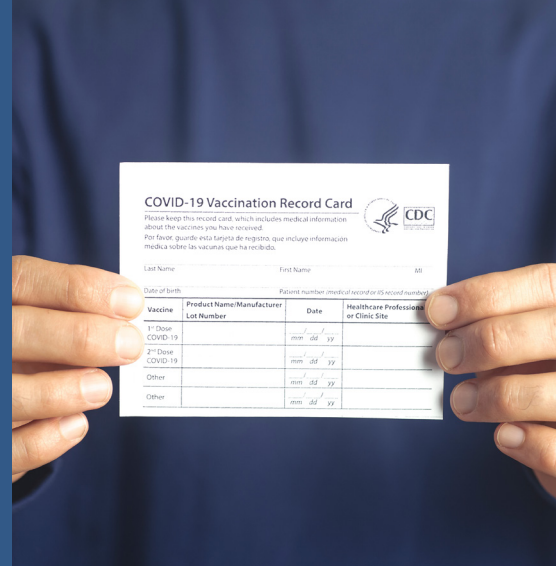
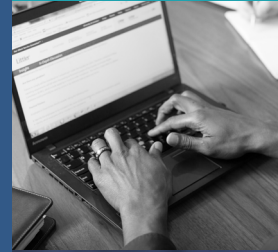



Littler COVID-19 Vaccine Employer Survey Report — Delta Variant Update

August 2021



COVID-19 Vaccination Record Card 

Please keep this record card, which includes medical information about the vaccines you have received.
Por favor, guarde esta tarjeta de registro que incluye información médica sobre las vacunas que ha recibido.

Last Name: _____ First Name: _____ SSN: _____

Date of birth: _____ Patient number, medical record or US social number: _____

Vaccine	Product Name/Manufacturer Lot Number	Date mm / dd / yy	Healthcare Professional or Clinic Site
1 st Dose COVID-19		mm / dd / yy	
2 nd Dose COVID-19		mm / dd / yy	
Other		mm / dd / yy	
Other		mm / dd / yy	



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This report analyzes data gathered from more than 1,600 in-house lawyers, C-suite executives and HR professionals. The survey gauged employers' key concerns and strategies related to mandating and encouraging COVID-19 vaccinations among their workforces.

Disclaimer: The survey questions and their resulting findings cover issues that are governed by various laws and regulations. The content does not convey or constitute legal advice, nor is it intended to be acted upon as such.

Executive Summary

After more than a year of a crushing global pandemic, the early summer brought hope for a long-anticipated return to normal business operations, at least in the United States. But those plans were derailed by the rapid spread of the highly contagious delta variant and mounting COVID-19 infections, which [reached](#) a six-month high in the U.S. by early August.

The abrupt change left companies – many of which had just updated plans with an eye toward a post-pandemic future – scrambling to adjust policies for return-to-office timing, vaccinations and mask wearing.

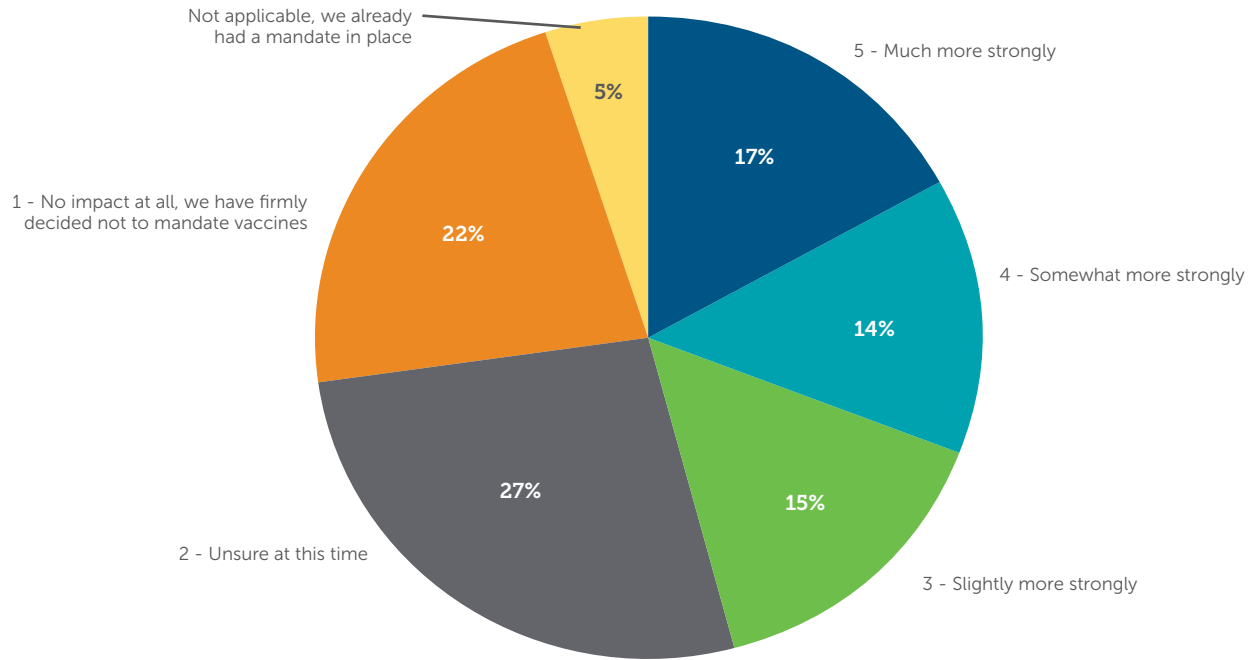
On the issue of vaccines, employer mandates that seemed unlikely several months ago – in a [survey](#) we conducted in January, less than 1 percent of employers were mandating vaccination and just 9 percent were planning to in some form – are swiftly becoming more of a reality. Companies [in a wide range of industries](#) have announced mandates and even the [U.S. military](#) recently decided to require vaccines for active-duty troops.

