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**Greater Binghamton Chamber of
Commerce**
COVID-19 VACCINE ISSUES

MARCH 29, 2021

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- This presentation is not intended to be legal advice. It is for information only.
- This may be considered attorney advertising. You should not rely on it as legal advice.
- Please contact an attorney to discuss your specific situation.



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DISCLAIMER



- This presentation may be obsolete 5 min. after it is finished.
- This is an ever changing situation and the rules, guidance, and information are changing all the time.
- Please monitor the news, legal updates, the governor's office, congress, executive orders, and agency guidance for the most current information.



ELIGIBILITY IN NY

<https://covid19vaccine.health.ny.gov/>

- 30 and over as of today—soon 16 and over
- Comorbidities
- Public facing essential workers from governmental and nonprofit entities will be eligible beginning March 17.
- Public-facing essential building services workers.



Vaccines In Other States

- Pennsylvania eligibility:
<https://www.pa.gov/guides/get-vaccinated/>
- PA employer mandatory?
<https://www.uc.pa.gov/COVID-19/Pages/Labor-Law-COVID19-FAQs.aspx>
- 50 State Guide to Potential Laws regarding mandatory vaccines
<https://www.huschblackwell.com/newsandinsights/50-state-update-on-pending-legislation-pertaining-to-employer-mandated-vaccinations>
- 50 State Guide to Vaccine Distribution Plans
<https://www.usatoday.com/story/news/health/2020/12/07/state-covid-19-vaccine-distribution-plans-links-all-50/6481199002/>



PAID LEAVE FOR VACCINES

NEW NY VACCINE LEAVE

- Labor Law 196-c
- Up to 4 hrs. per shot
- Paid at Regular Rate
- Cannot Replace Other Leave
 - <https://www.nysenate.gov/legislation/bills/2021/S2588>



FAMILIES FIRST ACT EXTENSION

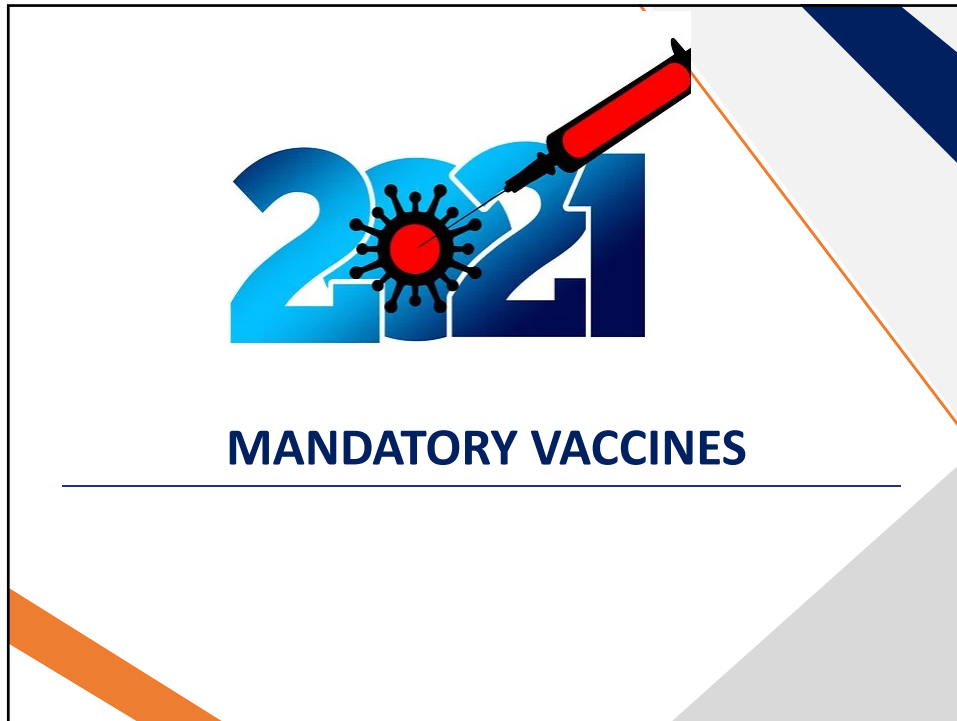
- Extended through September 30, 2021
- Voluntary for Employers under 500 employees, but can still receive tax credit
- New bank of 10 days of emergency paid sick leave for employees starts April 1
- Must provide to all employees (including part-time) if you are claiming the tax credit

