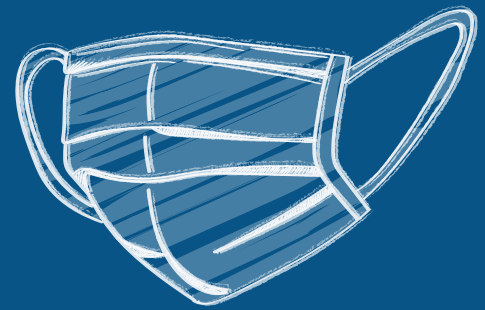


Special Report:

Littler COVID-19 Vaccine Employer Survey Report

February 2021



Littler[®]

Fueled by ingenuity.
Inspired by you.

This report summarizes and analyzes data gathered from more than 1,800 in-house lawyers, HR professionals and C-suite executives. The survey gauged employers' key concerns, plans and strategies related to COVID-19 vaccination 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

For employers, the new year has brought an urgent question to the fore: Should we mandate COVID-19 vaccinations for our workforce?

The sentiment gathered from more than 1,800 in-house lawyers, HR professionals and C-suite executives across the country who responded to our survey boils down to two words: "Probably not."

Less than 1 percent currently mandate vaccination for all employees, and only 6 percent say they plan to once vaccinations are readily available and/or the U.S. Food and Drug Administration (FDA) grants full approval. Though that number might go up as time goes on – 43 percent haven't written off the idea of a mandate completely – 48 percent have already decided that they will not require employees to be vaccinated.

Given the potential legal and administrative issues at play – for instance, exemptions or accommodations for employees with religious objections, pregnant or lactating workers, and those with disabilities that may prevent them from getting vaccinated – it's unsurprising that 64 percent of respondents expressed concern around legal liability (if employees experience an adverse reaction to the vaccine) and that 57 percent questioned the effectiveness of a mandate given the number of potential exemptions.

But perhaps more surprising is that these issues were not even employers' top concerns. Those were reserved for cultural quandaries, like pushback from employees who refuse to get the vaccine or oppose it generally (79 percent) and the impact a mandate might have on company culture and employee morale (67 percent). The concern was also widely captured in verbatim responses, many of which noted that a mandate would be perceived as an infringement of basic civil liberties.

Mandate aside, most employers do plan to encourage employees to get the vaccine. Nearly 90 percent said they would provide information to employees (e.g., how to get vaccinated, the benefits of doing so) and nearly 40 percent said they would offer vaccine administration at their facility to increase convenience – even though this may be easier said than done. A third said they would offer paid time off for employees to receive the vaccine and/or recover from any side effects.