While big names may be making news with such mandates, many other employers across the country are still grappling with their vaccination plans – or whether to make any. To better understand where employers stand and where we may be headed next, Littler surveyed 1,630 in-house lawyers, C-suite executives and HR professionals from a variety of industries about their current plans, concerns and key considerations when it comes to vaccination of their workforces.

What we found was a notably greater openness to the idea of vaccine mandates as compared with earlier in the year. While only 9 percent of employers are currently mandating vaccines for some or all of their workers, another 12 percent are planning to impose a mandate in the near future (8 percent) or for specific subsets of individuals (4 percent).

At this time, a significant majority (63 percent) are still planning on encouraging – rather than mandating – the vaccine. But that might be changing, given the recent rise in COVID-19 cases. Nearly half of those surveyed (46 percent) are more strongly considering a new vaccine mandate due to the recent rise in cases; 27 percent are unsure, while just 22 percent say they have firmly decided not to institute a mandate.

To what extent is your organization more strongly considering a vaccine mandate due to the recent rise in COVID-19 cases, including the spread of the delta variant?



Something that hasn't changed since January are employers' key concerns about instituting vaccine mandates: Respondents' top two concerns still relate to resistance from those who are not in a protected category but refuse to get vaccinated (75 percent) and the impact on company culture and employee morale (69 percent). Meanwhile, in today's tight labor market, the stakes have been raised: Sixty percent now fear the possible loss of staff and difficulty operating due to termination or resignation of employees who don't wish to be vaccinated.

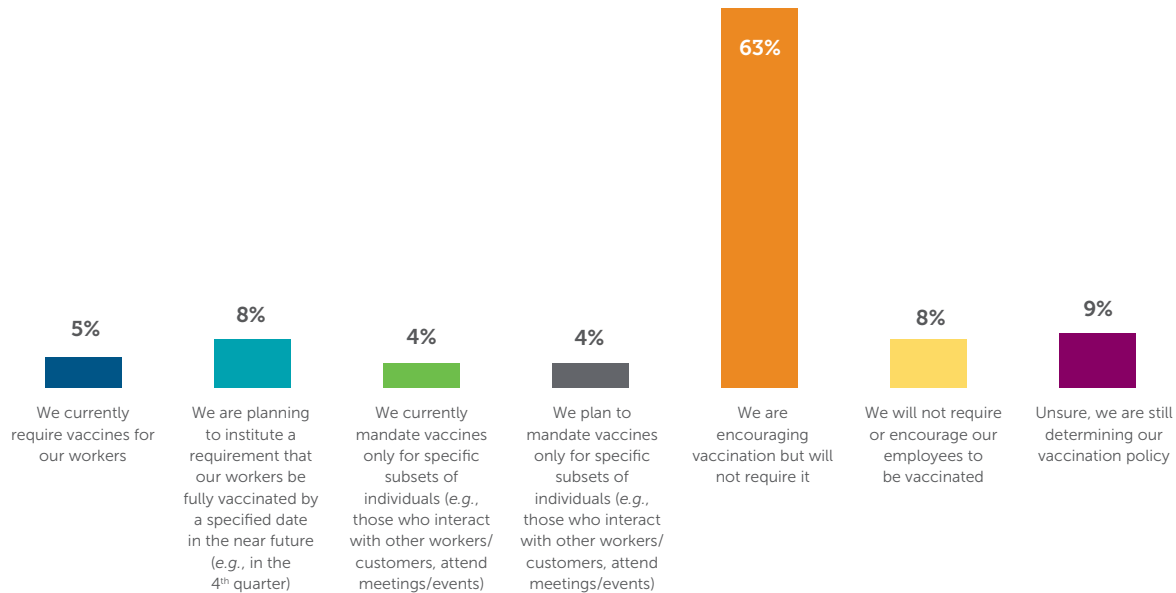
As one C-suite executive for a long-term healthcare company told us: "We are already suffering a critical staff shortage. Mandating vaccination for healthcare workers who are against it will hurt this hospital and community *even if I support it.*"

In what follows, we'll dig deeper into this new data – uncovering what might move the needle for companies when it comes to mandating vaccines, how they define their mandate policies, what they're doing to encourage their workers to get vaccinated and to keep them safe, and more.

