain from discussions about the individual vaccination status of your co-workers. These discussions can distract us from our mission of staying safe during the pandemic.”



Top Two Things Said on Zoom Calls Between Clients and Littler Lawyers In August

1. You're on mute.
2. We are implementing a mandatory vaccination policy, can you help us with that?



The New York Times

Walmart and Disney Join a Growing Group of Businesses Requiring Vaccines

Walmart's mandate applies to office workers and traveling managers but not to store and warehouse employees. Disney said it had begun conversations with unions to expand its requirement.

By Lauren Hirsch

Published July 30, 2021 Updated July 31, 2021, 9:46 a.m. ET

Employers held off for months on making decisions about mandates, worried about the legal and political fallout from renewed pandemic restrictions, and with encouragement from government leaders, a growing number of the country's largest companies have been embracing the idea.

On Friday, Walmart and the Walt Disney Company in California announced requirements that some employees be vaccinated. The companies' similar announcements this past week from Google, Amazon, Facebook, Uber and others.

POLITICO PRO

Kaiser Permanente mandates Covid-19 vaccines for employees and doctors

BY VICTORIA COLLIVER | 08/02/2021 06:55 PM EDT

Kaiser Permanente will require its employees and physicians to be fully vaccinated for Covid-19 by the end of September, the Oakland-based health system [announced Monday](#).

"Making vaccination mandatory is the most effective way we can protect our people, patients and the communities we serve," Greg Adams, CEO and chairman of Kaiser Foundation Hospitals and Health Plan, said in a statement. "We encourage all health systems and business and industry leaders across the country to play a role in ending the pandemic by doing the same."

The significance: Kaiser isn't the first in the nation or California to require that its staff get vaccinated, but it has outsize influence as the nation's largest integrated health system. The Kaiser Permanente organization — a health plan and hospital network that contracts exclusively with The Permanente Medical Group — includes more than 216,000 employees and more than 23,000 doctors. Kaiser officials say 77.8 percent of its employees and more than 95 percent of its physicians have already been vaccinated.

THE WALL STREET JOURNAL.


BUSINESS

Tyson Foods to Require Covid-19 Vaccines for All U.S. Workers

CEO says move needed to combat Covid-19 variants; voluntary efforts have resulted in less than half of U.S. workforce vaccinated

By [Jacob Bunge](#)

Updated Aug. 3, 2021 10:56 am ET

 PRINT  TEXT

Tyson Foods Inc. said it would require Covid-19 vaccinations for its U.S. workforce of about 120,000, aiming for total vaccination of the meat giant's employees by Nov. 1.

The Arkansas-based company's target, which includes both processing plant and corporate office workers, is partly subject to discussions with labor unions that represent around one-third of the company's hourly workers, Tyson officials said. The company said it would offer a \$200 bonus to its front-line workers as an incentive.

Chief Executive Donnie King said the effort is the best way to protect the health of Tyson's workforce as more contagious and [deadly variants of Covid-19](#) drive infections higher across the country.

Mandatory Vaccination Policy - Options

1. Immediate.
2. Phase-In.
3. Either get vaccinated or test weekly.



1. Mandatory Vaccination Policy – Immediately

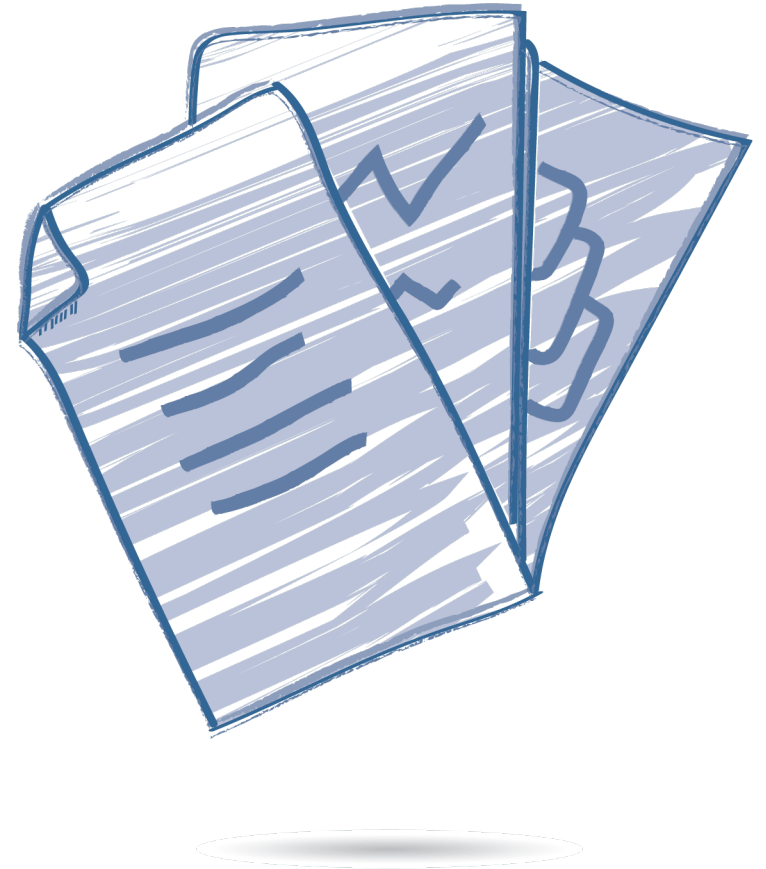
All employees must be fully vaccinated*

* Of course, with exceptions based on medical conditions and sincerely held religious beliefs.



