

COVID-19: *The End is Near?*

WORKPLACE VACCINATION PROGRAMS REPRESENT POWERFUL PROTECTION AGAINST THE PANDEMIC IN THE RACE TO RETURNING NORMALCY

Across the self-insurance community, rapt attention is being devoted to digging out of the worst pandemic in a century.

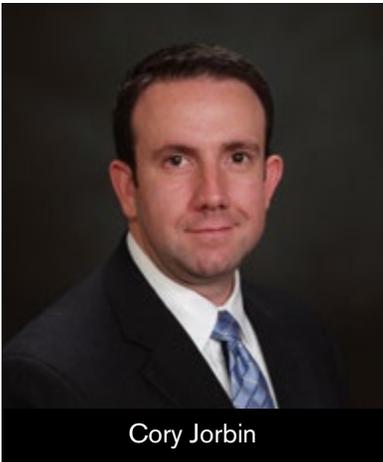
In a year like no other defined by lockdowns, sheltering in place, a hybrid of remote and office work arrangements, social distancing, masking up and incessant handwashing, working Americans are finally being vaccinated against the scourge of COVID-19. But those efforts, which eventually will spark a return to normalcy, are plodding and ponderous.

Written By Bruce Shutan

Employers are essentially faced with three options: mandate, motivate or educate, according to Carrie B. Cherveney, chief compliance officer, employment law and employee benefits, South region, for HUB International.

Much of the vaccination discussion has been “aspirational, theoretical and strategic,” observes her colleague, Cory Jorbin, chief compliance officer, employee benefits, West region for HUB International.

One of his clients in New York City has expressed serious interest in mandating the vaccine and terminating employees who refuse to be inoculated unless they’re exempt under the law. But most will stick with motivating and educating their workforces.



Cory Jorbin

In fact, only 3% of roughly 1,100 people who attended one of HUB's recent webinars on COVID-19 vaccination indicated that they were going to mandate the vaccine. The second-highest response was no plan is in place yet.

He says many employers are seeking guidance from their brokers and consultants on the compliance component and practicality of pursuing some type of COVID-19 vaccination program, as well as designing a program that actually works for their employee population.

'WHAT'S OLD IS NEW'

A mandatory vaccination program is about as complex as any initiative from an employment law standpoint, Cherveney says. But the fact is that "health care facilities and hospitals have been doing this for the past 10 or 15 years when it comes to the flu and the hep B vaccines," she notes. "I find myself saying to HR people really frequently, what's old is new."

Private employers can mandate that their employees get vaccinated as long as there's a reasonable basis for doing so, explains Adam Russo, Esq., CEO of the Phia Group, LLC, citing healthcare and commercial aviation as two examples. "In certain industries, it might be harder to establish a reasonableness standard," he adds.

Russo hasn't seen any private employers require COVID-19 vaccinations. "A big part of that is a liability concern," he says, noting the possibility of some workers suffering a serious adverse reaction or the vaccine being administered incorrectly at an onsite clinic. Experts are advising them to simply encourage employees to get vaccinated. Most companies are offering remote work arrangements, virus-monitoring programs, temperature checks and self-certification logs, as well as helping employees find testing sites, he observes.

While the federal government hasn't made vaccinations mandatory, Russo says states have the authority to do so in certain industries involving, say, critical infrastructure or health care jobs. But once again, he hasn't seen any such action at the state level.

Under vaccination guidance issued by the Equal Opportunity Employment Commission (EEOC), reasonable work accommodations must be given to people with disabilities or those with a religious objection to being vaccinated, bringing into play both the Americans with Disabilities Act and Title VII of the Civil Rights Act.

The point is that there cannot be any discrimination against people on the basis of an underlying health condition or their religious beliefs. It's also worth noting that there

are safety concerns about the vaccine's impact on pregnant women because of limited data.

However, having the EEOC declare COVID-19 a direct threat to the health and safety of others serves as a compelling vote of confidence for the vaccination effort, Cherveney observes.

