

# VASS

## Responses to Questions from the Vaccine Webinar

1. Is the religious beliefs exclusion also applicable to required TB screening and subsequent test if warranted?

TB shots are different than the COVID vaccine because TB shots are required by state law. We encourage you to discuss this question with your school board attorney.

2. Does the vaccine "emergency approval" impact the ability to mandate vaccination?

No, not really. Schools are already able to mandate vaccines for employees, with or without the emergency approval. But the speed with which the FDA approved the vaccines does underscore the value of getting shots into as many employees' arms as quickly as possible.

3. If we do nothing do we stand to be sued by an employee who becomes sick with Covid-19 because the coworker was not vaccinated?

I don't think a court would find that not mandating the vaccine was negligent. But failing to even encourage the vaccine could embolden an employee who contracts the virus at work to sue the school.

4. If an employee does not get vaccinated, can we not allow an employee to come to work and use their accrued leave?

If an employee refuses to get the vaccine, and does *not* have a medical or religious justification for the refusal, you can probably prohibit the employee from coming to work, and force the employee to use his/her accrued leave. But you need to make these kinds of determinations on a case-by-case basis.

5. Many listeners asked – does our obligation to accommodate employees who don't get vaccinated with remote work change once we return to in-school instruction?

Yes. It will be easier for school divisions to show that employees working from home imposes an "undue burden" on the division once all students and teachers have returned to the classroom.

6. Could the school system be held liable if we mandate the vaccine and an employee has a reaction or complications?

Not likely. Mandating the vaccine simply makes it a condition of a job. The employee still gets to choose whether he/she will accept this condition, or instead move on to another job.

7. What about requiring a vaccine for volunteers? Or student interns?

You can require the vaccine for volunteers and student interns.

8. If we have a *mandatory* program, would a School Board policy be required?

Yes. Virginia law would require any mandatory action by employees to be embedded in policy. It could be an amendment to your existing vaccination policy, or a standalone policy with a “sunset” that would expire when the COVID crisis is over – although that is hard to predict currently.

9. Would a policy be required if opting for a *voluntary* vaccination program?

No. Because it is voluntary, and not mandatory, a policy is not required. However, the Board might want to pass a resolution encouraging all employees to be vaccinated in order to make a public statement.

10. Evidently, the second dose can have stronger side effects and the employee may be ill as a result. If we require the vaccination, do we then have to cover the sick leave if they need to be out after the vaccination?

Yes, subject to available leave. If an employee suffers side effects that are sufficient for the employee to be out the next day, that employee should use his or her accrued sick leave. If the employee does not have sick leave because he or she has used it all, the absence would generally be without pay. But you should consult your school attorney as to any FLSA issues as the answer could be different for exempt versus hourly employees.

11. Please address/define the 'duty of the Superintendent' to require the vaccine.

The Superintendent has no duty or authority to require the vaccine. Only the Board has that authority.

12. Should employees be asked to sign a document indicating they were offered the vaccination and are choosing not to take it?

It would be a prudent idea to have each employee sign a statement that they are taking the vaccine, or declining the vaccine, and that they accept the risks attendant to their decision.

13. Can we make the presumption that all employees, absent a legally protected objection, will get the vaccine and then require them to come back to work? And if they have a legally protected objection, engage in the ADA interactive process?

Generally, yes. Once the vaccine is broadly available, and especially if you are able to offer it to your employees as some districts are beginning to do, you may require that all employees return to work in person. However, the ADA will still require you to consider any asserted disabilities, and whether any requested accommodations work an undue hardship. That will be done on an individualized basis. So you may not be able to require every employee to return in person.