Littler's HR Textbook, Chapter 1: Work Rules

- If you have a work rule, you better be ready to enforce it.
- On a consistent basis.
- With proper documentation.
- And be sure you have it documented.
- Don't forget to document.



2. Mandatory Vaccination Policy – Phase-In

- All employees hired on or after September 1, 2021, must be fully vaccinated*.
- By January 1, 2022, all employees must be fully vaccinated*.

* Of course, with exceptions based on medical conditions and sincerely held religious beliefs.



3. Mandatory Vaccination Policy – Or Get Tested Weekly

The “soft landing” approach:

All employees must be fully vaccinated*,
or get a COVID test every week.

* Of course, with exceptions based on
medical conditions and sincerely held
religious beliefs.



On the Production Floor

Supervisor: “Can I get some help over here? Where is everybody?”

Employee # 1: “They are all in line to get their COVID test.”

Supervisor: “Shoot.”

Vaccine or test weekly? Other challenges

- Cost of tests.
- Paying employees for the time it takes to get the test.
- Practical issues:
 - When?
 - Where?
 - How does employee communicate results?
- And, after all that, you may end up with a lot of positive tests.


What You Can Do With Vaccination Status Info.

- Allow fully vaccinated persons to not wear masks in low or moderate areas (except where preempted by local or state requirements – SF Bay Area and Louisiana).
- Impose a workplace rule requiring mandatory vaccinations (except in Montana).
- Allow employees to travel on business.



So What About Masks?

CDC: May 13, 2021

 Centers for Disease Control and Prevention
CDC 24/7: Saving Lives, Protecting People™

Search COVID-19

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[Vaccines](#)

[Getting Your Vaccine](#) +

[Types of Vaccines Available](#) +

[Possible Side Effects](#)

[After You're Fully Vaccinated](#) -

[Guidance for Fully Vaccinated People](#)

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Interim Public Health Recommendations for Fully Vaccinated People

Updated May 13, 2021 Languages Print

Summary of Recent Changes

Updates as of May 13, 2021

- Update that fully vaccinated people no longer need to wear a mask or physically distance in any setting, except where required by federal, state, local, tribal, or territorial laws, rules, and regulations, including local business and workplace guidance
- Update that fully vaccinated people can refrain from testing following a known exposure unless they are residents or employees of a correctional or detention facility or a homeless shelter

CDC: July 27, 2021



COVID-19

To reduce their risk of becoming infected with the Delta variant and potentially spreading it to others, CDC recommends that **fully vaccinated people:**

- **Wear a mask in public indoor settings** if they are in an area of **substantial or high transmission**.

