

Virginia Bankers Association March 31<sup>st</sup> Conference Call  
Q&A COVID-19 Vaccinations

**This communication has been prepared for informational purposes only and is not legal advice. This information does not create an attorney-client or similar relationship. You should consult with your legal counsel if you have a legal matter requiring attention.**

**Questions & Answers:**

**Q: What is the current state of VA for COVID-19 vaccine?**

A: Localities in Virginia are in various phases; for the latest information visit:

<https://www.vdh.virginia.gov/covid-19-vaccine/phase-by-health-district/>

All of Virginia will move to Phase 2 on April 18<sup>th</sup>: <https://www.vdh.virginia.gov/covid-19-vaccine/#phase1c>

**Q: Are all bank employees included in Phase 1C?**

A: Yes. Phase 1C includes finance sector workers. The activities engaged in by bank employees fall within the essential critical infrastructure “Financial Sector” workers identified by Cybersecurity and Infrastructure Security Agency (CISA).

[https://www.cisa.gov/sites/default/files/publications/ECIW\\_4.0\\_Guidance\\_on\\_Essential\\_Critical\\_Infrastructure\\_Workers\\_Final3\\_508\\_0.pdf](https://www.cisa.gov/sites/default/files/publications/ECIW_4.0_Guidance_on_Essential_Critical_Infrastructure_Workers_Final3_508_0.pdf)

**Q: If an employee is completely vaccinated and gets exposed to COVID, do they still need to quarantine from work?**

A: The Virginia Department of Health (VDH) advises that if an individual has been fully vaccinated for COVID-19 and has close contact with someone with COVID-19, they are not required to quarantine (stay home) as long as the individual has no symptoms and are not an inpatient, resident of a healthcare setting, or resident of a congregate setting like a group home or correctional or detention facility. Fully vaccinated means that two weeks or more have passed since the individual has received the second dose of a two-dose vaccine **or** one dose of a single-dose vaccine. Otherwise, you should follow existing VDH guidance for when and how long to quarantine after an exposure to COVID-19.

If an individual is fully vaccinated for COVID-19 but is sick with COVID-19, that person should follow existing VDH guidance on when and how long to isolate (stay home) until you meet the criteria to discontinue isolation.

**Q: Are there any concerns with mandating employee vaccinations?**

A: Generally, a private employer can mandate that employees obtain a COVID-19 vaccine so long as they allow reasonable accommodations for an ADA disability, a sincerely held religious belief, practice, or observance under Title VII, and possibly for pregnancy. It is a best practice to have one staff member responsible for accommodation requests to ensure consistency in how the requests are handled.

In addition, whether employees should be required to be vaccinated against COVID-19 may implicate other legal considerations, including employees’ rights to engage in concerted activity

Virginia Bankers Association March 31<sup>st</sup> Conference Call  
Q&A COVID-19 Vaccinations

*under the National Labor Relations Act, safety obligations under the Occupational Safety and Health Act and similar state safety laws, and even workers compensation claims or other insurance-related issues. Consult with counsel to help design a vaccination program that best meets the needs of your workplace and workforce.*

**Q: Can an employer with a voluntary vaccination policy offer an incentive for employees to obtain a COVID-19 vaccination?**

*A: Generally, an employer can offer an incentive to encourage employees to obtain COVID-19 vaccinations. Participation in the incentive program should be voluntary and the incentive should be low in value, e.g. - dress down day, PTO, or a small-dollar gift card. The incentive should be provided on the same terms and conditions to all similarly situated employees. Employees cannot be divided into different similarly situated groups on the basis of religion, disability, or any other protected characteristic. To avoid claims of disparate impact, employers should offer a method other than vaccination for employees who qualify for an accommodation to earn the incentive, e.g. - attending additional COVID-19 training.*

**Q: What is the guidance around "if or how" a bank should be tracking those employees who have been vaccinated?**

*A: An employer can ask employees for proof of vaccination. An employer should not ask follow up questions, such as asking why an individual did not receive a vaccination, as the U.S. Equal Employment Opportunity Commission (EEOC) has indicated such questions would be likely to elicit protected medical information and would need to meet the high showing that they are job-related and consistent with business necessity to be permissible. A best practice is to advise employees not to provide medical information or genetic information along with their proof of vaccination. You can find the recommended language from the GINA statute related to genetic information at [29 CFR 1635.8\(b\)\(1\)\(i\) \(linked\)](#). Employers are required to keep vaccination status confidential and maintain those records separately from the employee's personnel file.*

