

COVID-19 vaccinations; hope and hesitancy

VT Public Library HR minute – October 2020

Dear Library Friends,

As the United States and Europe spike in COVID-19 cases, we are all holding out hope that someday, somehow, we return to “normalcy”. In order for us to be safe, to beat this pandemic, we have taken significant steps, like social distancing, isolation, and masking that have been disruptive to all and unimaginably hurtful to many. As we continue to look ahead to a brighter horizon, we understand that vaccinations are crucial in stopping the pandemic.

According to an article published in early October 2020 in *Vaccines* by Brigham Young University researchers¹, the best hope for a permanent solution is a vaccine. But they also add that to be effective, a vaccine must be accepted and used by a large majority of the population. Lower acceptance rates will likely be below the threshold needed for “herd immunity” [see [Mayo Clinic](#) for definition] and many will still be vulnerable to the disease.

The researchers found that 68% of all respondents were supportive of being vaccinated for COVID-19. However, acceptance of the vaccine is weakened or strengthened by the following:

- Two significant predictors of attitudes towards a COVID-19 vaccine were vaccine history and perceived impact of the pandemic on America. Those who routinely received vaccines were more likely to be receptive to a COVID-19 vaccine. Those who saw a greater pandemic impact on America were also more receptive to a COVID-19 vaccine.
- When examined individually, income level, education, and satisfaction with health insurance is positively correlated to intent to vaccinate.
- Enthusiasm for a COVID-19 vaccine increased if the time for vaccine testing increased from 30 days to six months, due to concerns about safety. Safety was a bigger concern than efficacy.

- A large percentage of the survey respondents (23%) said that nothing would make them feel safe enough to get vaccinated for COVID-19.
- As vaccine efficacy increased (50%, 75%, and 99%), vaccination hesitancy decreased, and as booster requirement increased, so did hesitancy to vaccinate.
- Americans were more accepting of an American made vaccine, or one made in America or Europe over any other location.

Interestingly the study showed that none of the following were influential on respondent attitude: understanding of vaccines and immunity; the number of people they knew with COVID-19; race; age; sex; and political ideology.

Workplace vaccinations – can they be mandatory?

Yes, in general. According to an article published by the attorney firm *Ogletree Deakins*², authors Jimmy Robinson, Jr. and James Paul write that employers may implement mandatory vaccination programs. Although we are thinking a lot about vaccinations now, mandatory vaccination programs are not new. As you may know from personal experience, mandatory vaccination requirements, for seasonal flu, for instance, are prevalent among healthcare providers.

The “in general” part is when mandatory is not permissible, and it relates to accommodations under two acts; the Civil Rights Act of 1964, and the increasingly familiar Americans with Disabilities Act (ADA) (1990).

Under Title VII of the Civil Rights Act of 1964, Robinson and Dean say that “a ‘sincerely held religious belief’ is a prerequisite to establishing an entitlement to a religious accommodation.” As long as employers consider religious accommodation requests, they can institute mandatory vaccination programs. They add that “personal or ethical objections” to vaccinations “are typically insufficient.” This includes personally-held anti-vaccination positions. If an employer can show

¹ Kendall Pogue, Jamie L. Jensen, Carter K. Stancil, Daniel G. Ferguson, Savannah J. Hughes, Emily J. Mello, Ryan Burgess, Bradford K. Berges, Abraham Quaye, and Brian D. Poole. "Influences on Attitudes Regarding Potential COVID-19 Vaccination in the United States." *Vaccines* (Basel) 8.582 (2020): 582. Web.

² Mandatory COVID-19 Vaccination: Is It Legal and Is It Right for Your Workplace? <https://ogletree.com/insights/mandatory-covid-19-vaccination-is-it-legal-and-is-it-right-for-your-workplace/> accessed October 20, 2020

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significant and considerable harm (“undue harm”) to the employer, its employees and third parties (like patients in a hospital), an employer may deny an accommodation request.

Similar to the requirements of establishing a sincerely held religious belief under Title VII, ADA requires that an employee establish a legally-covered disability. According to Robinson and Dean, the path towards accommodation can be rocky. The claim of sensitivity to vaccinations as a covered disability has met with mixed legal results. Additionally, the U.S. Equal Employment Opportunity Commission (EEOC) has recognized that COVID-19 meets the “direct threat standard” which permits *more extensive* medical inquiries than typically allowed under ADA. This is why COVID-19 testing is also allowed. Simply put, the pandemic is **that** serious, and significant “undue harm” may come to an employer, its employees, or their patients or clients if a COVID-19 infected employee shows up for work. It is intriguing to note that the U.S. EEOC, which is responsible for ADA compliance, has been traditionally hostile to mandatory vaccination programs; but these are different times.

The U.S. Centers for Disease Control offers a *Roadmap to Implementing Pandemic Influenza Vaccination of Critical Workforce*³ that guides states and local planners in allocating and targeting the vaccine when it becomes available. The federal government and state and local governments, according to Robinson and James, are likely more open to mandatory programs for these critical workforces – those considered essential to societal function.

Vermont released its COVID-19 vaccination *Draft Interim Plan*⁴ on October 23, 2020. The plan calls for

Gary Deziel, MBA, SHRM-CP | Extension Assistant Professor
University of Vermont Extension, Saint Albans, VT
802 524-6501 ext. 444, gdeziel@uvm.edu
UVM Extension helps individuals and communities put research-based knowledge to work.

Gary is not an attorney and this does not constitute legal advice.

³ https://www.cdc.gov/flu/pandemic-resources/pdf/roadmap_panflu.pdf accessed October 20, 2020

⁴ Executive Summary, VT Interim COVID-19 Vaccination Plan
<file:///C:/Users/gdeziel/AppData/Local/Temp/Executive%20Summary%20Vermont%20Jurisdictional%20COVID->

A vaccine is coming. Library directors and trustees may like to consider the following in anticipation.

- **Carefully consider** whether or not a mandatory vaccination policy is truly necessary for your library. An employer must be on solid ground in determining “undue harm.”
- If you institute a mandatory policy, ensure that you **create a process** for reviewing requests for accommodations under the acts noted. Remember to remain consistent with implementing the process.
- **Be prepared** to provide vaccinations at no cost to the employee.
- Think about the **political context** of vaccinations within your community. While researchers in this study found no political ideology differences, vaccinations are a source of controversy.
- If you have questions about mandatory vaccinations *or* mandatory COVID-19 testing, please drop me an [email](#).

the early vaccine going to certain groups of people, and those groups may include:

- People who provide direct care to others
- people who are critical to the COVID-19 response
- people who are essential to maintaining a functional society
- older adults and people who have chronic illnesses

As always, please visit your [Vermont Department of Libraries](#) for the latest in expert library support on a wide range of topics, and please visit my [UVM Extension website](#) to read more about human resource and budget management.

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[19%20Vaccination%20Plan_Interim%20Draft.10.21.2020.pdf](#) Accessed October 26, 2020.