FAMILIES FIRST ACT EXTENSION

- self-isolation because of a COVID-19 diagnosis;
- to obtain a medical diagnosis or care when experiencing COVID-19 symptoms;
- because a health official or health care provider has recommended quarantine;
- to care for a family member with COVID-19 or who is seeking diagnosis/care;
- to care for a family member in quarantine;
- when a child's school or childcare provider is unavailable because of COVID-19;
- **to get a COVID-19 vaccine; and**
- **to recover from adverse reactions to the vaccine.**

FFCRA-EFMLA


- Expands tax credits for emergency FMLA leave arising from any of the reasons
- The Rescue Plan also removes the two week waiting period on emergency FMLA leave
- Raises the aggregate cap on emergency FMLA leave from \$10,000 to \$12,000.



MANDATORY VACCINES

EEOC GUIDANCE

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



“If an employee cannot get vaccinated for COVID-19 because of a disability or sincerely held religious belief, practice, or observance, and there is no reasonable accommodation possible, then it would be lawful for the employer to exclude the employee from the workplace.”

REASONABLE ACCOMMODATION ANALYSIS

- Virus poses a “direct threat” to public
- Vaccine can mitigate that threat
- Is there another alternative to mitigate the threat?
- Would that alternative be a “hardship”—more than an inconvenience



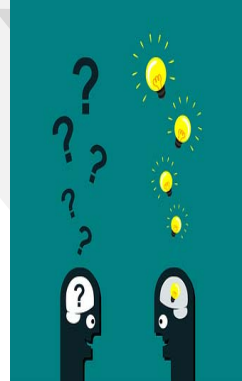
EUA ISSUES

- Emergency Use Authorization Issues: Emergency Use Authorization (EUA), under which the vaccine was authorized, is a “mechanism to facilitate the availability and use of medical countermeasures, including vaccines, during public health emergencies, such as the current COVID-19 pandemic.

<https://blog.petrieflom.law.harvard.edu/2020/11/30/covid-vaccine-eua-mandate-business/>

QUESTIONS TO ASK BEFORE MANDATING

- Why Do I Need Mandatory Vaccines? Will Strongly Encouraging Do the Same Thing?
- Is the Need Universal or Specific?
- What Process Will We Use for Requests for Accommodation?
- What if someone has serious side effects?



DON'T IGNORE THE NLRA

- Unionized Employers Are Likely Going to Need to Bargain
- Even non-Unionized Employers may be affected—for instance an employee protest





NOT A LEGAL ISSUE, BUT WHAT ABOUT EMPLOYEE MORALE?

MANDATORY VACCINES-Bottom Line

- Employers *can* have a policy requiring vaccines
- Employers must *consider* accommodations
- Employers will want to consider *impact* on the workplace
- Watch for additional guidance on EUA



VACCINE CLAIMS

FEDERAL LAWSUIT AGAINST EMPLOYER

- New Mexico detention center officer has filed a federal lawsuit challenging the right of his employer to require first responders to receive the COVID-19 vaccination.
- Court set an expedited briefing schedule and parties voluntarily agreed to terminate the request for expedited relief

WORKER'S COMPENSATION

- Was the vaccine mandated by the employer?
- Was the vaccine administered at work while the employee was working and being paid?
- Did the employee, for personal reasons outside of their employment, undergo the vaccine?
- Did the side effects rise the level of serious injury?



Vaccines—Other Issues

ASKING FOR PROOF OF STATUS?

- **Can I ask for vaccine status of employees if I have a voluntary program?** YES, it is not a disability related question.

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

Question K.3 provides additional guidance

But cannot ask why someone is NOT vaccinated.



WHAT WILL YOU DO WITH VACCINE INFORMATION?

MASKS AND DISTANCING DON'T GO AWAY

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

- It is important to wear a face covering and remain physically distant from co-workers and customers even if you have been vaccinated because it is not known at this time how vaccination affects transmissibility.




WHAT TO DO NOW?

- Create your policy—mandatory/voluntary
- Have resources available for employees
- Have a plan for what to do with vaccine status provided to you
- Continue to exercise appropriate precautions
- Get your vaccine when the time comes

TRAVEL CHANGES

NO MORE QUARANTINE—APRIL 1

<https://www.governor.ny.gov/news/governor-cuomo-announces-quarantine-domestic-travel-will-no-longer-be-required-starting-april>



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QUESTIONS



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