



May 28, 2021

TO: ACECL Members

FROM Doreen Brasseaux, President

RE: Updated Return to Work Policy Considerations

In an effort to help you update your Return to Work policies, below is relevant information and resources for your consideration.

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Vaccinations

According to the CDC, as of May 16, 2021:

- [If you are fully vaccinated](#), you can resume activities that you did prior to the pandemic.
- Fully vaccinated people can resume activities without wearing a mask or physically distancing, except where required by federal, state, local, tribal, or territorial laws, rules, and regulations, including local business and workplace guidance.
- If you've been around someone who has COVID-19, you do not need to stay away from others or get tested unless you have symptoms.

- You should still watch out for [symptoms of COVID-19](#), especially if you've been around someone who is sick. If you have symptoms of COVID-19, you should get [tested](#) and [stay home](#) and away from others.

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Louisiana Governor John Bel Edwards announced on May 14, 2021 that based on the CDC recommendations and in consultation with the Louisiana Dept. of Health, those who are fully vaccinated no longer have to wear masks indoors except in certain situations including: educational facilities, public transit, correctional settings, and health care facilities as regulated by the Louisiana Department of Health. This is in addition to recent guidance that also eased restrictions on masks outdoors for those who are fully vaccinated. Businesses may decide whether to continue requiring patrons to wear masks and are not limited by the revised proclamation. Further, local governments will continue to be able to make decisions to have further restrictions, including face covering requirements, in place.

Click here for 85JBE2021 proclamation:

<https://gov.louisiana.gov/assets/Proclamations/2021/85-JBE-2021-COVID-19-Public-Health-Emergency-Modificiation.pdf>

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The American Council of Engineering Companies released an updated **Guide to Returning to the Office and Job Site**. This resource offers considerations for your own policy. Note the vaccine considerations at the end. In addition to updating their Guide, ACEC engaged GibsonDunn LLC for additional guidance.

An employer can ask whether or not an employee has received the vaccine and ask for proof of that vaccination. The employer cannot ask why an employee has not received the vaccine. There are many reasons why an employee may not be vaccinated, which may or may not be disability-related. Simply requesting proof of receipt of a COVID-19 vaccination is not likely to elicit information about a disability and, therefore, is not a disability-related inquiry. However, subsequent employer questions, such as asking why an individual did not receive a vaccination, may elicit information about a disability and would be subject to the pertinent ADA standard that they be "job-related and

consistent with business necessity.” If an employer requires employees to provide proof that they have received a COVID-19 vaccination from a pharmacy or their own health care provider, the employer may want to warn the employee not to provide any medical information as part of the proof in order to avoid implicating the ADA.

In the instance when clients require vaccinations, a firm may decide to require those working on site to have a vaccination. If a firm has an employee who refuses to be vaccinated, firms may opt to send only those vaccinated to work on sites requiring vaccinations. Firms may also opt to allow those refusing vaccinations to work remotely. For firms who make vaccinations optional, they may require unvaccinated employees to continue observing all safety protocols such as masking and social distancing while in the office. Firms may also consider offering paid leave for employees to receive a vaccine or recover from the effects of a shot.

In an informal survey of ACEC member firms across the country related to whether they were going to require vaccinations, the trend seems to indicate a voluntary policy over a mandatory policy.

Mandated vaccines by employers has not been tested in the Louisiana courts.

Click [here](#) for 2021 ACEC Guide to Returning to Office and Job Site

Click [here](#) for GibsonDunn presentation

Click [here](#) for Mandatory Vaccination Sample Policy

Click [here](#) for Voluntary Vaccination Sample Policy

Click [here](#) for article from Employee Relations Law Journal article: The EEOC

Confirms Employers Can Mandate Vaccines But Should They?

Click [here](#) for link to EEOC: What you should know about COVID 19 and the ADA Rehabilitation Act and other EEO laws.

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**Federal COVID Leave:**

The Families First Coronavirus Response (FFCRA) has been extended for companies wishing to participate. It is not mandatory.

In 2020, all employers with less than 500 employees were required to provide FFCRA paid leave to employees covered by the Act. **Effective January 1, 2021, FFCRA paid leave became optional.** Covered employers are not required to participate, but if they do, they can continue to receive tax credits for the payments made to employees on leave for covered reasons.

The American Rescue Act Plan of 2021 extended and expanded the FFCRA in a number of different ways. First, it extended the FFCRA expiration deadline beyond March 31. FFCRA remains optional for eligible employers (those with fewer than 500 employees), but now those employers may continue the program, if they desire, through September 30, 2021. Any employer that voluntarily pays the FFCRA paid leave benefits during this time frame will continue to receive dollar-for-dollar tax credits for the monies paid.

In addition, employers with less than 500 employees should be aware that if they voluntarily opt-in to the FFCRA, the Act's substantive provisions have been expanded and employees will have broader rights to take sick leave and family leave.

In order to promote vaccination and testing, the Act added two additional reasons that allow employees to qualify for FFCRA leave, effective April 1, 2021, if their employer opts in:

1. FFCRA leave is available for employees who are unable to work because they are obtaining a COVID-19 vaccine, or are recovering from any illness, injury or condition related to such vaccine (side effects): and
2. FFCRA leave is available for employees who are unable to work because they are seeking or waiting for the results of a diagnostic test or awaiting a medical diagnosis.

The American Rescue Act Plan of 2021 also extended the FFCRA in two other important ways:

1. The Act increased the number of weeks that an employee can seek paid family leave under the FFCRA from ten (10) weeks to twelve (12) weeks. Thus, an employee now has 14 weeks of paid leave available, if he or she qualifies: two weeks of sick leave and twelve weeks of family leave.
2. The Act also resets employees' FFCRA sick leave rights to zero on April 1, 2021. Therefore, if employees took FFCRA sick leave prior to April 1, 2021, that does not count against their future right to leave right.

Employers will have to decide if they wish to continue providing FFCRA leave. Some employers may not opt-in to the FFCRA because they are worried that by providing such broad paid leave benefits, their employees will be unduly encouraged to take extended leave or that employees will lie about their condition or a potential exposure to take leave even though they are not eligible. Other employers will likely continue to opt-in to ensure that employees who may have contracted COVID-19 or may be at risk of contracting it are encouraged to stay home and to benefit from the dollar-for-dollar tax credit.

Click here for FFCRA paid leave Q&A:

<https://www.dol.gov/agencies/whd/pandemic/ffcra-questions#12>

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Disclaimer: The information provided herein is provided simply for information purposes only based on information available from reliable sources as of May 17, 2021. It is not legal advice. You should contact your own attorney for legal advice and your Human Resources professional to ensure you are following all applicable federal and state laws.

Sources:

CDC

EEOC

Employee Relations Law Journal

ACEC

Louisiana Governor's Office

Society for Human Resource Management