HIGH ANXIETY

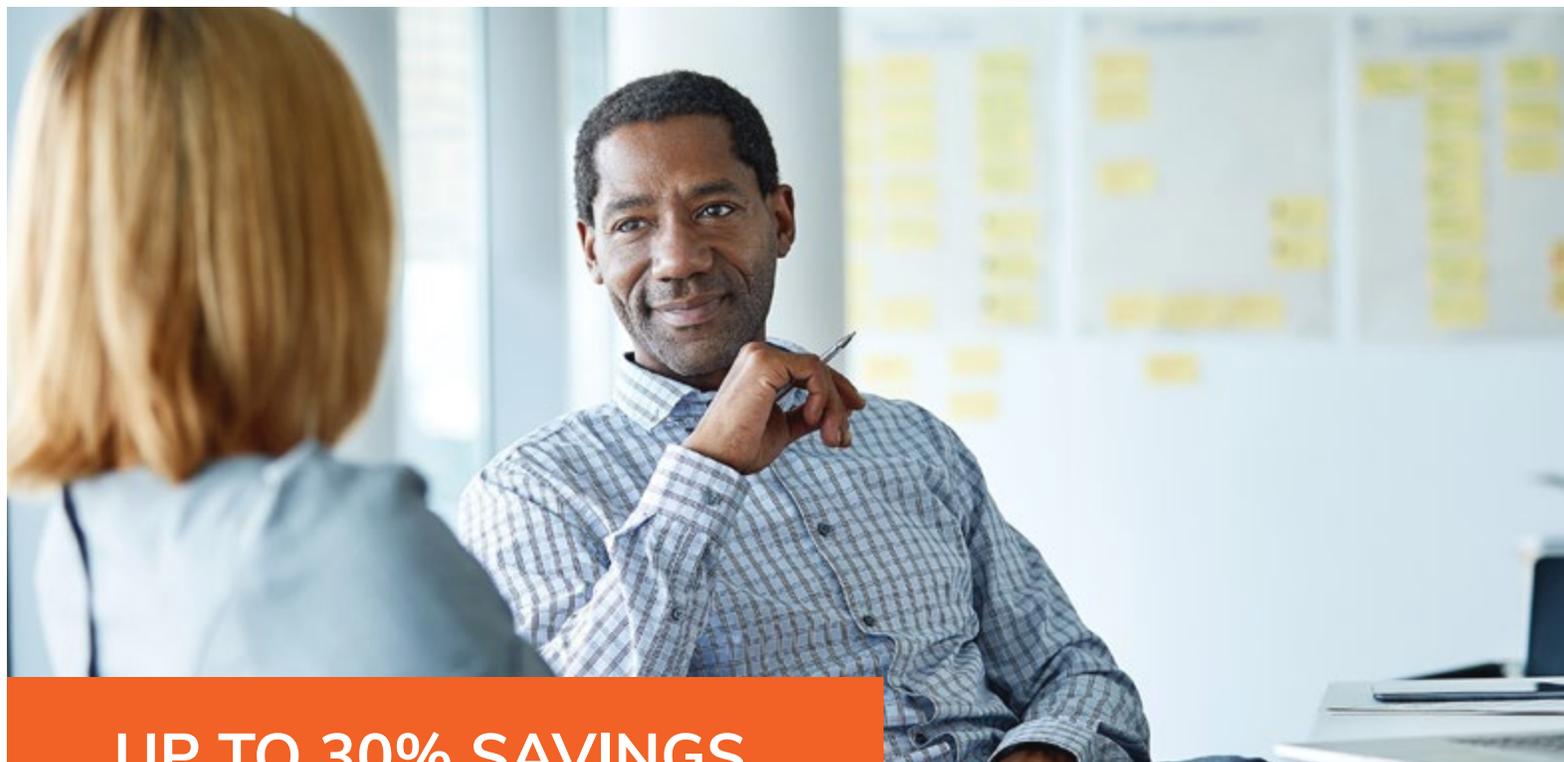
Trepidation about returning to workplaces has been mounting for months. More than 70% of working Americans consider their offices unsafe and nearly 30% say they'd search for a new job before returning to work, according to a Honeywell poll. Roughly half of more than 1,000 respondents to a PwC survey felt forced to sacrifice their personal safety to stay employed.

Fear and anxiety could linger in a post-pandemic workplace. Glassdoor found that 70% of employees would prefer continuing to work from home at least part time once COVID-19 is under control.

It's such a hot-button issue that several SIIA members declined to be interviewed or did not respond to a request for comment about inoculating their own employees or any advice they've given to employer clients.

The first wave of vaccinations involving health care workers went smoother than it did for older Americans, especially those who don't have caregivers and aren't proficient on a computer.

Supplies haven't kept up with demand, while seniors have had to contend with



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“glitchy websites, jammed phone lines and long lines outside clinics,” according to one published account.

Of course, it's anyone's guess how the four-phase approach to vaccination will unfold in the coming months with fewer than 8% of the U.S. population having been vaccinated against COVID-19 as this issue went to press.

About 40% to 50% of Americans seem to want the vaccine, according to Paul S. Bradley, M.D., chief medical officer of Scripta Insights and principal investigator for Meridian Clinical Research for whom he is leading the Moderna, Pfizer and Novavax COVID-19 vaccine clinical trials.

A rush to market under Operation Warp Speed and politicization of this issue obviously has raised concerns, but “from everything we've seen, it's very safe,” he said during a recent webinar on the topic of COVID-19 vaccination. Other recent polls have suggested that as many as 60% of the U.S. population is willing to be vaccinated.

