



The Ultimate Guide to Vaccines & the Workplace

What's Inside?

Best practices, checklists, and templates to **develop & execute** your vaccine policy

Let's Talk About Vaccine Policies & the Workplace...

You're here reading this guide because you've decided that you want to roll out a vaccination policy in your workplace. Or perhaps your business is being impacted by a government order. No matter what your outlook on the matter is, we can all agree that ensuring the livelihoods of Hawaii's workforce and protecting the safety of the communities in which we work and live is of *supreme* importance.

But as you know, this is a complex topic. And there's a healthy balance to find in order to keep our businesses and schools moving forward while alleviating pressure on our healthcare system and avoiding blanket lock-downs.

In this guide, we'll help you:

- **Decide on the best policy to keep your business moving forward**
- **Maximize the health and safety of your team, customers & vendors**
- **Retain a happy and productive team**
- **Stay compliant with labor laws and the latest guidance**

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Your Three Options

There are essentially **three vaccine paths** to consider. Each path comes with its own set of pros and cons. At ProService Hawaii, our recommendation is to encourage your team to get vaccinated (unless they are unable to), and roll out a **mandatory vaccine** or **flexible vaccine and testing policy**.

<p style="text-align: center;">Least Strict: VOLUNTARY VACCINE (Not recommended)</p>	<p style="text-align: center;">Most Strict: MANDATORY VACCINE (Recommended)</p>	<p style="text-align: center;">Most Flexible: VACCINATE OR TEST (Recommended)</p>
<p>The employer encourages and even incentivizes all employee to get vaccinated</p> <p>However, a voluntary vaccine policy is not a vaccination policy per se. Rather, it's a SOP on preventing the spread of COVID-19 in the workplace that can include a variety of measures including PPE, distancing, testing, masking, and vaccinations, etc.</p> <p>Unlike a true vaccination policy, it doesn't require certain employee actions as a condition to work for your company.</p>	<p>On the other end of the spectrum, a mandatory vaccine policy requires that all employees be vaccinated in order to work for your company so that the most vulnerable among your workforce and in the community are protected.</p> <p>Federal law does, however, require you to determine if there are reasonable accommodations to be made for employees that properly request a medical or religious exemption to this policy. If reasonable accommodations cannot be made or the employee does not accept your offered accommodations in full, you may place them on indefinite leave without pay or separation.</p> <p>All other employees must follow your policy in full or face indefinite leave without pay or separation.</p>	<p>The third option is the most <i>flexible</i> in employee choice but requires adjustments to operations, yet strongly encourages vaccination.</p> <p>In order to work for your company, employees can either vaccinate and continue normal work activities, including those which require in-person contact with others, OR agree to flex accommodations:</p> <ul style="list-style-type: none"> ● Submit to COVID-19 testing paid for by employer prior to any in-person work ● Change when/where work activities are performed to minimize/eliminate in-person contact, e.g. WFH, alternate worksite schedule or reassignment <p>Reasonable accommodations required for those with medical or religious exemptions</p> <p>* Safe Access Oahu is a flexible Vaccinate or Test policy</p>

Let's take a look at some pros:

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<p>A voluntary vaccine policy requires the least or no change to your current operations and is unlikely to generate complaints from those refusing the vaccine.</p> <p>Requires no changes to operations, other than the PPE and social distancing required by government order</p>	<p>In comparison, a mandatory vaccine policy provides the clearest, most proactive protection to avoid community spread of COVID-19 amongst your employees, customers, vendors and our community.</p> <p>This policy is the most straightforward to communicate and implement. It does not require varying logistics based on vaccination status, unless employees have a medical or religious exemption, and is generally well suited for both in-person or remote workplaces.</p> <p>If your employees are particularly concerned about health and wellness, it could also minimize turnover risks from this group as well.</p>	<p>Of the three options, a vaccinate or test policy is the most flexible, and balances your legal responsibility to provide a safe workplace for everyone, while giving employees the most options/choice.</p> <p>A policy like this strives to accommodate and enable the <i>most</i> employees to continue working and reduce employee complaints and minimize turnover over policy decisions.</p> <p>This policy is the most practical to implement across hybrid settings, but requires thoughtful planning.</p> <p>The vaccinate or test policy helps balance the difficult practicalities of health & safety with employee retention & productivity to maintain the forward movement of your business. It is the most commonly used in Hawaii.</p>

