

**Dear Library Friends,**

As we enter what many of us consider the bleakest of times in the course of the pandemic, 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 widespread acceptance of COVID-19 vaccinations are crucial in stopping the pandemic.

According to an article published in early October 2020 in *Vaccines* by Brigham Young University researchers<sup>1</sup>, the best hope for a permanent solution is a vaccine. But they also add that to be effective, a vaccine must be accepted 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:

- 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 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. Safety was a bigger concern than efficacy.
- As vaccine efficacy increased, vaccination hesitancy decreased, and as booster requirement increased, so did hesitancy to vaccinate.
- Twenty-three percent of those surveyed said that nothing would make them feel safe enough to get vaccinated for COVID-19.

**Workplace vaccinations can be mandatory**

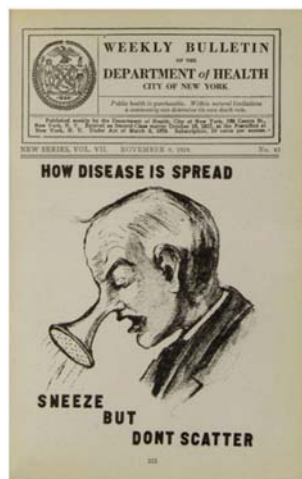
According to articles published by the attorney firm *Ogletree Deakins*<sup>2</sup> and *The National Law Review*<sup>3</sup>, the authors write that employers may implement mandatory vaccination programs. Mandatory vaccination programs are not new. As you may know from personal experience, mandatory vaccination requirements are prevalent among healthcare providers.

That written, mandatory vaccination is not permissible if covered under aspects of two important acts: the Civil Rights Act of 1964 and the Americans with Disabilities Act (ADA).

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 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, the 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 inquires than typically allowed under ADA. This is why COVID-19 testing is also allowed. Simply put, the



<sup>1</sup> 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.

<sup>2</sup> 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

<sup>3</sup> [COVID-19 Vaccinations Arriving For the Holidays: What Employers Need to Know and Can Do](#), accessed December 10, 2020

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. 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*<sup>4</sup> 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*<sup>5</sup> on October 23, 2020. The plan calls for the early vaccine going to certain groups of people, and those groups may include people who provide direct care to others, who are critical to the COVID-19 response, or who are essential to maintaining a functional society

#### **A vaccine is here<sup>6</sup>.**

Library directors and trustees may like to consider the following in anticipation, as guided by The National Law Review<sup>7</sup>. **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.” Think about the following factors when making a decision.

- **Employee Morale.** Do you want to force employees to choose between a vaccine and their job? You risk driving a wedge between you and your employees. As noted earlier in this article, intentions to get vaccinated are not high in the United States and are subject to many factors. Employee push-back, fear, and resentment may be significant.
- **Accommodation Requests.** Again, as noted, employees may request an accommodation, which you will have to act upon, legally. An accommodation may result in additional mitigation

of risk factors or shuffling of job responsibilities, and will require a thorough discussion and documentation of options and actions.

- **Discipline and Enforcement.** Is your library willing to terminate employees who refuse to vaccinate? Can you easily replace people you lose, either through attrition or termination? If you make it mandatory, be prepared to walk the talk.
- **Cost and Distribution.** These are big unknowns right now as the vaccine is distributed to critical workers and populations. However, you should be prepared to get this vaccine to your workers *free* if you want to be effective.
- **Administrative Burden.** This is a big one. Think of every point above, and then add that to your plate or the plate of a trustee chair / personnel committee.

If you do choose to continue down the mandatory path, documenting your “business reasons” for adopting a mandatory policy is a first on your to-do list. This should be followed by writing clear language about the administration and enforcement of your policy. Communication is a vital role in your decision as well; employees deserve to know why the library has made the decision it has (business purpose), and how it will all “roll out.”

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

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<sup>4</sup> [https://www.cdc.gov/flu/pandemic-resources/pdf/roadmap\\_panflu.pdf](https://www.cdc.gov/flu/pandemic-resources/pdf/roadmap_panflu.pdf) accessed October 20, 2020

<sup>5</sup> Executive Summary, VT Interim COVID-19 Vaccination Plan [file:///C:/Users/gdeziel/AppData/Local/Temp/Executive%20Summary\\_Vermont%20Jurisdictional%20COVID-19%20Vaccination%20Plan\\_Interim%20Draft.10.21.2020.pdf](file:///C:/Users/gdeziel/AppData/Local/Temp/Executive%20Summary_Vermont%20Jurisdictional%20COVID-19%20Vaccination%20Plan_Interim%20Draft.10.21.2020.pdf) Accessed October 26, 2020.

<sup>6</sup> [Pfizer-BioNTech COVID-19 Vaccine, expected to be approved by FDA USA Today](#), accessed on December 10, 2020.

<sup>7</sup> [COVID-19 Vaccinations Arriving For the Holidays: What Employers Need to Know and Can Do](#), accessed December 10, 2020