In the charts and analysis that follow, responses to some questions do not add up to 100 percent due to rounding, and some exceed 100 percent because respondents were invited to select more than one answer. For the full survey [methodology and a breakdown of respondent demographics](#), see page 13.

Current COVID-19 Vaccination Plans

Which of the following statements best describes your organization’s approach to COVID-19 vaccinations?



Back in January, only 0.5 percent of employers responding to our survey were mandating vaccines and 9 percent were planning to do so for some or all employees (see chart on page 2 [here](#)).

Suffice to say a lot has changed since the early days of 2021: Vaccines have become universally accessible to U.S. adults, adverse reactions appear relatively rare, and the new delta variant has driven cases back up – just as many employers were planning to return to offices.

Now, the percentage of respondents whose organizations are currently mandating vaccines or planning to in some form has doubled from less than 10 percent to 21 percent. Five percent now require vaccines for workers, including employees (97 percent), new hires (96 percent) and, to a lesser degree, independent contractors/contingent workers (58 percent). Eight percent are planning to require that workers be fully vaccinated by a specified date in the near future, also covering employees (98 percent), new hires (92 percent), and, for most, independent contractors/contingent workers (59 percent). Meanwhile, 4 percent currently mandate vaccines for specific subsets of individuals (e.g., those who attend meetings/ events or interact with customers) and another 4 percent plan to.

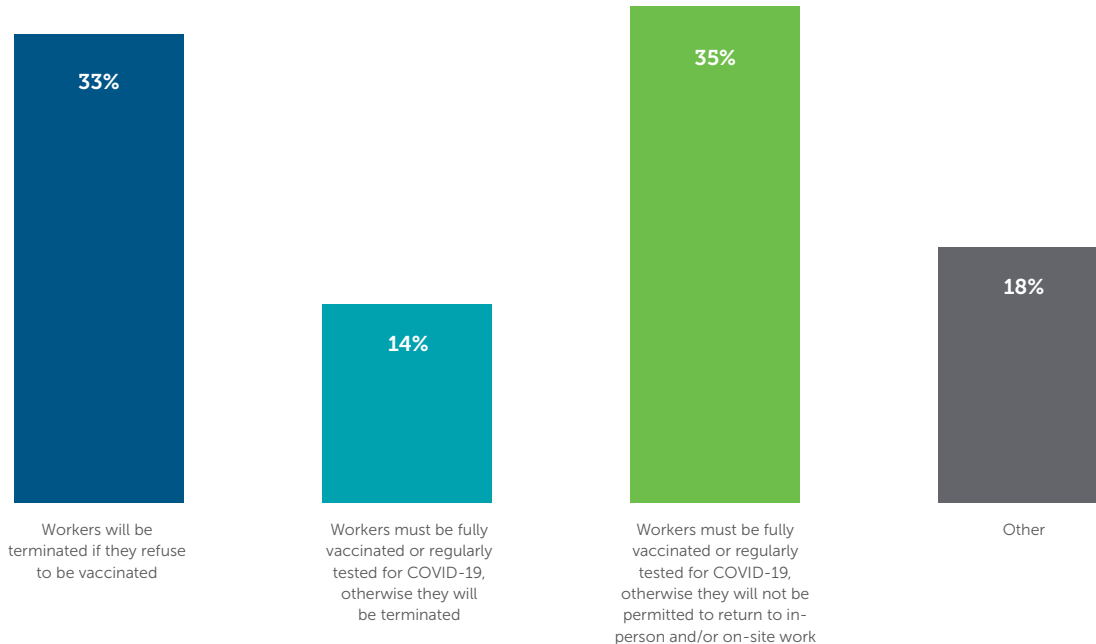
While plans for vaccine mandates were mostly consistent by company size, interesting differences arose by industry. Significantly more healthcare employers are mandating vaccines or planning to (36 percent) and fewer in manufacturing (8 percent) and retail/hospitality (9 percent) are doing the same.

The largest group of respondents (63 percent) are encouraging vaccination but will not require it and another 8 percent are neither requiring nor encouraging vaccination – marking an increase from the 48 percent who told us in January they would not require their employees to be vaccinated. In addition, while 43 percent told us they were unsure of their plans in the last survey, only 9 percent are still unsure. This suggests that the previously unsure employers have moved toward encouraging, rather than mandating, vaccination for the time being.