**Q: Can a bank tell its employees or customers that its employees are vaccinated?**

*A: Typically, an employer cannot disclose medical information about its employees, including vaccination status.*

**Q: The recent CDC guidance on not wearing masks when in a group of all fully vaccinated people, does that apply to a work setting? What guidance is there when a Management Team has a meeting and all but one person has been fully vaccinated, and only that one is wearing a mask?**

*A: The CDC currently advises that, if an individual is fully vaccinated, that person can gather indoors with other fully vaccinated people without wearing a mask or staying six feet apart. However, the Virginia Department of Labor & Industry's (DOLI) Final Permanent Workplace Standards for COVID-19, 16 VAC 25-220 et seq., which apply to Virginia employers, require that employees wear face coverings when within six feet of another person at the workplace.*

*Additionally, Governor Northam's Executive Order - 72 FOURTH AMENDED and Order of Public Health Emergency Nine Easing of Commonsense Surge Restrictions Due to Novel Coronavirus (COVID-19) - requires that each person maintains proper physical distance from others, stays home when possible, and wears a mask while indoors and in public. Thus, we*

Virginia Bankers Association March 31<sup>st</sup> Conference Call  
Q&A COVID-19 Vaccinations

*recommend employers in Virginia continue requiring mask wearing, social distancing, and other recommended and required COVID-19 precautions until further notice.*

**Q: Is it safe for vaccinated employees to work with non-vaccinated employees?**

*A: If an employer determines that an unvaccinated worker poses a direct threat, the EEOC warns that the employer cannot then exclude that employee from the workplace unless there is no way to provide a reasonable accommodation (absent undue hardship) that would eliminate or reduce this risk so that the unvaccinated employee does not pose a direct threat.*

*The EEOC guidance states that if an employee's failure to be vaccinated poses a direct threat that cannot be reduced to an acceptable level, the employer can then exclude that unvaccinated employee from the workplace but warns employers that a decision to exclude does not mean an employer can automatically terminate the employment of that employee. The EEOC guidance states that employers will need to determine if any other rights apply under the EEO laws or other federal, state, and local authorities.*

*At this time, the CDC recommends that individuals who are fully vaccinated against COVID-19 continue to [keep taking precautions](#) - like wearing a mask, staying six feet apart from others, and avoiding crowds and poorly ventilated spaces, whenever those individuals are in public; gathering with unvaccinated people from more than one other household; or visiting with an unvaccinated person who is at [increased risk of severe illness or death from COVID-19](#) or who lives with a person at increased risk.*

**Q: Can employers return to work only those employees who have been vaccinated or prioritize the return to work of vaccinated employees over unvaccinated employees? Likewise, can an employer assign work to employees based on vaccination status, letting only vaccinated employees perform job duties in which they interact with the public, visit customer sites or travel?**

*A: Generally, employers may condition return to work on receipt of a vaccine (as discussed above), except where an employee cannot be vaccinated due to a disability or a religious belief and seeks an accommodation as a result. The EEOC states that employees who have not been vaccinated due to a disability or religious based objection cannot be excluded from the workplace without due consideration being given to an accommodation request and an individualized assessment being made.*

*While making decisions regarding a vaccine requirement for particular roles or certain job assignments may be permissible in certain limited circumstances, until we have further guidance, banks should discuss with counsel before implementing this type of policy - each situation will require a case-by-case, fact-specific analysis and potentially a formal risk assessment. Accommodation requirements will continue to apply in this context for those workers unable to be vaccinated due to underlying medical conditions or sincerely held religious justifications. Further, and as noted, identification of employee medical status is generally impermissible – be aware that selective staffing may run afoul of this prohibition given that it may be easy to identify vaccination status based on which employees are assigned to which roles.*

Virginia Bankers Association March 31<sup>st</sup> Conference Call  
Q&A COVID-19 Vaccinations

*The CDC currently advises that if you are fully vaccinated for COVID19 and you [travel in the United States](#), you do not need to get tested before or after travel or self-quarantine after travel. We expect further guidance regarding travel as vaccination access expands.*

**Q: Effective April 1, 2021, employees may be paid Emergency Paid Sick leave to obtain a COVID-19 immunization under the American Rescue Plan Act?**

