

Considerations for Health Care Employers under Iowa's Vaccine Passport Law and Recent CDC, CMS and EEOC Guidelines

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One of the last pieces of legislation the Iowa legislature sent to Governor Kim Reynolds' desk for guaranteed signature was a bill banning vaccine passports in Iowa. House File 889 contains several prohibitions regarding inquiries into a person's COVID-19 vaccine status. For entities that contract with the state government or otherwise receive state funding, the law contains financial consequences for a violation (but is silent as to penalties for others). While the law contains clear proscriptions, it also has notable explicit and implicit exclusions.

Healthcare providers, and nursing home facilities specifically, have additional considerations under recently released CMS, CDC and OSHA guidance. All employers have considerations under state and federal anti-discrimination laws and updated EEOC technical assistance.

Iowa Law

Iowa's law prohibits the designation of COVID-19 vaccine status on state or political subdivision-issued identification cards. That means there will be no COVID-19 notations on Iowa drivers' licenses anytime soon. The law also forbids businesses or governmental entities from requiring customers, patrons, clients, patients, or other persons invited onto the premises ("invitees") to show proof of a COVID-19 vaccine.

However, the law does not list employees in the category of people who are protected from having to show proof of a COVID-19 vaccine. Therefore, under Iowa law, employers can legally require employees to show proof of a COVID-19 vaccine as a condition of employment.

Further, *the law explicitly excludes healthcare facilities from the definition of a business or a governmental entity.* Healthcare facilities include hospitals and other licensed inpatient centers, ambulatory surgical or treatment centers, skilled nursing centers and nursing facilities, residential treatment centers, diagnostic, laboratory and imaging centers, rehabilitation and other therapeutic health settings, and intermediate care

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CDC, CMS and OSHA Guidance

On April 27, 2021, the Centers for Disease Control and Prevention (CDC) published updated health care infection prevention and control recommendations following the wide availability of COVID-19 vaccination, available [here](#). The CDC guidance includes updated COVID-19 testing recommendations, updated visitation guidance for health care facilities, and additional guidance for communal activities and dining in healthcare settings.



Shortly thereafter, on May 11, 2021, CMS published updated guidance for long term care (LTC) facilities, called an interim final rule. That rule, available [here](#), focuses on COVID-19 vaccination education, consent, and refusal, as well as the procedures LTC facilities must follow in offering vaccinations to employees and residents. It also includes recordkeeping requirements. The guidance is silent regarding whether LTC facilities can *require* employee or resident vaccinations, instead simply stating, “[f]acilities should follow state law and facility policies with respect to staff refusal of vaccination.”

In Iowa, that means long term care facilities could choose to require all staff and residents to be vaccinated.

On June 10, 2021, OSHA published the first guidance for employers governing workplace safety rules related to COVID-19, which applies only to employment settings where employees provide healthcare services or healthcare support services in a healthcare setting. The new OSHA rules are entitled, the “COVID-19 Healthcare Emergency Temporary Standard”, and they are available [here](#). FAQs regarding the new regulations were published by OSHA and are available [here](#). The scope of this article does not cover the new OSHA COVID-19 Healthcare Emergency Temporary Standard because Dorsey attorneys published a separate article on this new guidance including practical tips for its implementation, which is available [here](#).

EEOC Guidance

Health care facilities adopting COVID-19 vaccination requirements should be mindful of state and federal anti-discrimination laws such as the Iowa Civil Rights Act (ICRA) and the Americans with Disabilities Act (ADA). Both the ICRA and the ADA prohibit employers and places of public accommodation from discriminating against people on the basis of their religion or disability, among other things. Public accommodations include, but are not limited to places that offer services, facilities, or goods for a fee or

charge. To name a few, a person's health condition could prohibit them from getting a COVID-19 vaccine, a person's religion might prohibit vaccinations, a person may be reluctant to get the vaccine while pregnant, and data has shown that minority communities disparately have lower vaccination rates. Health care facilities mandating vaccines could run into legal issues if they are unwilling to make exceptions in certain circumstances.

Additionally, on May 28, 2021, the EEOC updated its technical guidance regarding whether employers can provide COVID-19 vaccine incentives for employees in a technical assistance Q&A, available [here](#). The EEOC guidance echoes the considerations above, noting that employers must take care not to run afoul of state and federal employment laws when making decisions about vaccine requirements. The guidance also states the vaccine incentives cannot be coercive, and that employers must keep vaccine information confidential.



Practical Tips and Take Aways

In light of the ever-changing status of employment and health laws and guidance related to COVID-19, healthcare facilities drafting or updating policies related to COVID-19 mitigation should consult with their employment and

health care counsel to make sure the policies are consistent with Iowa's vaccine passport law, state and federal employment laws and technical assistance, and any recent CDC and CMS publications.

That said, the following tips may help to guide health care facilities' development of employment-related COVID-19 policies and procedures:

- Healthcare employers, particularly LTC facilities, considering mandating the COVID-19 vaccine for employees should also think about the impact such a mandate might have on the available workforce. With data suggesting that only about half (or less) of Iowa's LTC facility employees are fully vaccinated, employers might see crippling staff shortages if they start making the COVID-19 vaccination a condition of new or continued employment.
- Healthcare employers seeking to increase their workforce's COVID-19 vaccination rates could come up with ways to fairly incentivize employees, consistent with the recent EEOC technical assistance.
- Regardless of the type of vaccine, if employers choose to require vaccinations as a condition of employment, they should remember to keep all vaccination information confidential pursuant to the ADA.
- If employers believe that a lack of convenient access is a contributing factor to low employee COVID-19 vaccine rates, employers could consider holding vaccine clinics consistent with the CMS guidance described and linked above.
- Employers who do choose to hold vaccine clinics or otherwise make the COVID-19 vaccine available to employees at work should be cognizant of their workforce and adjust accordingly. For example, employers should think about whether informational

materials should be offered in languages other than English and whether some of the people administering vaccines should be bilingual.

- Healthcare employers which are covered under the new OSHA COVID-19 Healthcare Emergency Temporary Standard referenced above (generally, those with 10 or more employees) should ensure that the company's written COVID-19 plan incorporates all of the elements required under the new COVID-19 Healthcare Emergency Temporary Standard, including providing reasonable time off and paid leave for vaccinations and vaccine side effects for employees. For more information on the new OSHA standards, see a separate post by our Dorsey colleagues, available [here](#).
- Prior to taking any adverse action against an employee related to that person's COVID-19 vaccination status, or any other conduct pertaining to COVID-19, employers should seek guidance from a knowledgeable employment law attorney. As described in [an earlier blog post](#), COVID-19 related lawsuits against employers are on the rise (including in Iowa), and employers need to be proactive in ensuring their decisions are consistent with the ever-changing legal landscape on these issues.