POSSIBLE SIDE EFFECTS

After You're Fully Vaccinated —

Guidance for Fully Vaccinated People

Safety & Monitoring



Effectiveness



Myths & Facts

Frequently Asked Questions

About COVID-19 Vaccines



Summary of Recent Changes

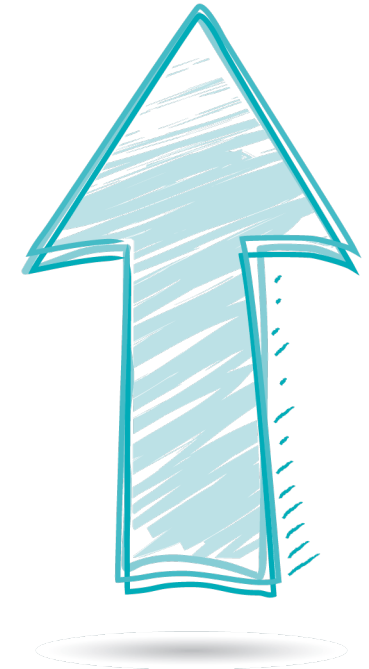
Updates as of July 27, 2021

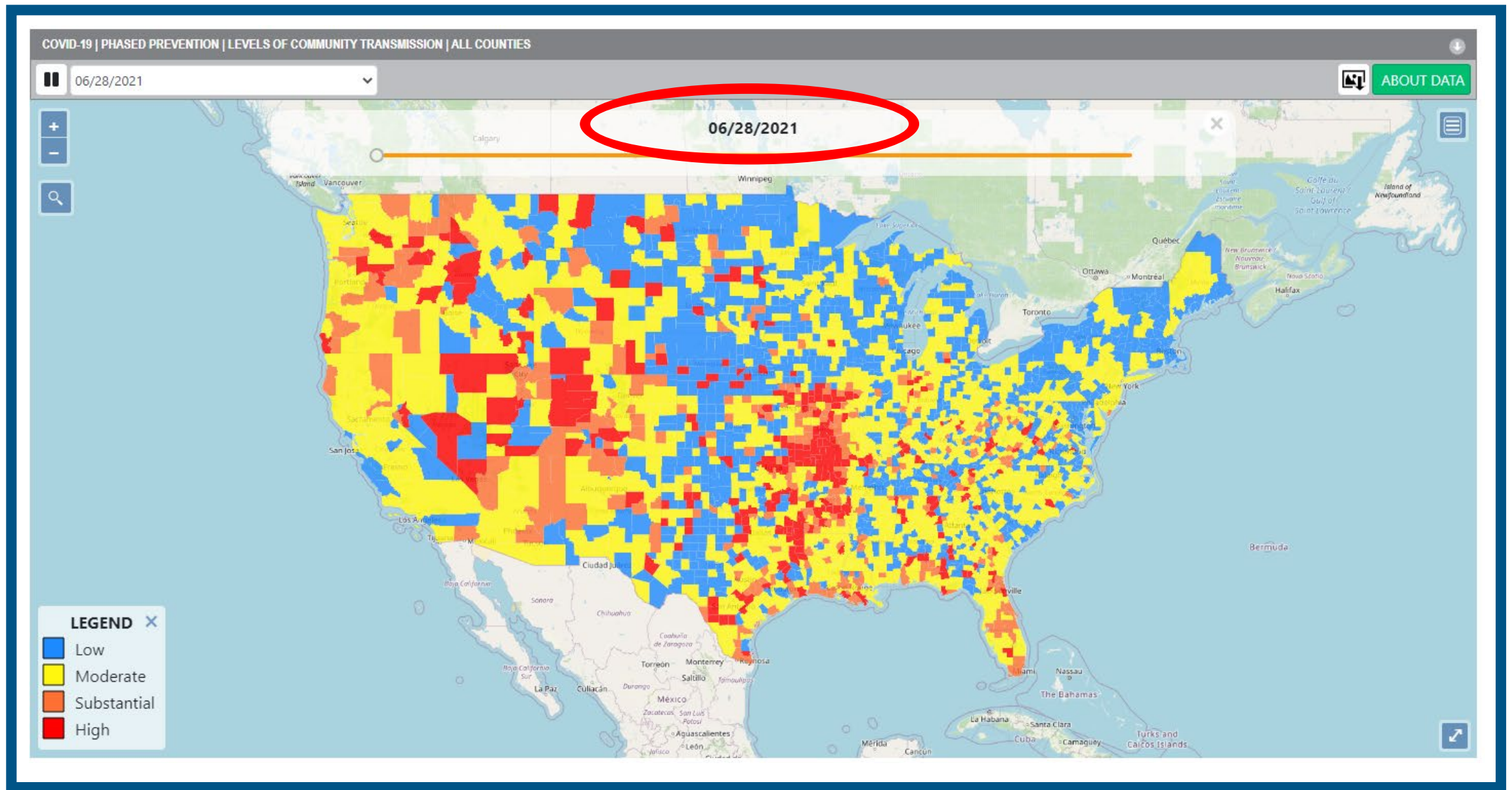


- Updated information for fully vaccinated people given new evidence on the B.1.617.2 (Delta) variant currently circulating in the United States.
- Added a recommendation for fully vaccinated people to wear a mask in public indoor settings in areas of substantial or high transmission.
- Added information that fully vaccinated people might choose to wear a mask regardless of the level of transmission, particularly if they are immunocompromised or at increased risk for severe disease from COVID-19, or if they have someone in their household who is immunocompromised, at increased risk of severe disease or not fully vaccinated.

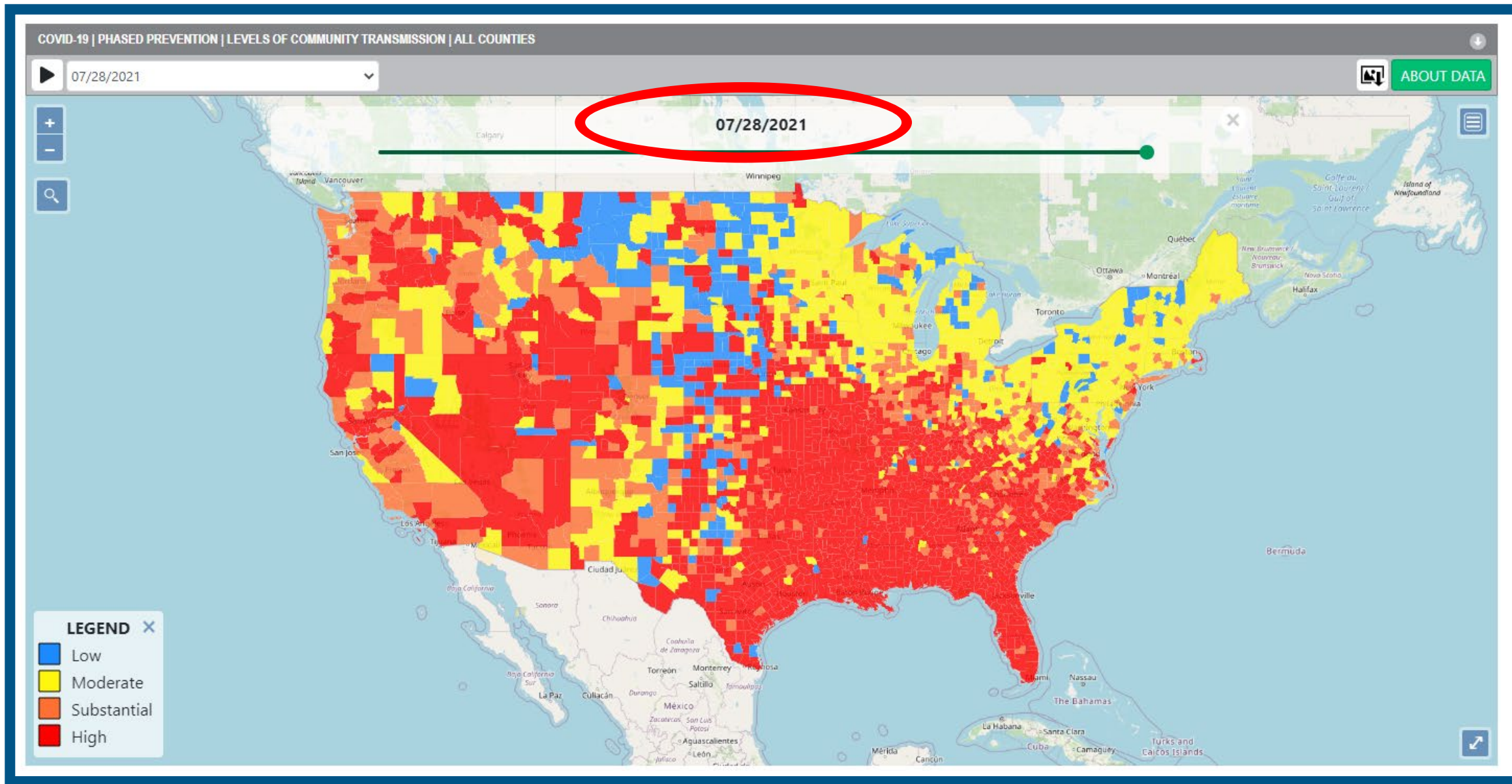
“Substantial or High Transmission”

