



March 25, 2021

SUBJECT: COVID-19 Scenarios "2.0"

Introduction

As we progress through the COVID-19 pandemic, we continue to be asked operational questions related to the pandemic and available vaccines. The following are questions, answers, updated scenarios and responses to these questions.

Guest Inquiries

How should we answer if a guest asks the following questions?

Guest Question: Are your hotel workers vaccinated?

Your answer if you are "strongly encouraging your staff to receive vaccinations":

We are strongly encouraging all staff members to get vaccinated. Because we value the health and wellbeing of our guests and staff, in addition to encouraging vaccinations, we enforce CDC guidelines regarding the wearing of face coverings, social distancing and safe health practices. We have also put in place strict cleaning protocols to keep all of the hotel's facilities, including guest rooms and all hotel high-touch areas, clean and safe. We want you to know that we are committed to ensuring your health and safety.

- OR -

Your answer if you are "requiring vaccinations" (and see the vaccination discussion below):

Yes, per our hotel's policy, staff members who are eligible to receive the vaccine have been vaccinated. Because we value the health and wellbeing of our guests and staff, in addition to requiring eligible employees to get vaccinated, we enforce CDC guidelines regarding the wearing of face coverings, social distancing and safe health practices. We have also put in place strict cleaning protocols to keep all the hotel's facilities, including guest rooms and all high-touch areas, clean and safe. We want you to know that we are committed to ensuring your health and safety.

Guest Question: Is the hotel requiring that all guests be vaccinated?

Your answer (assuming you are not requiring that guests be vaccinated): We recognize that vaccinations are a personal choice, and as a result, we are not requiring them. Nonetheless, because we value the health and wellbeing of our guests and staff, we enforce CDC guidelines regarding the wearing of face coverings, social distancing and safe health practices. Additionally, we have put in place strict cleaning protocols to keep all the hotel's facilities, including guest rooms and all hotel

high-touch areas, clean and safe. We want you to know that we are committed to ensuring your health and safety.

Guest Question: Have any of your employees been sick with COVID-19?

Answer: Recognizing the privacy rights of our employees, please let me assure you that we carefully comply with the CDC's Guidance regarding COVID-19. If any employee were to have been exposed to COVID-19 or exhibit symptoms, they were not allowed to come to work until they have complied with the CDC's protocols regarding self-quarantining or the CDC's vaccination guidance. We strictly follow CDC Guidance because we care about the health, wellbeing and safety of our guests, staff, their families and our community.

Employment Law

COVID-19 Vaccines Generally

Now that the COVID-19 vaccine is becoming more widely available, you may be wondering whether you can or should require your employees to get vaccinated. *Notably, when surveyed, most employers are opting to strongly encourage vaccines but not require them.*

If you are interested in mandating vaccines, the Equal Employment Opportunity Commission has issued guidance, which makes clear that it is permissible with two (2) exceptions: (1) you must provide a reasonable accommodation if the employee cannot get the vaccine because of a medical condition; and (2) you must provide a reasonable accommodation if the employee cannot get the vaccine because of a sincerely held religious belief. The Guidance is available at the following link:

<https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>

In addition, as it can be difficult to get a vaccination appointment, you may consider allowing employees time off to go to a vaccine appointment. In addition, please note that some jurisdictions, like New York, are requiring employers to provide paid time off to employees so they can get vaccinated.

Sick Employees

Please follow the CDC Guidance regarding when an employee who presents with COVID-19 or COVID-19 symptoms can return to work:

1. If the employee has COVID-19 or COVID-19 symptoms he can return to work ten (10) days after symptoms first appeared and he has had 24 hours with no fever without using fever reducing medication and other symptoms of COVID-19 are improving.
2. If the employee has tested positive but has no symptoms, he can return to work ten (10) days after receipt of the positive test.
3. If the employee has been in close contact with a person with COVID-19 and has not been fully vaccinated, he can return to work fourteen (14) days after the last exposure to the person with COVID-19.
4. If the employee has been fully vaccinated (received 2-doses of the vaccine if a 2-dose vaccine or 1 dose of the vaccine if a 1-dose vaccine) and it has been two (2) weeks since the final dose of the

vaccine and he or she has no symptoms, he or she does not need to quarantine or get tested for COVID-19.

Of note, the attached Exhibit is an updated sample COVID-19 Employee Health Certification Form that now includes the following language regarding when an employee can work if he or she has been vaccinated and was subsequently exposed to the COVID-19 virus.

- I will not come to work and I will leave work if I learn that I have been exposed to anyone with suspected or confirmed COVID-19 within the past fourteen (14) days, unless I meet the following criteria:
 - ❖ I am fully vaccinated (it has been at least 2 weeks since I received the second dose in a 2-dose series, or at least 2 weeks since I received one dose of a single-dose vaccine); and
 - ❖ I have remained asymptomatic since the current COVID-19 exposure.

If I do not meet both of the above criteria, I will not come to work and I will leave work if I learn that I have been exposed to anyone with suspected or confirmed COVID-19 within the past fourteen (14) days.

OSHA Guidance

Recall that on January 29, 2021, OSHA published new guidance regarding COVID-19 health and safety protocols, entitled “Protecting Workers: Guidance on Mitigating and Preventing the Spread of COVID-19 in the Workplace.” The Guidance is at the following link:

<https://www.osha.gov/coronavirus/safework>

While OSHA’s “Guidance” does not create legal requirements, as discussed during our recent All Things Legal webinar, you are encouraged to consider them regarding your health, welfare and wellbeing protocols (e.g., wearing face coverings, social distancing, cleaning of facilities, good health practices, etc.) – recognizing compliance could assist in the defense of a lawsuit (to include in states that have adopted COVID-19 liability protection statutes).

Conclusion

Please consider encouraging your staff to get vaccinated – for their protection as well as the health, wellbeing and safety of your guests, their fellow staff, their families and your community.

Lastly, mark your calendars for the next “All Things Legal” webinar on May 12th and 13th.

Be safe and well – get vaccinated.

Sincerely,

The Best Western Legal Team

Sample - COVID-19 Employee Health Certification Form

[Insert Hotel Name] is focused on the health, wellbeing and safety of its associates and its guests.

This Certification will help prevent the spread of COVID-19 and will reduce the risk of potential exposure.

Completing this Certification enables us to help protect you and everyone in the hotel and its facilities.

I certify that:

- I will wear a face mask over my nose and mouth whenever I am in the presence of guests and co-workers unless I am alone at my workstation.
- I will stay at least six (6) feet away from others.
- I will practice good hygiene (i.e., I will wash my hands frequently and sanitize my workstation every day before beginning work, mid-day, and at the end of my workday).
- I will not come to work and I will leave work if I am exhibiting new symptoms of fever or chills, cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, congestion or runny nose, nausea or vomiting, or diarrhea.
- I will not come to work and I will leave work if I learn that I have been exposed to anyone with suspected or confirmed COVID-19 within the past fourteen (14) days, unless I meet the following criteria:
 - ❖ I am fully vaccinated (it has been at least 2 weeks since I received the second dose in a 2-dose series, or at least 2 weeks since I received one dose of a single-dose vaccine); and
 - ❖ I have remained asymptomatic since the current COVID-19 exposure.

If I do not meet both of the above criteria, I will not come to work and I will leave work if I learn that I have been exposed to anyone with suspected or confirmed COVID-19 within the past fourteen (14) days.

- If requested, I will have my temperature taken prior to work to ensure that I am not experiencing a fever.

Signature: _____ Department: _____

Name: _____

Date: _____