

# Employer Vaccination Mandates and Unemployment Insurance

This is a guide for employers and employees regarding eligibility for unemployment insurance benefits after a work separation due to a COVID-19 vaccine mandate.

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Unemployment Insurance provides temporary wage replacement to individuals who lose a job through no fault of their own. As a general matter, if a claimant quits a job, in order to receive unemployment benefits, the individual must demonstrate that the quit was for good cause attributable to the employer. Likewise, an employer who terminates an employee must demonstrate that the termination was due to misconduct detrimental to the employer's business interest.

As it relates to COVID-19 vaccine mandates, if an employer follows the guidance issued below, the Department is likely to find that an employee's failure to follow a vaccine mandate is a willful decision made in disregard of the employer's business interest. As such, if the employer follows the guidance issued below, an employee that is terminated for failure to comply with a vaccine mandate will not be eligible for UI benefits based on that separation.

## **1. Can an employer mandate vaccination for their employees?**

Yes. An employer has the legal authority to mandate that employees be vaccinated as a condition of employment.

Exceptions to the COVID-19 vaccine mandate include individuals who have a deeply held religious belief or a medical condition that prevents them from receiving the vaccination.

## **2. What must an employer do in order to implement a vaccine mandate?**

An employer should include the vaccine requirement as part of an employer's required policies. This should be documented in writing and provided to employees in writing, and the requirement should be included in the employee handbook.

An employer should provide advanced notice and reasonable time for the employee to comply with the employer's vaccination policy.

The employer should make it clear to the employee, in writing, that the employee has work and work shifts available to them, but the employee shall not work if they are not vaccinated (again, providing a reasonable time for the employee to schedule and receive a vaccine dose, and become fully vaccinated).

While not required, a best practice is for the employer to provide alternatives to an employee who refuses or cannot get vaccinated. For example, the employer may require the employee to be masked at all times while working on site, and the employer could require proof of frequent negative tests.

**3. Must an employer provide an exemption for those refusing to get vaccinated?**

The Department recommends that an employer provide exemptions to any vaccine mandate, specifically for those who have a deeply held religious belief or for those with an underlying medical condition that prevents them from getting vaccinated.

An employer is not required to allow for any exemptions. However, an employer without proper exemptions built into their policy opens the employer up to a potential lawsuit. In addition, the Department may find that a policy that is implemented without the exemptions identified above is unreasonable and that unemployment insurance benefits should be allowed for a claimant terminated due to a lack of exemption.

It is strongly recommended for employers to have such exemptions. Without a similar exemption built into the policy, the Department may find that the termination was not reasonable under the circumstances.

**4. What constitutes a proper exemption from a vaccine mandate?**

The Department cannot dictate what qualifies as a sufficient religious belief or medical condition that would meet an employer's documented policy. In determining whether to allow benefits, the Department will examine whether a policy exists for an exemption and whether or not that policy was followed.

Please note that an employer may require an employee to provide proof as part of a policy that allows for an exemption. Assuming an employee fails to comply with the exemption requirements, such as failing to provide documented proof of the exemption, the employer may terminate the employee and that individual would be ineligible for benefits.

**5. Can an employer fire an employee for failing to get vaccinated?**

Yes. An employer may legally fire an employee for failing to get vaccinated if that is a requirement of employment.

For the purposes of unemployment insurance, an employer will be required to prove that they provided employees with advanced notice of the vaccine requirement **and** that they gave a reasonable amount of time for the employee to comply with the policy.

Employers should also consider providing an official warning of non-compliance to the employee before choosing to terminate employment.

*If an employer does not allow for an accommodation for employees with a deeply held religious belief or a documented medical justification to not get vaccinated and terminates the employee, the employee will likely be eligible for benefits.*

**6. If an employee quits because they do not wish to comply with the employer's policy regarding mandatory vaccinations, will the employee be eligible for unemployment insurance benefits?**

No. An individual is not eligible for unemployment insurance benefits if they voluntarily leave their job because they do not want to be vaccinated and do not have a qualifying exemption.

Again, if the employer is following best practices, and allowing for exemptions, it is unlikely the Department will find that an individual quitting employment for a refusal to get vaccinated is eligible for benefits.

**7. How will the Department of Labor determine if an employee voluntarily quits or is fired?**

Determining if an employee quit or was fired is something the Department does on a regular basis through the adjudications process. To determine UI eligibility, the Department will collect information from the employee (claimant) and the employer. Based on the facts available, the Department will issue an eligibility determination.

In order to help determine UI eligibility, the Department must identify which party has initiated the separation from employment. In the matter of mandatory vaccinations, the facts collected must show that the employee had work available to them, and that they were aware of the requirement. At which time the Department will decide if the employer provided explicit notice of termination or if the employee chose to not return to employment because they were not vaccinated.

**8. What if there is work available for an employee, but they refuse to get vaccinated and do not return to work?**

If the employer follows the best practices outlined above, the employer should make clear to the employee that work is available but **only** if the employee is vaccinated. If the employee refuses to get vaccinated, they will not be eligible for benefits.