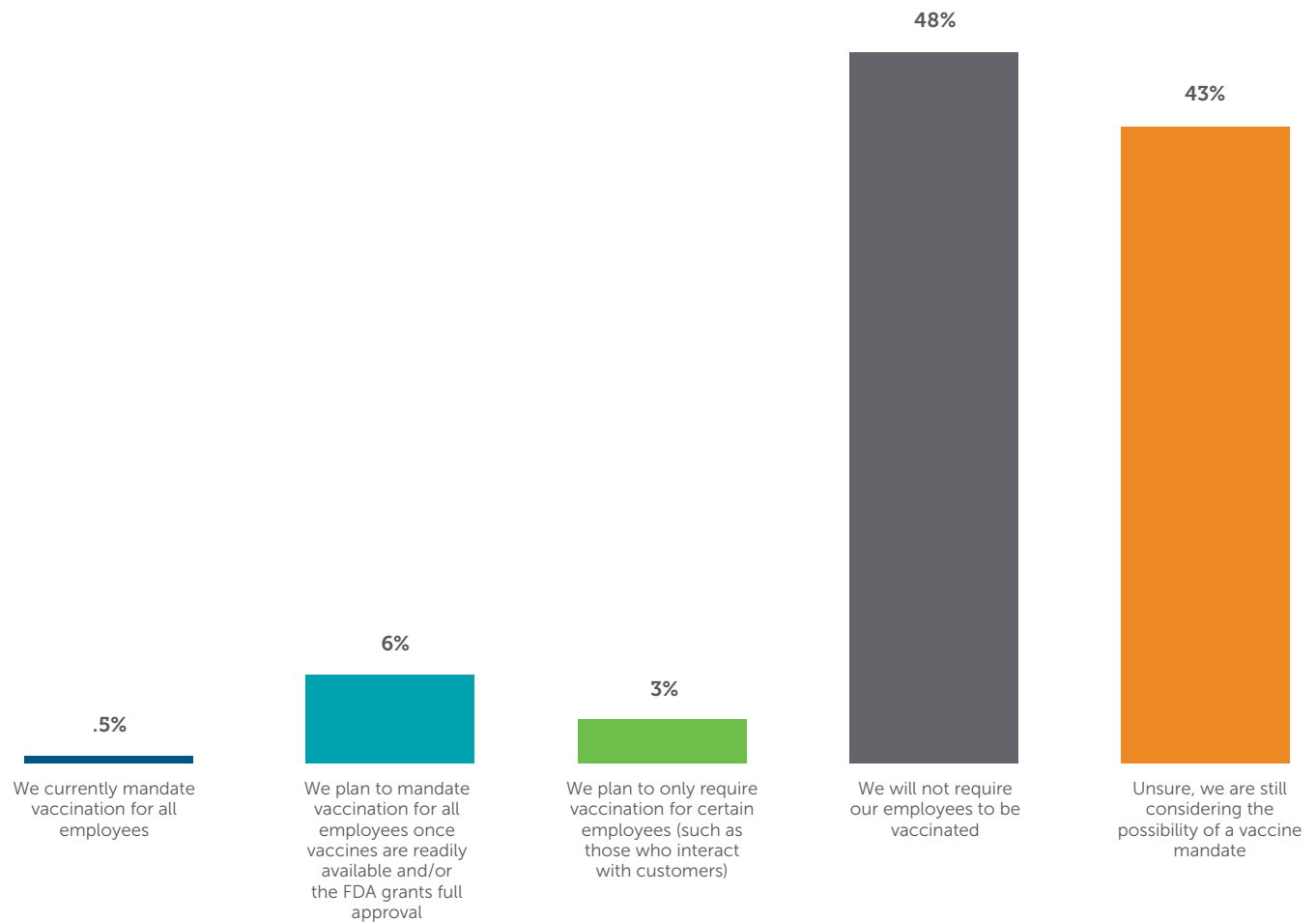
Of course, without a mandate, there will inevitably be a split in the workforce between those who have received the vaccine and those who have not. Thus, nearly 75 percent of respondents have some level of concern about providing reasonable on-site accommodations to those who have not been or refuse to get vaccinated. There is also widespread recognition that other policies – involving remote work, testing and more – will play a crucial role in providing safe workplaces.

In what follows, we take a deep dive into these pressing questions, exploring vaccine mandates, employer efforts to encourage vaccination, remote work policies, additional COVID-19 safety protocols and more.