- **Substantial:** 50 to 99.99 cases per 100,000 persons over the preceding 7-day period.
- **High:** 100 or more cases per 100,000 persons over the preceding 7-day period.
- CDC has created a county-level map!
- Updated at 8 pm EST every day.

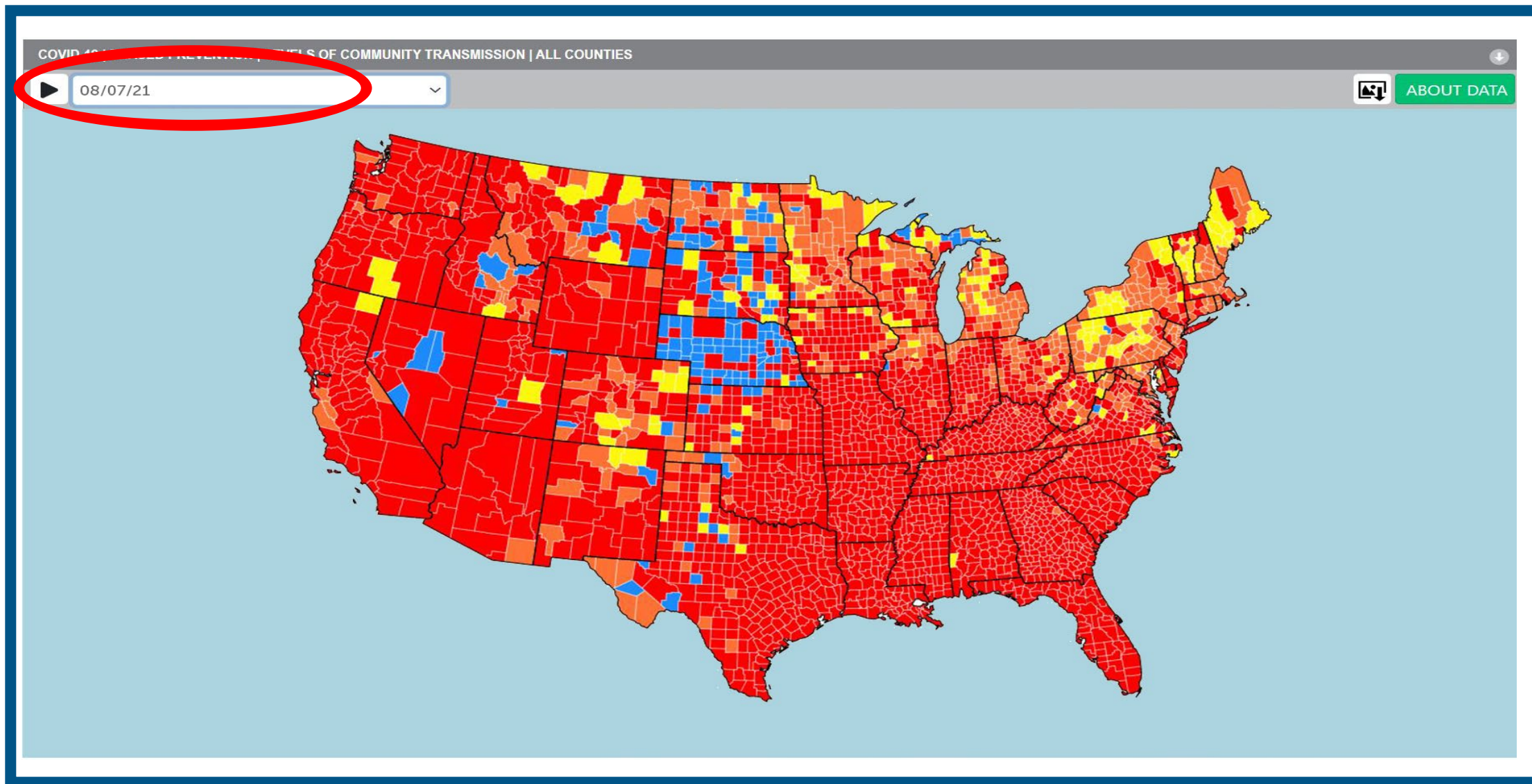




<https://covid.cdc.gov/covid-data-tracker/#county-view>



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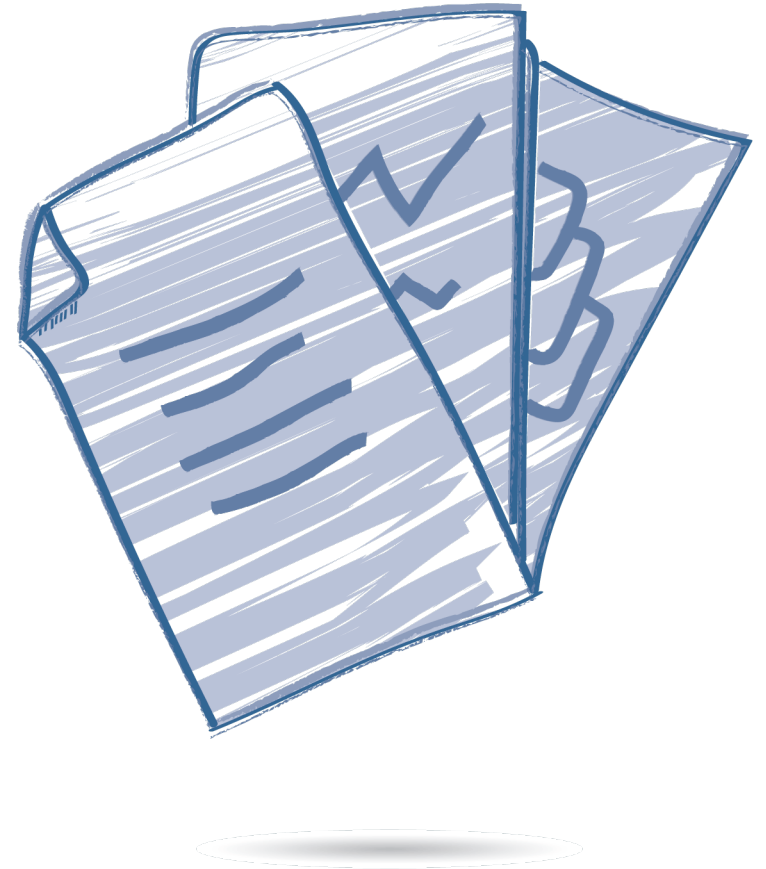
In The Cubicles...

Supervisor: “This is your final warning for not properly wearing your face covering.”