Defining Vaccine Mandates

Which of the following best describes how your organization currently defines, or plans to define, its vaccination policy for those who do not have a medical or religious exemption?

This question was only asked to those who currently mandate vaccinations or plan to do so.



Vaccine mandates are not a one-size-fits-all policy. They depend on a range of factors, including the type of work being conducted, the company’s culture and its geography. For instance, is your company located in an area the Centers for Disease Control and Prevention [identifies](#) as having high or substantial COVID-19 transmission? Do workers have to interact with others in person to do their jobs? Are they interacting with customers? What proportion of your workforce has been vaccinated thus far?

At the same time, while some states – like California and Washington – are explicitly [requiring](#) employers to determine vaccination status in order to lift COVID-19 safety protocols for fully vaccinated employees, other states have enacted legislation that make it more difficult for employers to mandate or even encourage the vaccine. “We have large populations of employees in Texas and Florida, and their [state] governments are actively fighting employers for doing this,” one HR professional for a large multistate employer noted.

These headwinds mean that those currently mandating vaccines (or planning to) have differing definitions of what such a policy entails. Thirty-three percent are taking a hard line, defining their policy as “workers will be terminated if they refuse to be vaccinated” (for healthcare respondents, that number jumped to 57 percent). But a near-equal amount (35 percent) are taking a softer approach, saying workers must be fully vaccinated or regularly tested as a condition for returning to in-person/on-site work. Another 14 percent split the difference, defining their policy as “workers must be fully vaccinated or regularly tested, otherwise they will be terminated.”

Of the 18 percent who selected “other,” about a quarter said that the specifics of their policy are still being determined. Others noted plans to staff unvaccinated employees in different roles, undertake reasonable accommodations (such as offering remote work where possible) or make educational efforts before moving to termination. Still others described their policies as requiring vaccination only for a subset of employees (e.g., those who are customer facing) or placing unvaccinated employees on leave until they either receive the vaccine or are approved for an exemption. For example, an in-house lawyer for a large technology company described the organization’s policy this way: “Workers who cannot comply with an otherwise applicable vaccine requirement will engage in an interactive process to assess the best approach for their situation – deference to flexibility will be provided to the extent it is possible absent an undue hardship to the business.”



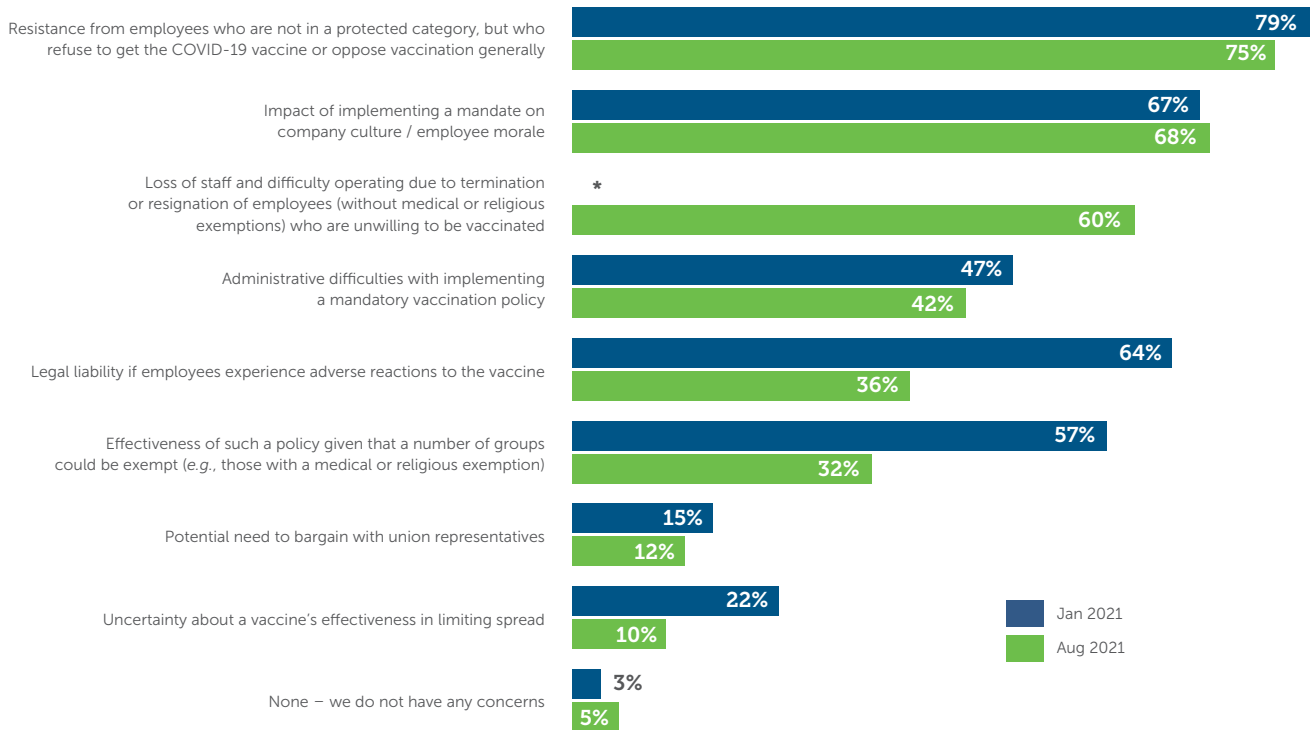
Though employer concerns about mandating vaccines shouldn’t be taken lightly, the past few months have shown that vaccination is the most effective approach to fighting COVID-19 and can ultimately help us return to business as usual. But there is no one-size-fits-all approach to setting workplace vaccination policies. Employers need to gather the type of information that would guide any employment-related decision, including determining the number of workers who already have been vaccinated, understanding workforce sentiment, addressing and removing obstacles to vaccination, evaluating industry trends, and accounting for public safety and health policies and infection rates in their particular geographies.

