



## **Can you require your employees to have the COVID-19 vaccine before returning to work?**

Many of my advice and counsel clients have asked me whether they can require their employees to have the COVID-19 vaccine before returning to work.

The federal government does not mandate (require) vaccination for individuals. For some healthcare workers or essential employees, state or local governments may require or mandate that workers be vaccinated as a matter of state or other law.

According to the Equal Employment Opportunity Commission (EEOC) and the California Department of Fair Employment and Housing (DFEH), employers can generally require employees to receive a COVID-19 vaccination before returning to work. However, the EEOC and the DFEH encourages employers to take certain precautions in mandating vaccines to avoid violations of the Americans with Disabilities Act (ADA) and other disability laws. For example, while administering the vaccine itself is not considered a medical examination that would violate the ADA or the California Fair Employment and Housing Act (FEHA), certain medical-related questions can constitute impermissible "disability-related inquiries." However, these limitations on asking disability-related questions do not apply when a third party administers the vaccination. Additionally, employers may offer the vaccination on a voluntary basis provided that the employee's decision to fill out any screening disability-related questions is also voluntary.

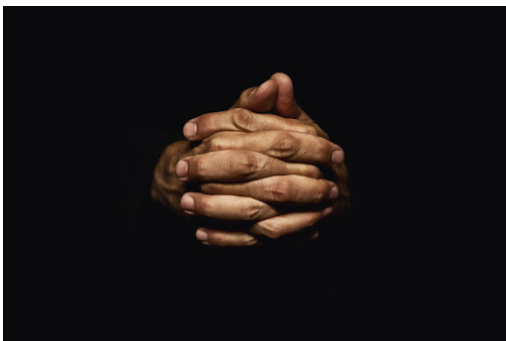


## What if, for religious or health reasons, an employee refuses to have the vaccine? What proof can employers ask for?

The biggest limits on a mandatory vaccine requirement are considering exemptions for individuals with sincerely held religious beliefs or health conditions that prevent them from receiving the vaccine. Sincerely held religious beliefs are covered by FEHA and Title VII of the Civil Rights Act, and the ADA governs medical conditions that make receiving the vaccine dangerous or inappropriate.

For individuals who refuse to get vaccinated due to sincerely held religious beliefs, the employer must provide reasonable accommodations unless it would pose "undue hardship" to the employer. The EEOC states that "because the definition of religion is broad and protects beliefs, practices, and observances with which the employer may be unfamiliar, the employer should ordinarily assume that an employee's request for accommodations is based on a sincerely held religious belief." In other words, employers should generally not question employees about their religion. However, employers may question the nature or sincerity of the employee's religion if they have an objective basis for doing so. In such a case, employers may be justified in asking for additional supporting information. Likewise, the DFEH requires employers to reasonably accommodate employees with a known disability or sincerely-held religious belief or practice that prevents them from being vaccinated against COVID-19, as well as prohibits employers from retaliating against anyone for engaging in protected activity.

For employees who cannot get vaccinated due to a disability, employers must also take steps to provide reasonable accommodations. These accommodations cannot be unduly burdensome to the employer. Some reasonable accommodations for these employees include allowing them to work remotely or adjusting the employee's duties to prevent contact with others. ***An employer may exclude the employee from the workplace if having the unvaccinated person on the premises would post a "direct threat" to the health and safety of other workers.*** However, even if such a threat does exist, employers should analyze the facts of each employee's case closely and make individualized determinations.



## Can employers ask for proof that the employee received the vaccine?

According to the EEOC and the DFEH, employers may ask for proof of vaccination because such proof is not considered a disability-related inquiry. Since people who have received the vaccine are given a card, it would be reasonable to ask for proof via this card. However, employers should not ask intrusive follow-up questions such as the reasons why the employee is not getting vaccinated since these questions may be considered disability-related and accordingly trigger ADA protections. Employers should also request that employees provide them no more information than necessary as proof of vaccination in order to avoid violations of other disability laws.



## What should I do to encourage employees to receive the vaccine?

Build vaccine confidence by making confidence visible in your workplace. Vaccine confidence is the trust that employees, their families, and providers have in:

- Recommended vaccines
- Providers who administer vaccines
- Processes and policies that lead to vaccine development, licensure or authorization, manufacturing, and recommendations for use

### The CDC recommends the following:

1. Encourage your employee leaders to be vaccine champions. These leaders should reflect the diversity of the workforce. Invite them to share with staff their personal reasons for getting vaccinated and remind staff why it's important to be vaccinated.
2. Communicate transparently to all workers about vaccination.
3. Create a communication plan. Share key messages with staff through breakroom posters, emails, and other channels. Emphasize the benefits of protecting themselves, their families, co-workers, and community.
4. Provide regular updates on topics like the benefits, safety, side effects and effectiveness of vaccination; clearly communicate what is not known.
5. Make visible the decision to get vaccinated and celebrate it! Provide stickers for workers to wear after vaccination and encourage them to post selfies on social media.