All of the usual bureaucratic roadblocks to approving a COVID-19 vaccine were removed, while government financial support was pledged in terms of prefunding the effort, Bradley noted. This is why clinical trials were done so quickly, resulting in a safe and efficacious vaccine. Indeed, he said there were no serious adverse reactions to the vaccinations during clinical trials, while any allergic reactions were easily treated.

Arm tenderness and swelling are side effects associated with the first injection, while flu-like symptoms and extreme fatigue have been reported as a side effect after the second injection. A third

injection is being considered to help guard against new and more highly contagious strains.

More than 450,000 Americans – and counting – had died from COVID-19 complications amid more than 26 million infections nationwide as the U.S. edged toward the first-year anniversary of pandemic restrictions.

“Until we can get large numbers of people vaccinated, it's the only way we're going to quiet it down,” Bradley said. Federal authorities expect vaccines could be available to the general public by the second quarter of 2021, though timetables will vary from one state to the next.

One gray area would be someone who identifies as an anti-vaxxer. While Russo says such individuals wouldn't be afforded those same protections, it could complicate the job of a frontline or essential worker who is philosophically opposed to being vaccinated.

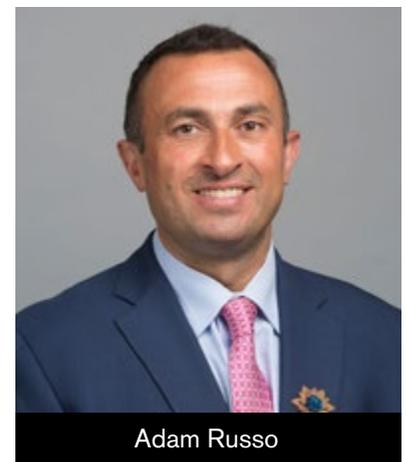
Those objections always could be addressed in a bargaining agreement, but in non-union workplaces he says their fate may be uncertain. If reasonable accommodations cannot be made, he says it's possible that these individuals could lose their job.

Realizing that “there's still a good percentage of the population in this country that is afraid to be vaccinated,” Russo believes Americans will likely wait and see how the early vaccination

rounds go and possible side effects before warming up to the idea. As more people are vaccinated, his sense is that people “expect some kind of return to normalcy in the fourth quarter... I'm seeing that just based on our actual clients and their expectations as to when claim volume returns.”

ALLEVIATING COST CONCERNS

While some employees may be reluctant to be vaccinated, cost will not be a concern. “From a benefits perspective, the vaccine does need to be covered without cost sharing by essentially all group health plans,” Jorbin explains. “The federal



Adam Russo



Carrie Cherveney

government, at least initially, is going to be picking up the cost of the vaccine itself," he reports. "That being said, we expect those that are providing the vaccine to charge administrative fees, which they are allowed to do. Plans outside of grandfathered health plans are required to pick up that administrative fee."

For companies that hire a third-party vendor to administer vaccinations onsite, Cherveney says they serve as a contracted agent of the organization, "and your liability is an obligation

to avoid prohibited medical inquiries under the ADA, conducting private conversations with the employee where other people can't hear, securing the medical information that you receive."

Pre-vaccine medical questionnaires are confidential, and the information must be confined to only those who need to know it. The easiest way to comply is sending employees to a third party of their choosing and ask them to provide proof of vaccination within a certain timeframe, she explains.

Cherveney advises clients to separate the vaccination effort from their health and wellness program, which will make it less complicated. Participating in a fun run, quitting smoking or agreeing to a biometric screening "is irrelevant to whether or not I get the vaccine, and we can establish an even safer workplace for our employees than we've already established over the course of the last 10 months," she says.

Best practices based on other types of vaccination programs have used a company-wide campaign to promote the effort in which senior leadership actively promote the campaign as well as get vaccinated themselves, Gigi Acevedo-Parker, clinical risk management practice leader for HUB International, noted in a recent webinar on the topic.

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“They need to lead by example so that workers know they’re all in on the vaccination,” she said, adding that “just like high school, peer pressure sometimes works to convince employees to have that vaccine.”

For employees who decline vaccination, Acevedo-Parker suggested they sign a form stating the reason for their decision, which would help employers track the acceptance rate of their COVID-19 vaccination program.

Russo, the father of four young children who have been showing up to school in person, was recently tested for COVID-19 three days after texting his direct primary care doctor under his company’s health care plan.

For the sake of his family, he has been working from home along with 197 others.

“We’ve got maybe five people at the actual office,” he says, “and the reason is every week we just see another employee with a positive test, knows someone with a positive test or lives with someone who’s very sick with COVID.”

Looking ahead, Cherveney believes employers will impose more rigorous standards to keep their workplaces clean and disinfected. Even with vaccinations, she says “we will all be observing safety protocols, including masks, through the end of the year.” ■

Bruce Shutan is a Portland, Oregon-based freelance writer who has closely covered the employee benefits industry for more than 30 years.



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