With each path, come various cons to consider as well:

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<p>Of the three options, a voluntary vaccine policy leaves workplace safety most vulnerable to community spread.</p> <p>Furthermore, if the majority of the business is done in-person, or in tight quarters, it can be perceived as not taking enough action for community safety.</p> <p>While this policy doesn't "rock the boat" with employees who choose not to vaccinate, employees who are extra cautious about their health may decide to look for employment elsewhere if they think the workplace is too unsafe for them.</p> <p>Lastly, from a leadership perspective, not taking a definitive stance could cause leadership ratings or team morale to waiver.</p>	<p>When it comes to a mandatory vaccine, the most significant consequence comes down to policy enforcement and whether you'll take disciplinary action, unpaid leave, or separation if employees do not comply with your policy.</p> <p>The two most likely examples requiring such action are:</p> <ul style="list-style-type: none"> ● unvaccinated employees who don't want to get vaccinated ● unvaccinated employees with medical or religious exemptions who don't comply with your reasonable accommodations. <p>Are you willing to part ways with these employees? Each business must consider the consequence turnover will have on their operations during a labor shortage, and its impact on separated employees who may not qualify for unemployment benefits.</p>	<p>This policy requires the most oversight and navigation since you're not dealing with a homogenous workforce; some employees will be vaccinated, others will not.</p> <p>Change is never easy - for you, your employees and potentially your customers. All employers and most employees have learned to flex over the past 18 months, but going forward will require even more changes.</p> <p>Employers will need to cover COVID test costs and time for employees who choose to not vaccinate while continuing work activities requiring in-person contact, per DOL guidance.</p> <p>Despite your best efforts to find a flexible solution, you must also think through how to handle disciplinary action and/or separation if/when employees decide not to comply with your policy.</p>

Where does your business fit?

The path you choose depends on the unique needs of your business. What do you need your vaccine policy to achieve? Which risks are greater or lesser for your business? Here, we provide you some guidance.

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<p>With the health and safety of your people and our community top-of-mind, ProService does not recommend a voluntary vaccine policy. Why? We believe employers have a role to play in strongly encouraging and incentivizing employees to get vaccinated—and this path is too passive.</p>	<p>For employers wanting the strictest, clearest policy, we recommend the mandatory vaccine. This sits on the opposite end of the spectrum as the voluntary path. A stricter policy is warranted when:</p> <ul style="list-style-type: none"> → Employees work or service, vulnerable populations e.g. Sick, elderly, unvaccinated keiki → Core business operations require In-person contact and/or work in close quarters → Employer is prepared to handle potential employee turnover <p>E.g. Health services, daycare, restaurants choosing a stricter policy</p>	<p>For employers striving to balance employee retention, health & safety and continuing forward business momentum, we recommend a flexible vaccinate or test policy. This is ideal for organizations that:</p> <ul style="list-style-type: none"> → Have a mixed workforce where some positions can be done remotely and others require in-person contact → Changing operations to minimize in-person contact is feasible, e.g. remote work, off hour schedules, task reassignments etc. <p>E.g. Professional services, construction, restaurants choosing flex policy</p> <p><i>* A government order, like Safe Access Oahu, outlines a more flexible approach. Employers may choose to implement stricter policies.</i></p>

Appendix: Top 7 Things to Know About ...

1. Employee Sentiment
2. Proof of Vaccination
3. Vaccination Status Do's and Don'ts
4. Vaccine Incentives
5. Medical & Religious Exemptions
6. COVID-19 Testing Process
7. Disciplinary Action



#1 Employee Survey

Knowing what percentage of employees are vaccinated is a good place to start. Before you implement a policy, consider conducting an anonymous survey to get a baseline percentage. Remember to keep your expectations in check. *Expect* that responses will vary.

Employee Vaccination Survey:

1. If we required the COVID-19 vaccine, would you get it?

- Yes
- No
- Maybe

2. Have you been fully vaccinated?

- Yes, I'm fully vaccinated
- No, I only got my first shot
- No, but I plan to get it
- No, I'm not planning on it
- I'm undecided about the vaccine

3. If we offered employees PTO to get the vaccine, would you take it?

- Yes
- No
- Maybe

4. If we offered employees \$100 to get the vaccine, would you take it?

- Yes
- No
- Maybe

#2 Proof of Vaccination (and testing if part of your policy)

Regardless of what path you chose, the next thing to consider is what kind of vaccination “proof” will be acceptable for your business and how you will collect/record this information. While this type of administration and logistics can be easily overlooked and seem insignificant, it’s important in order to stay compliant with labor regulations (e.g. EEOC, ADA and GINA etc) that are there to protect you and your employees from sticky situations.