[Devjani Mishra](#), a leader of Littler’s COVID-19 Task Force and co-leader of the firm’s Vaccination Working Group



Concerns with Vaccine Mandates

Which of the following represent concerns for your organization with regard to mandating that employees receive a COVID-19 vaccination? (check all that apply)



* This answer choice was not provided in Jan 2021.

As for employers’ concerns in mandating vaccines, the top responses remain – since our January survey – resistance from employees who are not in a protected category but refuse to be vaccinated (75 percent) and the impact of a mandate on company culture and employee morale (68 percent). These considerations are even more important now given labor shortages in some sectors, highlighted by the fact that 60 percent cite loss of staff and difficulty operating due to termination or resignation of employees without exemptions as a concern. The high rate of concern around these three interconnected issues helps explain why most employers responding to our survey still have not moved to mandating vaccination.

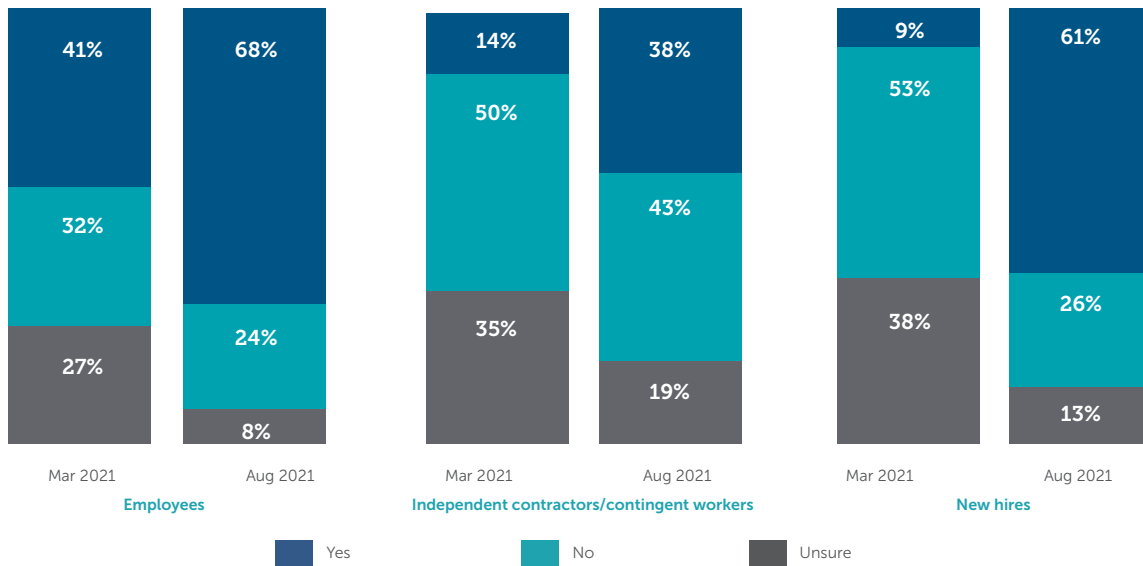
However, other concerns have diminished since January, notably legal liability if employees experience adverse reactions (36 percent compared with 64 percent in January), the effectiveness of such a policy given exempt groups (32 percent compared with 57 percent), and uncertainty about a vaccine’s effectiveness in limiting the spread of COVID-19 (10 percent compared with 22 percent). This is likely mainly due to data – and for many respondents, personal experience – showing vaccines to be safe and effective, as well as the applicability of workers’ compensation policies should an adverse reaction occur. On a broader legal front, vaccine mandates have [held](#) up in recent court decisions, including rulings involving Indiana University’s right to mandate vaccinations for students and Houston Methodist Hospital’s ability to require shots for healthcare workers.

