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# MEMORANDUM

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Date: February 8, 2021

To: The Honorable Chair and Members  
Pima County Board of Supervisors

From: C.H. Huckelberry  
County Administrator 

Re: **County Policy Related to COVID-19 Vaccination of Employees**

Attached is an informational memorandum from our Human Resources Director, Cathy Bohland, that discusses the various options that County will face when determining the requirement of COVID-19 vaccinations for County employees. As we begin to vaccinate essential employees, I will be asking the Board of Supervisors for policy direction regarding our position on mandatory vaccination for certain employee classification.

It seems appropriate that perhaps all new hires in the County should be required to be vaccinated and that there are certain job classifications where individuals receiving service from Pima County such as those in our Pima County Adult Detention Complex should be protected by having those employees vaccinated.

I will be asking for direction at the Board's March 16, 2021 meeting.

CHH/anc

Attachment

c: Jan Leshar, Chief Deputy County Administrator  
Carmine DeBonis, Jr., Deputy County Administrator for Public Works  
Francisco García, MD, MPH, Deputy County Administrator & Chief Medical Officer,  
Health and Community Services  
Cathy Bohland, Director, Human Resources

Date: February 2, 2021

To: C.H. Huckelberry  
County Administrator

From: Cathy Bohland, Director  
Human Resources

Via: Jan Leshner, Chief of Staff  
Deputy County Administrator

Re: **COVID-19 Vaccine – Informational Only**

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Public servants have, as part of their duty to serve the community, a responsibility to keep the public safe. To address that effort, Pima County must determine whether it will require employees to be vaccinated against COVID-19. Below is some guidance to review in making this determination.

### **Mandating the Vaccine is Permissible Under EEOC Guidance**

The U.S. Equal Employment Opportunity Commission (EEOC) has issued guidance indicating employers can require employees to get vaccinated and block them from entering the workplace if they refuse. Per the EEOC, mandating the vaccination does not constitute an unlawful medical examination under the Americans with Disabilities Act (ADA), where the “vaccine is administered to an employee by an employer for protection against contracting COVID-19.” *However, EEOC guidance does not carry the force of law and therefore, it is unknown whether courts will adopt this interpretation specific to COVID-19.* Historically, this issue dates back to 1905 in which the Supreme Court authorized the board of health for a city or town to require vaccination of its inhabitants if it deems it necessary to public health. *Jacobson v. Commonwealth of Massachusetts*, 197 U.S. 11. However, it is unclear how a court would rule on the issue of an emergency use vaccination as there are valid arguments on both sides.

### **Effects of Mandating the Vaccine**

#### *➤ Exception for Workplace Accommodations*

Should the County decide to mandate vaccinations for part or all of its staff, there may be a substantial increase in accommodation requests. For instance, where a vaccine is mandated, an employee may request an accommodation for either a medical disability or a sincerely held religious belief. Once triggered, the County has a legal duty to engage in the interactive process with the employee to identify reasonable accommodations. Pima County will likely have an obligation to provide a reasonable accommodation, unless it can show that an inability to be vaccinated poses a “direct threat” to health and safety which cannot be mitigated. While the County may be able to show that the lack of a COVID-19 vaccination poses a direct threat to the health and safety of its employees, a reasonable accommodation for such a request could include telecommuting, providing a separate office or workspace, additional personal protective equipment, or alternative leave, if it does not pose an undue hardship on the County.

➤ *Reluctant Employees*

There may also be employees who do not meet an exemption as outlined above but are not comfortable receiving the vaccine. The County will need to make a determination as to whether it will terminate employees who cannot be formally accommodated and are reluctant to get vaccinated. We have no indication of the number of employees who may refuse a vaccination, so it may be worthwhile to survey employees and inquire how many would be willing to obtain the vaccination if it were offered to them through the workplace. Even a small but vocal number of employees could have a negative effect on employee morale and, if from the same Department, could have a negative impact on the provision of services.

➤ *New Hires*

Should the County mandate vaccinations, new hires would be required to be vaccinated as well. Therefore, an Applicant would be required to either provide proof of vaccination at the time of hire or be required within a specified period of time to obtain the vaccination or be subject to termination. This employment requirement must be listed when advertising the position.

➤ *Medical Screening Questions*

Additionally, the pre-vaccination medical screening questions are likely to elicit information about a disability. Therefore, the County must ensure that these disability-related screening questions are “job-related and consistent with business necessity.” These conversations cannot take place in the employee’s work environment, but must take place with a trained Human Resources employee or with a non-contracted entity such as a pharmacy.

➤ *Proof of Vaccination*

Mandating vaccinations also requires that employees provide proof that they have been vaccinated. Employees must be warned to not provide any medical information as part of the proof of vaccination in order to avoid implicating the ADA. Proof of vaccination would need to be provided and confidentially maintained through the Human Resource Occupational Health Program.

➤ *Employer Liability*

The County may be financially liable whether or not it mandates vaccines. For example, where an employee has a negative reaction to the vaccination or if proven to be unsafe for a limited segment of employees, this may result in a workers’ compensation claim and potentially warrant payment of costs for treatment. This liability also extends to deficient processes for the interactive process, failing to identify reasonable accommodations, confidentiality violations, and whether a vaccine approved for emergency use can be mandated. Conversely, the County could be liable for failing to mandate the vaccination where the employer could be found in violation of OSHA’s General Duty Clause which requires employers to keep employee’s safe from known workplace hazards.

### **Voluntary Vaccinations**

The County may benefit from approaching the concept of COVID-19 vaccinations in the workplace as a voluntary decision by the employee. Strongly encouraging employees to get vaccinated preserves employee autonomy and may be beneficial to some employees who are hesitant to receive the

vaccination. Voluntary participation requires education as to the benefits of the vaccine, as well as dispelling conspiracy theories or myths. Advocating that employees voluntarily obtain vaccinations can be completed through vaccine education and training, on-site voluntary vaccinations, County-paid time to employees who get vaccinated during their standard work hours (current allotment is 90 minutes), and incentivizing through providing monetary discounts towards health premiums (current allotment is 50 points or \$5.00 per pay period/\$130 annually).

### **Mandatory Vaccinations**

Should the County move towards mandatory vaccinations, any employee whose position does not permit them to maintain social distancing should be vaccinated. This includes: sworn law enforcement, corrections officers, court personnel, health care workers, and any employees who have direct contact with the public. In order to make such a determination, the Appointing Authorities would need to identify the classifications and/or employees who engage in such contact. Any employees that are required to obtain the vaccination are permitted to request an exception under the ADA accommodation or religious accommodation, which would be handled through Human Resources.

It could be problematic if we require only certain classifications/employees to get vaccinated. In reality, all employees in the workplace can be exposed to one another, so from a safety perspective, if we are requiring the vaccine to keep employees in the workplace safe, all employees should be required to be vaccinated.