Essentially there are two best practice options for collecting and/or documenting vaccination information to consider.

1) Copy Vaccination Card and Document*	2) View Vaccination Card and Document*
One way is for the employers to keep/retain a copy of the vaccination document for their records . Vaccination documents should be kept in a protected and confidential place, with only authorized HR personnel to access	Another way is to have employees show their vaccination document to an HR rep but keep no copies of the vaccination documentation itself. Instead, the HR rep notes down “yes/no” or checks off a box on a sheet to indicate that the employee is vaccinated.
In accordance with EEOC guidelines, only designated employees should have access to vaccination documents or documents that track vaccination status. Typically these are HR professionals (or business owners if there is no HR department).	

* If you’re a ProService Hawaii client, our [COVID-19 Navigator](#) app allows employees to upload their vaccination card and COVID-19 test results. It is an excellent resource for either option you choose

Question to Answer:
<ul style="list-style-type: none">→ <i>What method do I want to use to collect/document employee vaccination status?</i>→ <i>How will I keep records up to date? Especially when the booster shot gets implemented?</i>→ <i>What individual will be in charge of collecting vaccination status information?</i>→ <i>In what secure place will I keep this information?</i>

#3 Vaccination Status Do's & Don'ts

Before you go asking employees about their vaccination status, there are several do's, don'ts, and best practices you should be aware of to stay compliant.

Employer Best Practices:	
<ol style="list-style-type: none"> Tell your employee that you are not asking for any additional medical or family history information before asking whether or not an employee is vaccinated Keep your question straightforward (e.g., "Did you receive a COVID vaccination?") This allows the employee to answer a simple "yes" or "no" and helps you avoid potential Genetic Information Nondiscrimination Act (GINA) and American Disability Act (ADA) issues. Narrowly tailor your follow-up questions about the circumstances surrounding the employee's vaccination to the actual vaccination. Only an HR professional, business owner, or designated leaders who have been trained on your vaccination policy's confidential communication protocols should have access to private medical information, including vaccine documentation. 	
Do Ask:	Don't Ask:
<ul style="list-style-type: none"> • "Did you receive a COVID vaccination?" • "Which vaccination shot did you receive?" • "When was your vaccination shot?" • "When was your second shot?" 	<ul style="list-style-type: none"> • "Why aren't you vaccinated?" • "It's been five weeks since your first vaccination shot. Why didn't you get your second vaccination shot?"
Disclosing to Supervisors/Managers:	
<p>Depending on your business, supervisors may need to know who is not vaccinated on their team for legitimate business reasons e.g. so they can assign tasks appropriately under the flexible "Vaccinate or Test" policy. In such a situation, the employee's status alone (vaccinated or not vaccinated) is the only information you are allowed to disclose.</p>	
Disclosing to clients, customers, vendors, or third-parties:	
<p>Here are best practices to respond to inquiries of your employees' vaccine status</p> <ul style="list-style-type: none"> • Share the aggregate percentage. If you choose the Mandatory Vaccine policy, say "We have a Mandatory Vaccine policy. All our employees are fully vaccinated." If you choose the flexible Vaccinate or Test policy, say "85% of our workforce is fully vaccinated." • Confirm the person asking the question will only come in contact with fully vaccinated people (Do say: "All employees working with you are fully vaccinated." Do not say: "The person who normally serves you is not vaccinated, so we'll send you a person who is."). This is relevant if you choose the flexible Vaccinate or Test policy. <p>Of critical importance: Each individual employee's vaccination status is confidential medical information under the ADA which must be protected and may not be disclosed.</p>	

#4 Vaccine Incentives

Whether you choose the Mandatory Vaccine or flexible Vaccinate or Test policy, offering incentives can be a great way to encourage more employees to get vaccinated. However, the EEOC has guidance on what’s allowable, including employer limitations to protect employee rights and promote fairness/avoid anti-discrimination claims.