An analysis by industry found a higher level of concern in manufacturing and retail/hospitality when it comes to resistance from employees (81 percent and 80 percent, respectively), the impact on culture and morale (78 percent and 73 percent, respectively), and loss of staff (71 percent and 69 percent, respectively). Meanwhile, although employers in the healthcare industry expressed slightly less concern across most categories, there was significantly greater concern about loss of staff (85 percent).

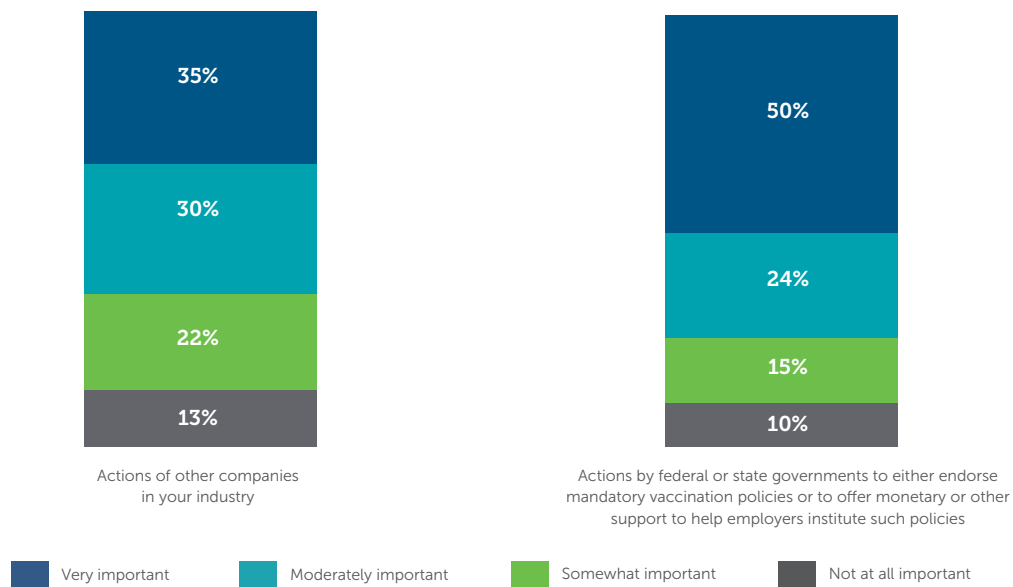
In addition, for large organizations (those with over 10,000 employees), there was greater concern across several categories, most notably loss of staff (70 percent). On the flip side, small companies (those with less than 100 employees) expressed less concern across all categories.

Vaccine Planning Considerations

Does your organization currently, or do you plan to, ask individuals in the following categories to voluntarily disclose that they have received the COVID-19 vaccine?



To what extent are the following factors important in your decision about whether to require vaccination of your employees?



Notably, a fair number of employers have yet to find out whether their workers have already been vaccinated. Yet the uncertainty employers have expressed around how to approach mandating vaccines underscores the need to collect the necessary data on the vaccination status of workers, as well as keep abreast of the latest state and federal guidance to make the right decision for one’s particular organization.

Many companies seem to have focused more on data collection, as there was a considerable rise in employers asking about vaccination status compared with six months ago in our [2021 Employer Survey](#). A majority of respondents now say they are currently or planning to ask employees (68 percent, up from 41 percent in March) and new hires (61 percent, up from 9 percent in March) about their vaccination status; 38 percent say the same about independent contractors/contingent workers. Those figures were at least 15 percentage points higher in each category in August for employers in the healthcare industry, including for employees (83 percent), new hires (81 percent) and independent contractors/contingent workers (56 percent).

These increases likely stem from broader clarity about the legality of asking for such information: Popular belief notwithstanding, employers *are* allowed to ask employees their vaccination status, and this inquiry does not implicate HIPAA, the Health Insurance Portability and Accountability Act. For employers, this information can pay dividends in crafting vaccination plans. One in-house lawyer whose organization is encouraging vaccination but not requiring it, noted that vaccine mandates are less of a need now as “a survey of staff reported about 98 percent of respondents said they had been vaccinated.”

Even so, the Equal Employment Opportunity Commission (EEOC) takes the view that vaccination status must be treated as confidential medical information. Further, care should be taken in sharing vaccination status with an employee’s supervisor, based on the EEOC’s [view](#) that medical information is “confidential” and supervisors and managers only “may be told about necessary restrictions on work duties and about necessary accommodations.”