Employee: “And what will happen next time you catch me?”

Littler's HR Textbook, Chapter 1: Work Rules

- If you have a work rule, you better be ready to enforce it.
- On a consistent basis.
- With proper documentation.
- And be sure you have it documented.
- Don't forget to document.



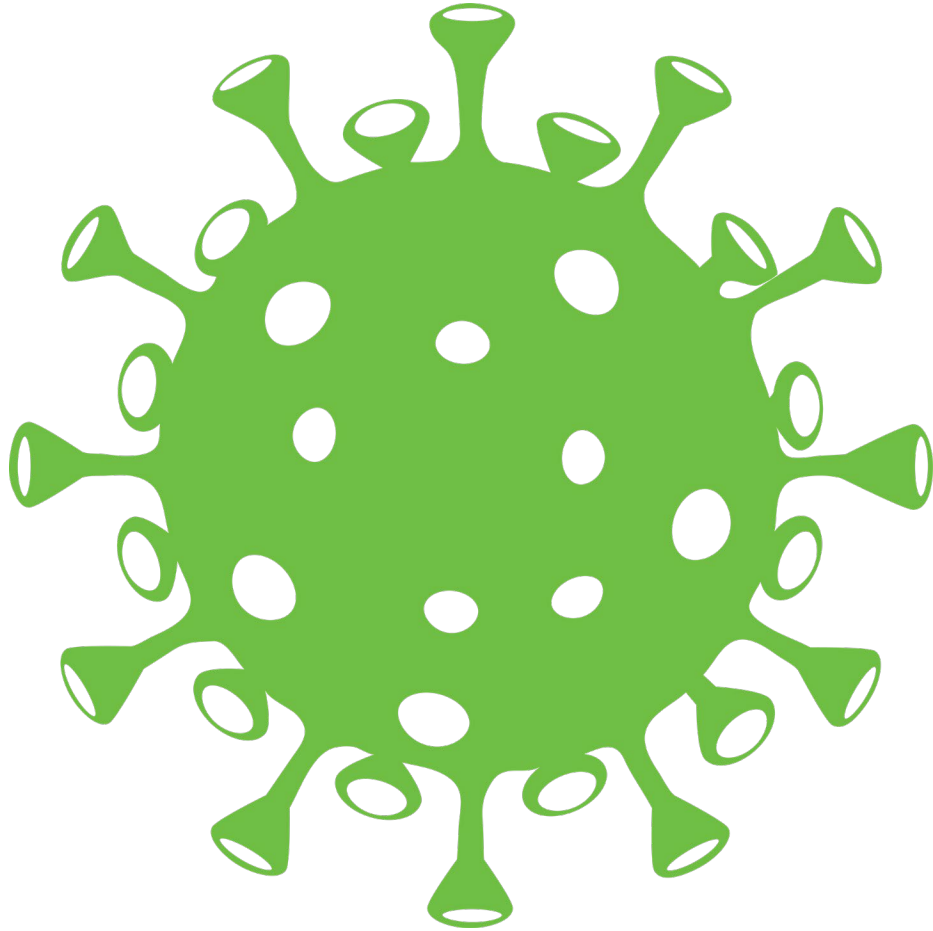


BACK AT THE
OFFICE:
Cleaning Protocols

Cleaning Protocols

- These are still a thing!
- Review local health orders/requirements.
- Document and distribute to employees.
- Spot check compliance.
- Update periodically.