If employee gets vaccinated on their own	If the employer or third-party administers vaccinations at the workplace
You can offer any incentive you like if employees have been vaccinated on their own from a pharmacy, public health department or health care provider.	However, if you are administering vaccinations on-site at work or through an entity acting on your behalf, you can still offer incentives but they cannot be so substantial as to be considered coercive. *

** The EEOC has stated that because vaccinations require employees to answer pre-vaccination disability-related screening questions, a large incentive could pressure employees into disclosing protected medical information.*

The best practice is to offer incentives of comparable value to those which have been very popular with your employees in the past. For example, if you have given \$15 gift cards before, offering a \$20 gift card to vaccinate is reasonable, however, offering a \$2,000 gift card may be deemed coercive. Other incentives might include cash, free or discounted merchandise/services from your own company or a partner company, additional PTO hours or days.

The best practice is to offer the incentive upon proof of full vaccination.

If you choose to offer vaccine incentives, you should also offer a similar wellness incentive to employees who cannot get the vaccine because of a medical or religious exemption. Doing so helps to avoid any discrimination claims. For example: You could offer a wellness incentive to such employees for watching a COVID-19 safety video or completing a COVID-19 safety training or test.

Question to Answer:
<ul style="list-style-type: none"> → Do I want to create an incentive program? → What type of incentive will I offer? (e.g. cash, gift card, extra PTO) → What kind of wellness incentive will I offer those with medical/religious exemptions?

#5 Medical & Religious Exemptions

While employers can require COVID-19 vaccines in the workplace under U.S. and Hawaii employment laws, there are two types of exemptions that can excuse a worker from vaccine mandates issued at work in accordance with federal laws.

<p>1) Medical Exemption under the Americans with Disabilities Act (ADA)</p>	<p>2) Religious Exemption* under Title VII of the Civil Rights Act of 1964</p>
<p>An employee may have medical reasons which prevent them from getting a vaccine. Medical exemptions may include allergies to vaccine components, a history of Guillain-Barré syndrome, or other health ailments that make the vaccine risky for the individual.</p>	<p>An employee has the right to be free from discrimination on the basis of religion. Vaccines may be in conflict with their religious beliefs.</p>
<p>Reasonable Accommodations</p>	
<p>If an employee chooses to not vaccinate due to a medical or religious exemption, you must perform a reasonable accommodation analysis to identify accommodations which protect the employee, and do not cause undue hardship on your business, worksite, workforce and customers. Example solutions include:</p> <ul style="list-style-type: none"> • Change the type of work the employee performs (eg reassignment), where (eg remote work) and when (eg off-hour shift when they can work alone in otherwise vacant space) they work to eliminate in-person contact with co-workers, customers, vendors and third parties, irrespective of whether this is at your worksite or an offsite location. If you choose the Mandatory Vaccine policy, if such reasonable accommodations are unrealistic and/or the employee does not accept your proposed accommodations, they are subject to indefinite unpaid leave or separation. • If you choose the flexible Vaccinate or Test policy, you are obligated to perform this same reasonable accommodations analysis. The difference is, your flexible policy offers the mandatory weekly test for any unvaccinated employee who does work requiring in-person contact, and is of course following your PPE and social distancing protocols. 	

<p>Question to Answer:</p>
<p>→ <i>When performing my required reasonable accommodation analysis, how can I accommodate employees with medical or religious exemptions while ensuring I protect my business, worksite, employees and customers?</i></p> <p>→ <i>Does my employee with the medical or religious exemption accept my accommodations?</i></p>

* An employee with a medical or religious exemption may have the same exemption from wearing a mask. This will result in an unvaccinated, un-masked employee entering the workplace. Reasonable accommodation would be remote work.

#6 COVID-19 Testing Process

If you choose the flexible Vaccinate or Test policy, you will need protocols to manage the weekly testing required of employees who choose not to vaccinate.

Who pays for the COVID tests?

Although the internet reports many companies forcing employees to pay for COVID tests, current federal and state labor and wage and hour laws indicate the cost is the responsibility of the employer.

Cost of the test: COVID-19 testing is **free and covered by health insurance only if it's medically necessary** (i.e. ordered by a doctor, or because an employee has symptoms).