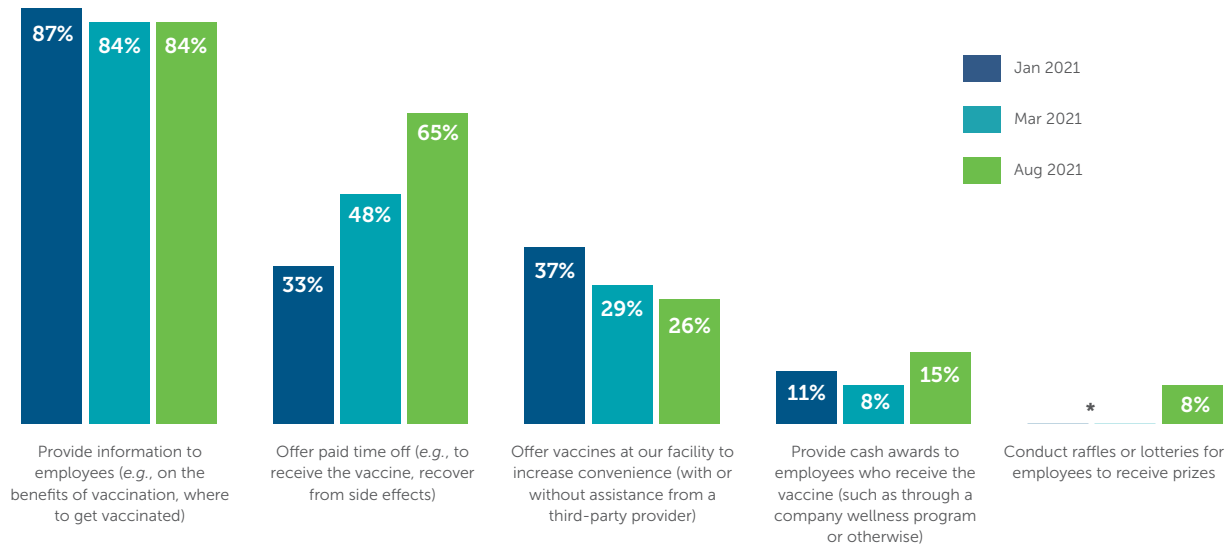
As for guidance from federal and state governments, nearly three-quarters of respondents say governmental actions to either endorse mandatory vaccination policies or offer monetary or other support to help employers institute them are very important (50 percent) or moderately important (24 percent) in their own vaccine mandate decisions; only 10 percent said they weren’t. Many public incentives already [exist](#), be it deals on tuition, vacations, hunting licenses, concert tickets or special license plates; in states including Ohio, Louisiana, Kentucky and California, there are million-dollar lotteries available for those who get the vaccine.

Actions of other companies in the same industry are also significant when it comes to making vaccine mandate decisions: Sixty-five percent of respondents say they are very (35 percent) or moderately (30 percent) important; just 13 percent say they aren’t important at all. Large organizations (those with over 10,000 employees) placed a greater degree of importance on the actions of other companies in their industries, with 43 percent saying this is very important, as did those in the healthcare and retail/hospitality industries where 43 percent and 48 percent, respectively, said the same. Employers in the healthcare industry are also more focused on the actions of federal and state governments, with 59 percent saying this is very important to their organization.

Encouraging Vaccination

Which of the following actions is your organization taking, or planning to take, to encourage employees to get a COVID-19 vaccine? (check all that apply)

This question was only asked to those whose organizations are encouraging vaccination.



* This answer choice was not provided prior to the August 2021 survey

With the majority of respondents (63 percent) still looking to encourage rather than mandate vaccines, it’s important to understand what actions they are taking to do so.