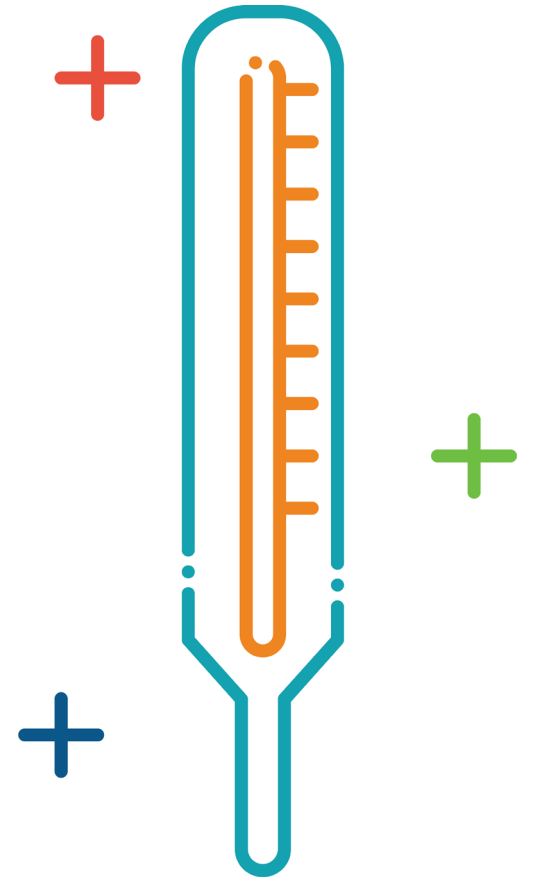




Employee
Exposed, Or
Tests Positive

Infected and Potentially Infected Employees

- Employees should be immediately excluded from the workplace and instructed to self-isolate if:
 - They experience COVID-19 symptoms,
 - They've experienced a close contact,
 - They test positive for COVID-19, or
 - They have been diagnosed by a health care provider with COVID-19



Infected and Potentially Infected Employees

Return to Work Criteria:

- Generally, a symptom/time-based strategy is recommended for returning employees to the workplace, not a test-based strategy.
- **Employees with COVID-19 who experience symptoms** should not be permitted to return to the workplace until:
 - At least 10 days have passed since the onset of symptoms,
 - At least 24 hours have passed since resolution of fever without the use of fever-reducing medications, and
 - Other symptoms have improved

Infected and Potentially Infected Employees

- **Employees with COVID-19 who never experience symptoms** should not be permitted to return to the workplace until:
 - At least 10 days have passed since the specimen for their first positive test was collected
- **Employees who have experienced a close contact, never develop symptoms, and are not tested for or diagnosed with COVID-19** should not be permitted to return to the workplace until:
 - At least 14 days have passed since the close contact

**Return to work criteria may vary depending on industry, geographic location, and whether an employee is severely immunocompromised.*

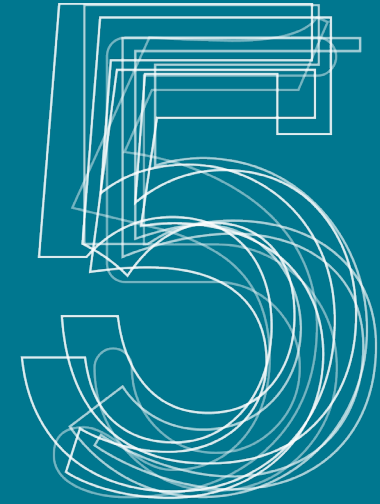
Types of Paid Leave Laws

Accrued Paid Leave Laws (“Kin Care”)

Paid Sick and Safe Time Laws

Paid Family and Medical Leave Insurance Programs

COVID-19 Leave Laws



Remote Work

Common Questions Asked by Telecommuters

- How do I clock in?
- Who pays my electric bill?
- What happens if I slip and fall?
- What should I do with all of this top secret work stuff?
- Can I keep doing this forever?



Non-Exempt Employees Working From Home. 10 Things to do every workday.

1. Don't work until you clock in.
2. Clock in.
3. Take your morning break. (but don't clock out or back in)
4. Clock out for lunch.
5. Clock back in after lunch.
6. Take your afternoon break. (but don't clock out or back in)
7. Get prior permission before working overtime.
8. Clock out.
9. Don't work after you clock out.
10. Oh, and don't forget to work in between each of these things.



Exempt Employees Working From Home

- Clock in, schmlock in, we don't care. Do your laundry if you like at 9:00 a.m., just get your work done.
- But – you may need to double check exempt status – outside sales – working from home.
- Big concern: expense reimbursement.
 - Home internet
 - Ergonomic workstation
 - Cell phone bill
 - Electric bill
 - Rent?



Non-Exempt Employees Working From Home

- We also are concerned about:
expense reimbursement.
 - Home internet
 - Ergonomic work station
 - Cell phone bill
 - Electric bill
 - Rent?



The Home Office – Other Considerations

- Notices and postings.
- Workplace Safety.
- Trade Secrets and Confidential Information.
- Workers' Compensation.