Regular return-to-work testing, work mandated testing, or testing not ordered by a doctor is **billed to the employee or employer** unless an employee goes to a mass free testing site funded by a government or other source. The majority of testing advertised as "free" bills the test to the insurance company, which will then bill it to the employee or employer. Current EEOC guidance suggests that **employer-mandated testing should be paid for by the employer**. Tests cost approx \$140 per test.

Time to test: Additionally, employers are required to pay employees for the time spent for COVID testing if they must test during normal working hours. In some cases, it may be compensable during non-work hours if testing is necessary to perform their jobs safely and effectively. For example: If a grocery store cashier who has significant interaction with the general public is required by her employer to undergo a COVID-19 test on her day off, such time is likely compensable because it is integral and indispensable to her work during the pandemic.

#7 Disciplinary Actions

When an employee fails to comply with your vaccine policy, what are the consequences? Do you retain them, put them on indefinite unpaid leave, or separate?

The vaccine policy you have chosen will guide your actions as you balance the relative benefits and risks to the health and safety of your employees and customers, the continued momentum of your operations, employee retention and productivity, and staying compliant.

For employees who choose not to vaccinate for

- Medical or Religious reason - reference #5 Medical or Religious Exemptions
- Other reasons - A non medical or religious personal need, reason, belief or preference is not protected by law. If based on personal belief, an employee chooses not to comply with your policy, including accepting the reasonable accommodations or flexibility you have offered, you may proceed with the following actions

Discipline & Termination:

If an employee refuses to adhere to your company policy, progressive discipline is typically the best approach. This involves writing them up, providing a final warning if they don't comply, and then either placing the employee on indefinite unpaid leave, or separation.

For all employees NOT covered by religious or medical exemption

- You must choose the same option - indefinite unpaid leave or separation
- You cannot offer unpaid leave to one, and separation to another
- You must ensure that disciplinary/termination action is equally applied

Important: You cannot place on unpaid leave or separate an employee with a religious or medical exemption without first providing reasonable accommodations

Unemployment Benefits (UI):

Employees that are excluded from the workplace because they are not complying with vaccine policies may not receive pay from the federal government. This would fall under normal company leave policies. According to the state unemployment insurance department, **eligibility for UI benefits will be made on a case-by-case basis** for employees who are either discharged or quit due to noncompliance with an employer's vaccine policy.

The claims examiner will determine, in the case of a discharge, whether the discharge is for **misconduct**, and in the case of an employee who quits, whether the employee had **good cause or not**. Some of the **factors that may be taken into consideration** include the employer's vaccine policy, the nature of the work being performed, the claimant's personal circumstances, and any other relevant facts bearing on why the employee can't/won't be vaccinated

Employer Risks:

We continue to manage through a very fluid situation. The severity of our local and national health situation, the legal landscape and EEOC guidance continues to evolve. ProService will continue to analyze the legal guidance, best practices from employers and communities across the country, and operational practicalities of employers and employees in Hawaii, and provide our best updated guidance.

Employer Tools & Resources:

Where to get Vaccinated

→ <https://hawaiiicovid19.com/vaccine/>

Where to get Tested

- [Oahu](#)
- [Hawaii](#)
- [Maui](#)
- [Kauai](#)

General Education:

- [What You Should Know About COVID-19 and Labor Laws](#), EEOC
- [Frequently Asked Questions about the COVID-19 Vaccine](#), CDC
- [Printed Resources Library](#), CDC
- [When You've Been Fully Vaccinated](#), CDC
- [Workplace COVID-19 Vaccine Toolkit](#), CDC

Multilingual Resources

- [COVID 19 State of Hawaii portal](#). Resources on Vaccinations, Safety protocols
- [CDC Resources in Languages Other than English](#)
 - ◆ [Samoan](#), CDC
 - ◆ [Tongan](#), CDC
 - ◆ [Chuukese](#), CDC
 - ◆ [Marshallese](#), CDC



Mahalo for being a ProService Partner

We know that managing a business can be overwhelming, particularly during the ups and downs of a global pandemic. As your HR partner, we've created this content to help you:

- Care for and manage your most important asset - your people
- Contain your total costs or labor while maximizing the productivity of your team
- Execute strategies to continue your business momentum through the pandemic

We do all this for you, so you can focus on motivating your people and running your business.

As your business continues to navigate employee concerns and HR policies in today's complex work environment, know that our team is committed to your success and will continue to stand by you.

Mahalo for your continued partnership!