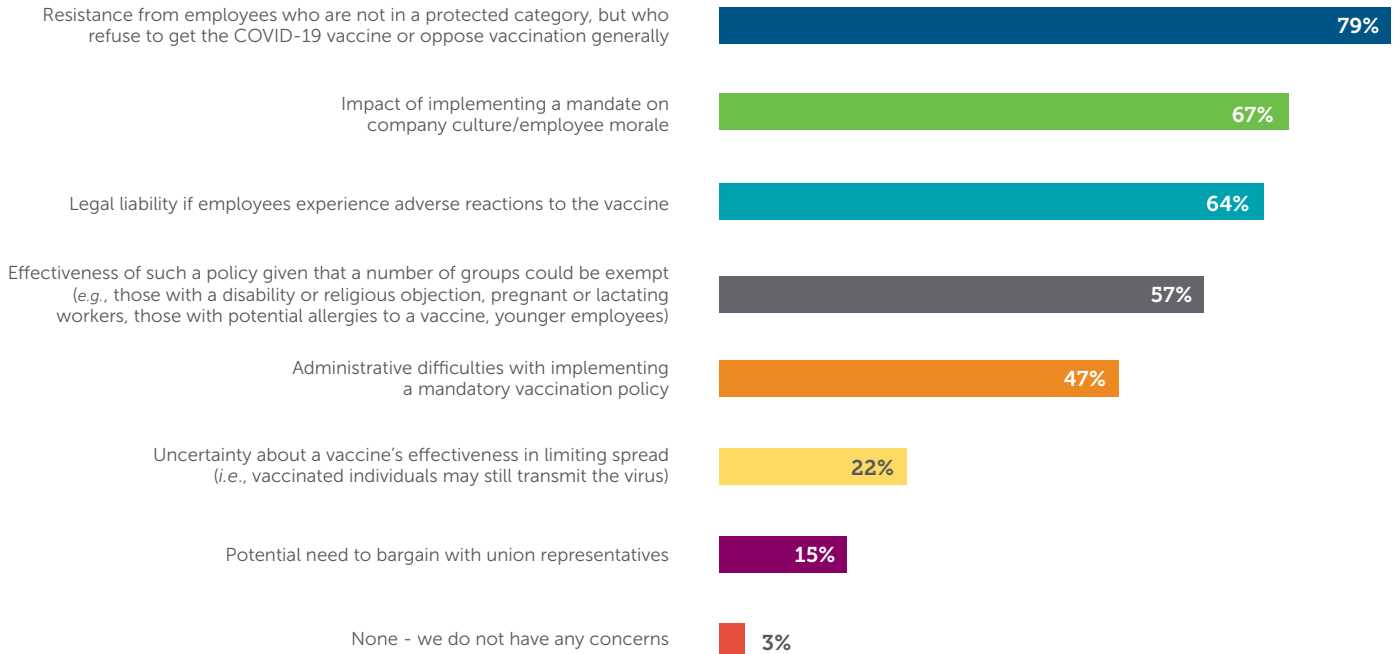
In the following charts and analysis, responses to some questions do not add up to 100 percent due to rounding, and some exceed 100 percent because respondents were invited to select more than one answer. For the full survey methodology and a breakdown of respondent demographics, see [page 13](#).

Mandatory Vaccination

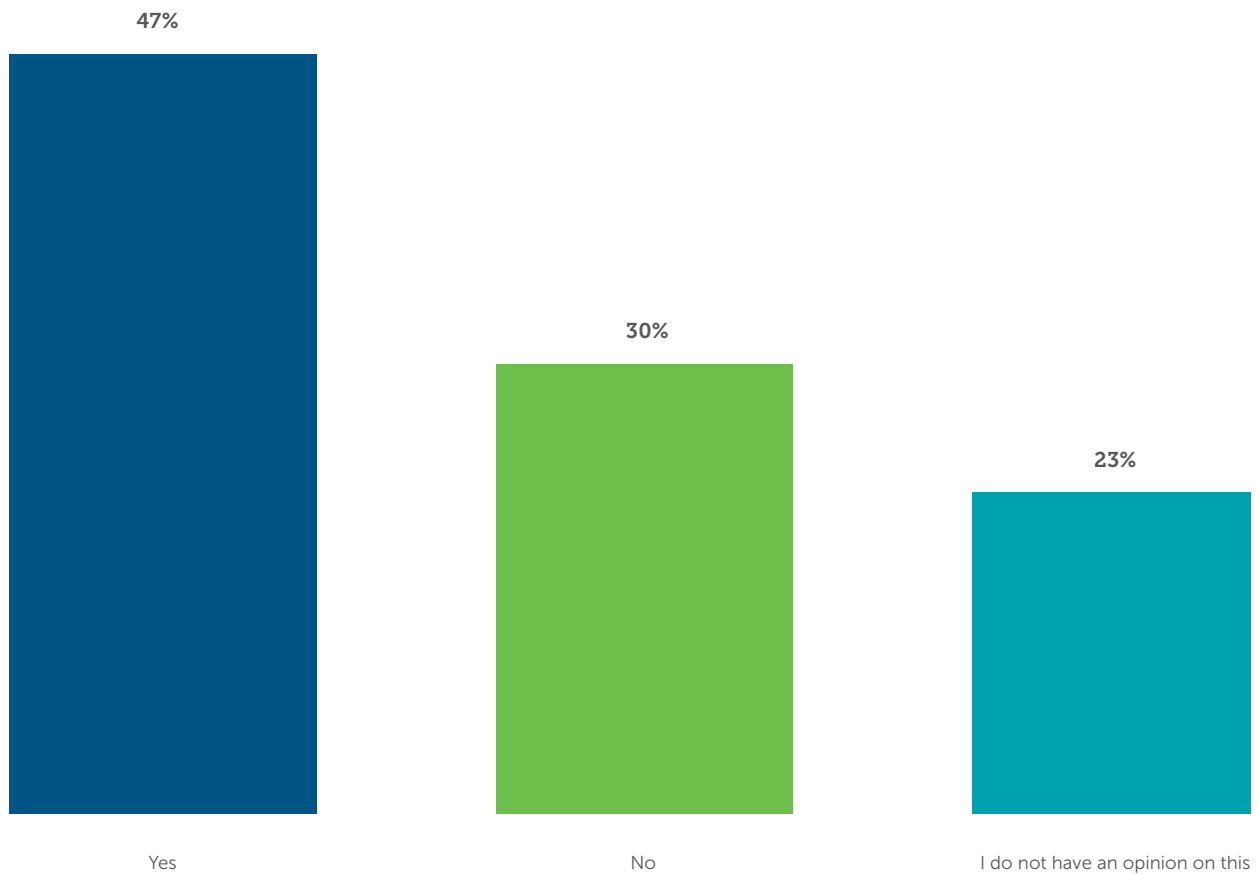
Which of the following best describes your organization's plans to require employees to receive a COVID-19 vaccination?