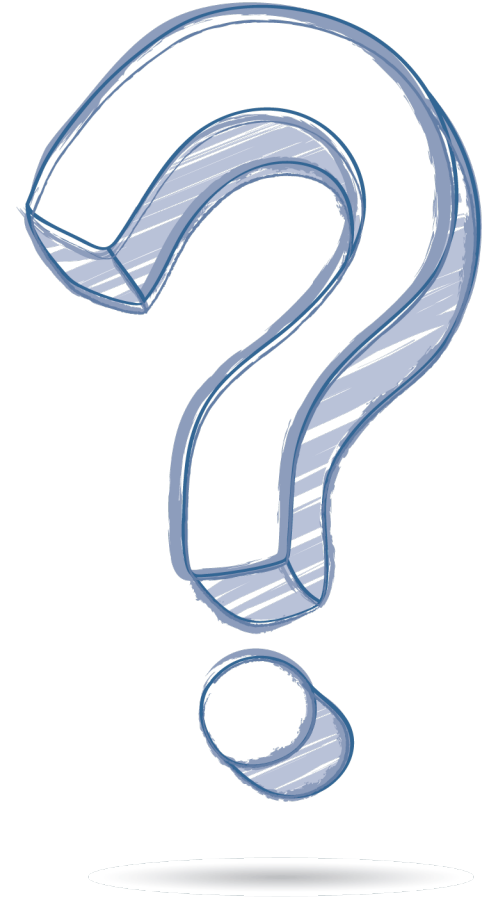




But Wait, Let's Play
Three-dimensional Chess!

What Happens When...

- Your employee is working from home,
- But their “home” is in a different **city** from their place of work?
- Or in a different **state**?
- Or in a different **country**?
- Or on a different **planet**?



Which Law Applies?

1. The Company's Office is in Sacramento, but employee is working in San Diego. Which law applies?
2. The Company's Office is in Sacramento, but employee is working in San Diego. Oh, and the employee snuck off to San Diego without telling anyone. Which law applies?

CAVEAT: Some leave of absence laws require accrual based on the location of the business, rather than the location of the employee.
(Example, Minneapolis, Seattle)

Can You Do Something About This?

- Yes!
- Audit today – ask your employees where they are.
- Policies:
 - If you are working from home, you must keep the Company informed of where you are every workday.
 - You may not move out of state to work without prior permission.



But it's not all bad.



- Embrace flexibility?
- Ability to work anywhere as a recruiting tool?
- Perhaps focus on where you ***can*** work, as opposed to where you ***can't***?

Questions?

Thank you for attending!



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Carl Gotcher
District Sales Manager -
HR Services

Managing COVID-19 Vaccinations and the Return to Work

What our clients are telling us



One in four business leaders¹ are wondering how to determine the role their company should play in employee COVID-19 vaccinations. To answer that question, **one in three business leaders¹** say they would benefit from information and recommendations from HR professionals on COVID-19 vaccine-related employer legal or compliance responsibilities.



More than **60% of all business leaders** in the Paychex survey say they expect a significant or very significant investment of time, money, and technology to monitor employee COVID-19 vaccination status.¹

1. Based on a Paychex survey of 300 principals at U.S. companies with 2 to 500 employees, fielded between January 27 and February 2, 2021.

Q. Why should we have a written policy?

A. A documented COVID-19 vaccination policy helps employees understand your expectations regarding vaccination, as well as any new processes or requirements associated with it. Since there are many considerations involved in developing vaccination policies, Paychex has created a [COVID-19 Vaccine Policy Checklist](#) to help employers get started on this process.

You may also want to consider making your COVID-19 vaccination policy part of your [business continuity plan](#) (BCP), since a BCP is designed to help you avoid business disruption from unexpected events.

Q. As an employer, am I allowed to mandate my employees be vaccinated against COVID-19?

A. The Americans with Disabilities Act (ADA) allows employers to establish a qualification standard that requests that “an individual not pose a direct threat to the health or safety of others in the workplace.” Therefore, according to the current guidance from the Equal Employment Opportunity Commission (EEOC), it does not violate federal law for employers to require employees to get a COVID-19 vaccine, as the virus presents a “direct threat.”

Q. As an employer, am I allowed to mandate my employees be vaccinated against COVID-19?

- A.** The Americans with Disabilities Act (ADA) allows employers to establish a qualification standard that requests that “an individual not pose a direct threat to the health or safety of others in the workplace.” Therefore, according to the current guidance from the Equal Employment Opportunity Commission (EEOC), it does not violate federal law for employers to require employees to get a COVID-19 vaccine, as the virus presents a “direct threat.”

However, an employee could have a medical condition that would be considered a disability under the ADA, or a covered condition under state or local laws, that may affect whether they can receive the COVID-19 vaccine. This includes pregnancy. In other cases, an employee may have a sincerely held religious belief that prevents them from being vaccinated. In both circumstances, such employees may be eligible for a reasonable accommodation to be able to perform their jobs.

Before taking any action against an employee who indicates they cannot be vaccinated for these reasons, employers will need to work with each employee to determine whether they can be reasonably accommodated. This must be an individualized assessment that considers, for example, factors specific to the workplace, the position, and the employee. Employers should also review applicable federal, state, and local laws if they are considering a mandatory vaccination policy.

Because of these complexities, employers may want to consider encouraging, rather than requiring, employees to be vaccinated.

It's important to note that employers who request or require their employees to be vaccinated may also need to compensate non-exempt employees for their time spent obtaining the vaccination, including travel.