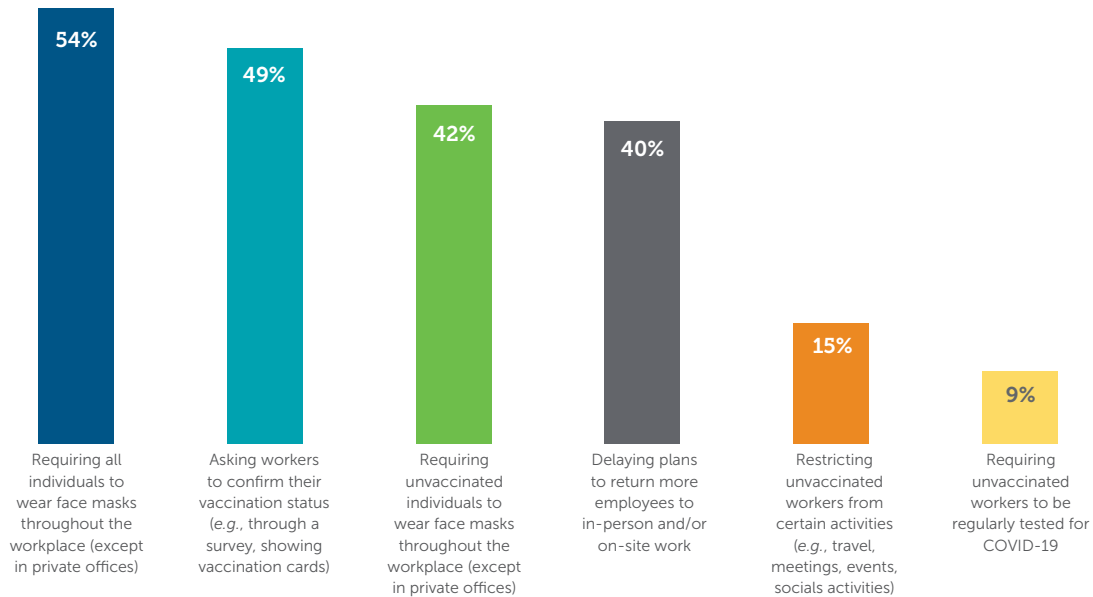
Providing information to employees (e.g., on the benefits of vaccinations, where to go to get vaccinated) remains the top action taken, with 84 percent of respondents citing it as a current or planned action. Interestingly, offering paid time off (e.g., to get and/or recover from the vaccine) has shot up since January, with 65 percent now saying they plan or already offer this to employees. Less common now – likely due to administrative difficulties and the widespread availability of the vaccine – is offering vaccines on-site (26 percent); and only 15 percent say they currently or plan to offer cash awards. Notably, more employers in the manufacturing industry are offering vaccines on-site (47 percent) and offering cash awards (22 percent).

Recent trends and reporting are likely moving companies forward in a positive direction. In a Kaiser Family Foundation [survey](#) from June, for instance, nearly 20 percent of all workers said they haven’t gotten vaccinated yet because they’re afraid of missing work or because they’re too busy – a proportion that increases to 26 percent for Black workers and 40 percent for Hispanic workers. Offering paid time off and emphasizing that COVID-19 vaccines are available at no cost can help overcome these obstacles.

Meanwhile, incentives (like cash awards and lotteries) have, according to experts, largely proven ineffective. “The incentives only really worked for people who were on the fence,” Dr. John Brownstein, an epidemiologist at Boston Children’s Hospital said in a recent [ABC News story](#). “You saw that slight bump, but there are still thousands of people who aren’t signing up and the incentives didn’t work on them.” Providing information about the benefits of a vaccine – and the dangers of not receiving one – can be more useful, some medical experts say.

Workplace Safety

What actions is your organization taking to keep individuals safe in the workplace in lieu of – or in addition to – a vaccine mandate? (check all that apply)



Vaccine mandates aside, employers are redoubling efforts to keep individuals safe in the workplace as infection and transmission rates rise. Many are requiring that face masks be worn in the workplace (except in private offices), either for all individuals (54 percent) or just for those who are unvaccinated (42 percent). While only 15 percent are currently restricting unvaccinated workers from certain workplace activities, that figure may rise as more organizations return to in-person work.

Forty percent are delaying plans to return more employees to in-person and/or on-site work and, not surprisingly given their size and scope, that figure rises to 50 percent for organizations with over 10,000 employees. Numerous high-profile companies have already [done](#) so and these decisions track with a recent McKinsey [report](#), which suggested that workers back in the office or anticipating their return are increasingly concerned about getting sick from the virus and the loss of flexibility in how they work.



The reality is that most U.S. workforces are not fully vaccinated, which leads to questions about whether and how to implement separate safety protocols for two different groups. Doing so, however, will require employers to develop a reliable and practical way of distinguishing between those who are vaccinated and not – without stigmatizing those who are unable to obtain the vaccine for legally protected reasons. If there’s one lesson here, it’s that, especially given the recent resurgence in cases, risk assessments in a pandemic are anything but static, and must be continually updated.

[Barry Hartstein](#), co-leader of Littler’s COVID-19 Vaccination Working Group and co-chair of the firm’s EEO & Diversity Practice Group



Methodology and Demographics

From August 4-12, 2021, 1,630 professionals from a variety of industries completed Littler’s survey via an online survey tool.

Respondents were based across the United States and included:

- Human resources professionals (49 percent)
- General counsel/in-house attorneys (35 percent)
- C-suite executives or other professionals (16 percent)

Companies represented were of a variety of sizes:

- More than 10,000 employees (15 percent)
- 5,001 to 10,000 employees (8 percent)
- 1,001 to 5,000 employees (19 percent)
- 501 to 1,000 employees (12 percent)
- 101 to 500 employees (29 percent)
- 1 to 100 employees (17 percent)

For more COVID-19-related resources and information, please visit [Littler’s COVID-19 resources page](#). For tools to help with the array of vaccine-related issues facing employers and other return-to-work issues, view [Littler’s COVID-19 Toolkits](#).