## **What are the Best Practices for my workplace?**

Whether vaccination is at the workplace or in the community, employers should:

- Offer flexible, non-punitive sick leave options (e.g., paid sick leave) for employees with signs and symptoms after vaccination.
- Allow time for vaccine confidence to grow. Workers who are hesitant at first may become more confident after seeing coworkers get vaccinated. Employers with an onsite clinic should offer more than one opportunity for vaccination. Mobile clinics can return to a worksite multiple times on a rotating schedule. Employers using community locations can provide supportive policies (e.g., paid leave, transportation support) for an extended period of time.
- Ask organizations and individuals who are respected in employee communities to help you build confidence in COVID-19 vaccines.

## **Retaining Good Employees**

**Now that employees are going back to work let's discuss some recommended best practices employers should follow to retain good employees. Here are some ideas that come to mind:**

- Update your handbook annually, especially the benefits/leave of absences sections because the laws change often.
- Have an employment attorney review your employee handbook to make sure it includes all the correct policies.
- If you have updates to your employee manual, give them out to employees promptly, and have them sign that they received the update.
- Conduct periodic audits of your paystubs and payroll practices
- Document conversations with employees, including requests for accommodation, work restrictions, performance, concerns, grievances, etc.
- Investigate all harassment/discrimination complaints thoroughly, timely, and in a neutral, unbiased manner.
- Train managers, supervisors, and employees on preventing workplace harassment and discrimination, within six months of hire, and every one to two years thereafter.
- Provide every exiting employee a separation agreement in exchange for a release.
- Implement an arbitration agreement with a mediation option at the employer's expense.
- Pay for an Employment Policies Liability Insurance (EPLI) policy.

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## **Karen's Delicious Peruvian Kitchen**

### **Peruvian Causa Rellena (Peruvian Stuffed Layered Potato)**

Causa rellena is an iconic recipe from Peru that combines lemony and spiced mashed potatoes with tuna or chicken or seafood and avocado. This is a dish my Peruvian Grandma, Manuela, used to make for our family. It is one of my sister, Patty's, favorite. Some of the best Peruvian restaurants also carry this dish on their menus. I recently ate at Quinoa, a Peruvian restaurant in Petaluma that made this dish and it was delicious. It inspired to make it at home for my husband, Mark. He loved it!

### **Ingredients (for 8-12 people):**

#### For the Chicken Salad:

- 1 large cooked chicken breast, diced or shredded
- ¼ cup green peas
- ¼ cup diced cooked carrot
- 1 teaspoon minced shallot
- 2 tablespoons finely chopped roasted red peppers
- 2 tablespoons chopped fresh cilantro
- 1 teaspoon lime juice
- ¼ cup mayonnaise, or as needed

#### For Potato Mixture:

- 1 ¼ pounds Yukon Gold potatoes, peeled and quartered
- 2 tablespoons aji amarillo chili paste, or to taste
- 2 tablespoons olive oil
- 1 lime, juiced, or more to taste
- cayenne pepper to taste
- salt to taste
- 1 avocado, quartered and sliced

#### For the Sauce:

- ⅓ cup mayonnaise
- 1 tablespoon sour cream (Optional)
- 1 small clove garlic, crushed
- 2 teaspoons aji amarillo chili paste, or to taste
- 1 teaspoon water as needed

## Instructions

1. Combine chicken, green peas, carrot, shallot, roasted red peppers, cilantro, and lime juice in a bowl. Season with salt and cayenne. Add mayonnaise and mix until combined. Cover chicken salad with plastic wrap and refrigerate until ready to use.
2. Place potatoes into a pot and cover with salted water; bring to a boil. Reduce heat to medium-low and simmer until very tender but not falling apart, about 20 minutes. Drain well and transfer potatoes to a mixing bowl. Mash until smooth.
3. Add aji amarillo, olive oil, and lime juice to the potatoes. Season with cayenne and salt. Mash together with the potato masher. Switch to a spatula and mix until completely smooth.
4. Line four 6-ounce ramekins with plastic wrap. Scoop mashed potatoes evenly into ramekins; press and smooth out the tops. Cover each with a layer of avocado slices. Fill ramekin to the top with chicken salad, pressing it down and pulling up the plastic wrap to eliminate any air pockets. Cover with a final layer of mashed potatoes, going up to 1/2 inch or more over the rim.
5. Seal top with a new layer of plastic wrap and fold the sides over to seal. Refrigerate salads until completely chilled, at least 1 hour.
6. Mix mayonnaise, sour cream, garlic, and aji amarillo together for the sauce, adding a splash of water to adjust the thickness.
7. Remove the top layer of plastic wrap from each salad. Invert each ramekin onto a serving plate; remove ramekins, then plastic wrap. Spoon some sauce around each salad.



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