Q. If I implement a mandatory vaccine policy, what can I do if I'm unable to accommodate an unvaccinated employee?

A. If an employee who refuses or is unable to be vaccinated due to a disability or medical condition (including pregnancy) or a religious belief cannot be reasonably accommodated, be sure to consult with your legal counsel to determine next steps, including whether the employee has any other leave of absence entitlements available under federal, state, or local law.

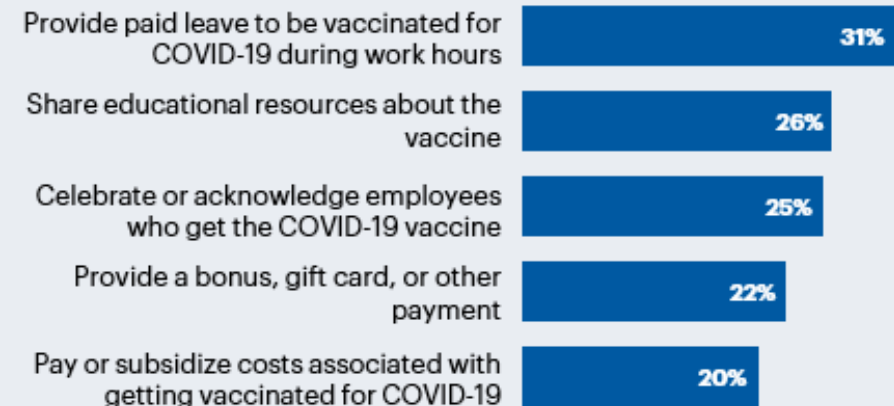


More than **30% of business owners** in the Paychex survey say that information and recommendations from HR professionals would be helpful when it comes to tracking and motivating employee vaccinations and best practices for returning to the workplace safely.¹

Q. What strategies are businesses considering to encourage employees to be vaccinated against COVID-19?

A. Most SMBs in our survey said they will encourage their employees to get the COVID-19 vaccine. Some employers even plan on incentivizing employees to get vaccinated. But, before implementing any incentive program, employers are encouraged to consult with their legal counsel to ensure compliance with applicable federal, state, and local laws.

Seventy-nine percent of businesses surveyed plan to motivate employees using incentives. Here are the top incentives they are considering.



Employers are reminded to review applicable federal, state, and local laws before implementing any incentives related to COVID-19 vaccinations or paying costs associated with vaccinations.

Based on a Paychex survey of 300 principals at U.S. companies with 2 to 500 employees, fielded between January 27 and February 2, 2021.

Three Ways SMBs Are Managing COVID-19 Vaccination Rollout

1. Providing consistent communication

Keeping employees informed about evolving developments regarding the vaccine rollout is a key part of managing your vaccination program. It's recommended as part of your policy that your business designate an internal direct person to field questions about your policy and point employees to trusted resources where they can find more information about getting the vaccine.

Our survey found that SMBs will use a variety of means to keep employees informed about vaccination guidelines, support, and requirements within their company:

Employee Communication Methods

Email or email newsletters	41%
In-person meetings	35%
Phone or video conferencing	34%
Internal chat	20%
Internal help line	16%
Internal blog or website	14%

Based on a Paychex survey of 300 principals at U.S. companies with 2 to 500 employees, fielded between January 27 and February 2, 2021.

Three Ways SMBs Are Managing COVID-19 Vaccination Rollout

2. Tracking employee COVID-19 vaccination information

Eighty-two percent of the businesses in the Paychex survey plan to monitor employee COVID-19 vaccination in some way. If you do plan to collect proof of COVID-19 vaccination, you must be careful not to request medical information. While the Centers for Disease Control and Prevention (CDC) COVID-19 Vaccination Record Card is not considered medical information under current guidance from the EEOC, employers should review state and local requirements before requiring any type of proof that an employee has received the vaccine.

SMBs in our survey say they will ask employees to update them about their COVID-19 vaccination status in the following ways:

Tracking Employee Vaccinations

Update a manager verbally	42%
Email a designated employee or team	39%
Use an app or online form	25%
Call in to a central help desk	22%

Based on a Paychex survey of 300 principals at U.S. companies with 2 to 500 employees, fielded between January 27 and February 2, 2021.

Three Ways SMBs Are Managing COVID-19 Vaccination Rollout

3. Providing digital alternatives

As COVID-19 vaccine developments are prompting businesses to return to work, SMBs are turning to digital methods to provide a safe — and productive — return. To keep employees working productively and safely, surveyed SMBs say they will offer programs and tools including:

Digital Tools & Offerings

Secure ways to answer employee HR questions virtually	29%
Digital employee management tools	25%
Online time and attendance tracking	24%
Online access to documents like handbooks and safety protocols	24%
Document management with e-signature	23%
Virtual training tools	21%
Online employee access to HR records	20%

Based on a Paychex survey of 300 principals at U.S. companies with 2 to 500 employees, fielded between January 27 and February 2, 2021.

To learn more contact Paychex today.
payx.me/ifa

Additional Resources

[Return to work ebook - https://www.paychex.com/sites/default/files/2021-06/eBook Vaccines and the Return to Work.pdf](https://www.paychex.com/sites/default/files/2021-06/eBook_Vaccines_and_the_Return_to_Work.pdf)

[Paychex Covid Help Page - https://www.paychex.com/coronavirus-resources](https://www.paychex.com/coronavirus-resources)



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