*A: The ARPA expands the existing list of qualifying reasons for Emergency Paid Sick Leave and Emergency Family and Medical Leave under the Families First Coronavirus Response Act to also include getting a COVID-19 vaccine, recovering from adverse reactions to the vaccine, and awaiting the results of a COVID diagnosis or test after having close contact with a person with COVID-19 or at the employer's request. The requirement to provide leave expired December 31, 2021. If an employer requires that employees obtain a COVID-19 vaccine, the employer should pay for the employee's time taken to get the vaccine as hours worked pursuant to federal and state law. If an employer does not require that employees obtain a COVID-19 vaccine, the employer likely does not have to pay for an employee's time taken to get vaccinated.*

**Q: If an employer paid an employee 80 hours FFCRA up through March 31, 2021, can the employer pay another 80 hours after April 1, 2021 and receive tax credit?**

*A: Yes. The 80 hours of paid sick leave resets as of April 1.*

**Q: If the bank owns its building, can it ask its tenants if their employees/contractors have been vaccinated and require proof of vaccination?**

*A: This is uncharted territory – we don't have much law on this or anything we can really use to argue by analogy. To the extent tenants or contractors may not track employee vaccination status, there may be some practical difficulty in enacting such a requirement. Also, banks should check any lease or other agreements with their tenants. Any requirements/questions of tenants would need to be consistent with what those agreements allow. We recommend engaging counsel to review the specific situation and relevant documents before enacting such a requirement.*

**Q: If the bank hosts an event, can it ask attendees if they have been vaccinated and require proof of vaccination?**

*A: If the bank would refuse to allow someone come to the event without being vaccinated, depending on the event and the person, there may be an argument (just like you may be familiar with masks) the bank might have to provide an accommodation, at least, to the requirement for disabilities. Note that the development of "vaccine passports" for use in places of public accommodation, like sporting events, is an area that continues to develop, with some states passing laws prohibiting them and others encouraging them. Virginia has not currently passed such a law. However, we expect there will be more clarity on this issue as vaccines become more widely available.*

Virginia Bankers Association March 31<sup>st</sup> Conference Call  
Q&A COVID-19 Vaccinations

**Q: If the bank hosts an event (in-state or out-of-state), does it need to have a “code of conduct” for attendees? If so, what does the code of conduct need to contain?**

*A: The bank should comply with the recommended guidance of the particular state and be sure that any employees attending events continue to follow applicable bank COVID-19 protocols. Additionally, the CDC currently has guidelines for organizing large events and gatherings that includes a code of conduct to help prevent the spread of COVID19:*

*<https://www.cdc.gov/coronavirus/2019-ncov/community/large-events/considerations-for-events-gatherings.html>*

**Q: The banks have implemented branch design changes to meet the Virginia DOLI COVID-19 regulation requirement of six feet of space between employees to achieve the low infection risk designation (e.g., only staffing every other teller station or installing floor to ceiling plastic shields). If employees are vaccinated, can the bank remove the barriers and fully staff? What if only some employees get vaccination but not all?**

*A: The DOLI Permanent Standard for COVID-19 remains in place and employers must comply with its requirements, including social distancing and physical controls, until the end of the declared Governor’s COVID-19 State of Emergency and Commissioner of Health’s COVID-19 Declaration of Public Emergency and the Virginia Safety and Health Codes Board determines the Standard is no longer needed.*

**Helpful Resources:**

- U.S. Equal Employment Opportunity Commission, What You Should Know About COVID-19: <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>
- CDC Vaccine Information: <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated.html>
- Virginia DOLI Permanent Standard for COVID-19: <https://www.doli.virginia.gov/proposed-permanent-standard-for-infectious-disease-prevention-for-covid-19/>
- Governor Northam’s Executive Order - 72 FOURTH AMENDED and Order of Public Health Emergency Nine - Easing of Commonsense Surge Restrictions Due to Novel Coronavirus (COVID-19): [https://www.governor.virginia.gov/media/governorvirginiagov/executive-actions/EO-72-FOURTH-AMENDED-and-Order-of-Public-Health-Emergency-Nine-Easing-of-Commonsense-Surge-Restrictions-Due-to-Novel-Coronavirus-\(COVID-19\).pdf](https://www.governor.virginia.gov/media/governorvirginiagov/executive-actions/EO-72-FOURTH-AMENDED-and-Order-of-Public-Health-Emergency-Nine-Easing-of-Commonsense-Surge-Restrictions-Due-to-Novel-Coronavirus-(COVID-19).pdf)
- CDC Event Planning and COVID-19: <https://www.cdc.gov/coronavirus/2019-ncov/community/large-events/event-planners-and-attendees-faq.html>
- Troutman Pepper Vaccine FAQ: <https://www.troutman.com/insights/covid-19-vaccine-frequently-asked-questions.html>