**9. What does it mean that an individual will not be eligible for unemployment insurance benefits?**

Whether an individual is eligible for unemployment insurance benefits will depend on the nature of the separation due to refusal to get vaccinated. An individual who quits a job must demonstrate that the quit was due to good cause attributable to the employer to be eligible for benefits. As outlined above, if an individual quits a job due to a refusal to get vaccinated without a proper exemption, such as an underlying medical or religious justification, will result in the individual not receiving benefits.

If an employer terminates an employee for misconduct due to a refusal to get vaccinated, and presuming the employer has followed the guidance issued by the Department above, the individual claimant is likely to initially be found ineligible for benefits. However, an individual may become eligible for benefits at a later date after serving a disqualification period of not more than 15 weeks. In the event the Department finds that an individual has been terminated for misconduct, the employer would be relieved of any future benefit charges.

**Common Scenarios:**

- a. Jim is an employee at Alpha Inc., and he has chosen to not receive the COVID-19 vaccine. Alpha Inc. has decided to require COVID-19 vaccinations for its employees and is prepared to terminate employees who do not become vaccinated. Alpha Inc. has implemented a formal written policy and they have distributed that policy to all of their employees. The policy outlines the expectations for employees, it offers an exemption for employees with deeply held religious belief, as well as medical conditions, and it stipulates that the employer will provide one warning to the employee before termination. Additionally, the company is providing unvaccinated employees 6-8 weeks to become fully vaccinated, as two of the available vaccines have a two-dose regimen. Jim has been vocal that he does not plan on receiving the vaccine even after the company implemented the policy. Jim was provided 6 weeks to comply with the policy, at which time he received a written warning from his manager that he had one week to show that he had received at least one dose. At the end of the warning period, Jim had not made any further progress in becoming vaccinated and was fired for misconduct. Under this scenario, it is likely that Jim will be found ineligible for unemployment benefits.
- b. Sarah is an employee at Delta Company. She is unvaccinated but is not against receiving the COVID-19 vaccine. Sarah showed up to work on Monday and her manager handed her a copy of Delta Company's new vaccination policy. In the policy, Delta Company states "effective immediately, all employees who have not received the COVID-19 vaccine are hereby terminated from employment for failure to be fully vaccinated." Sarah's manager asks if she is vaccinated and when she indicates that she is not, she is escorted from the property. Under this scenario, if Sarah files for unemployment, she will likely be found eligible for benefits because the employer did not provide a reasonable amount of time for Sarah to become fully vaccinated.
- c. Dan works at a company call Good for You Foods. Good for You has just implemented a COVID-19 vaccine mandate for its employees. The company has a policy that complies with all the best practices, but because the operations of the business require employees to handle food, the company has told all unvaccinated employees that they won't be scheduled for another shift until they provide proof of being fully vaccinated. Dan is not vaccinated and at the end of his shift, he leaves. Dan has decided that he is not going to get the COVID-19 vaccine but not because of a health condition or religious reason. He just does not agree with the mandate. He also has chosen to not contact his employer and does not

- return to work. When Dan files for unemployment benefits, he indicates he was laid off from work; however, upon further review by the Unemployment Adjudicator, it is determined that Dan's job was still available to him but that he made a conscious decision to not follow the company's policy and did not return to work. Under this scenario, it is likely that Dan will be found ineligible for unemployment benefits because he voluntarily quit his job.
- d. Jessica's company institutes a vaccine mandate via written policy and has provided that policy to all employees, including Jessica. The employer has provided a reasonable time for compliance with a deadline of eight weeks to be fully vaccinated. The written policy does not include information regarding any exemption to the vaccine requirements. Jessica asks her supervisor about her underlying medical condition and whether an exemption would be allowed. Her supervisor tells her that the employer's mandate does not allow for any exemptions, and therefore she would need to comply or be terminated. In this instance, regardless of whether Jessica quit or was terminated, if Jessica can demonstrate that her medical provider has recommended that she not get vaccinated due to her underlying medical condition, the Department is likely to find that Jessica is eligible for benefits given that the employer's policy does not allow for any exemptions to the mandate and does not allow the employee any alternatives such as masking and testing.
- e. John's employer has instituted a policy that requires vaccines and has provided a reasonable time to get fully vaccinated. The policy also provides that employees may request an exemption for a deeply held religious belief or underlying medical condition with proper documentation. John mentions that he has a deeply held religious belief and has no intention of getting vaccinated. The employer asks John to provide written documentation of his religious belief by the deadline in order to be evaluated. John fails to provide this requested documentation by the deadline. The employer provides John with a documented warning and gives John one more week to comply with this reasonable request. John fails to comply and is subsequently terminated. In this scenario, John is likely to not be eligible for UI benefits. Even if John subsequently provides written documentation to the Department's UI adjudicator, if John failed to provide the documentation to his employer in a timely manner, this reason for separation would be non-compliance with a reasonable request.