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



Would you like to see the states or municipalities in which you operate make a decision to either mandate COVID-19 vaccinations or prohibit mandatory vaccination policies to take the burden off employers?



On December 16, 2020, the U.S. Equal Employment Opportunity Commission (EEOC) released [guidance](#) essentially stating that employers *can* require workers to receive a COVID-19 vaccination without violating non-discrimination laws – though they may be obligated to provide exemptions or accommodations to employees with religious objections to vaccines, pregnant or lactating workers, and those with disabilities that may prevent them from getting vaccinated.

Yet simply because employers *can* doesn't mean they feel they *should*. Importantly, the EEOC guidance stopped short of taking a position on whether employers should mandate, or merely recommend, that employees be vaccinated. According to our survey, only 0.5 percent currently require vaccination, and only 6 percent say they will once the vaccine is widely available and/or the FDA grants full approval. With 43 percent still unsure about a mandate, it's possible these numbers could rise – especially following full FDA approval – but then again, nearly half (48 percent) have already made up their minds not to.

Why? Top concerns around a mandate are fundamentally linked to employee relations issues: Nearly 80 percent cited resistance from employees who are not in a protected category but refuse or oppose vaccination generally, while 67 percent are concerned about a mandate's impact on employee morale and company culture. These responses align with concerns around COVID-19 vaccines: Recent [polls](#) show only 58 percent of Americans – and only 42 percent of Black Americans – indicated they would get the vaccine.

As one leader of a small construction company noted, "There is misinformation about the vaccine, so it's hard to respect your workers' personal opinions and at the same time mandate everyone take the vaccine. It can be divisive, and we could potentially lose valuable workers."

Meanwhile, legal and administrative issues are also significant: 64 percent are worried about legal liability should an employee experience an adverse reaction, and 47 percent cited administrative difficulties with implementing such a mandate (the latter figure rose to 58 percent for in-house counsel respondents). Fifty-seven percent doubt the efficacy of such a policy given the number of groups that may be exempt.

Fifteen percent of respondents are concerned about the potential need to bargain with union representatives on this subject. This level of concern is fairly substantial given that – with union membership steadily declining over the years and [now at 10.8 percent of the workforce](#) – many respondents likely are not operating in workplaces with unions. Companies with union-represented employees that want to implement mandatory vaccination policies will need to carefully review their collective bargaining agreements. Nevertheless, whether bargaining is required in their agreements, and whether the vaccination program is mandatory or voluntary, employers may consider involving their union representatives to position their programs for success. Furthermore, even employers in a non-union environment need to brace themselves for situations where a group of employees protesting COVID-19 vaccination can be viewed as "protected concerted activity" under the National Labor Relations Act.



Given the wide range of legal and practical considerations employers must balance in establishing COVID-19 vaccination policies, it's not surprising that most are currently planning to encourage, rather than mandate, immunization. It's also a telling sign of the unprecedented environment we're operating in that employers' top two concerns with requiring vaccination are not legal or liability issues, but rather focus on the personal perspective of employees grappling with an ongoing global crisis and the potential impact on company culture.

[Barry Hartstein](#), leader of Littler's COVID-19 Vaccination Working Group



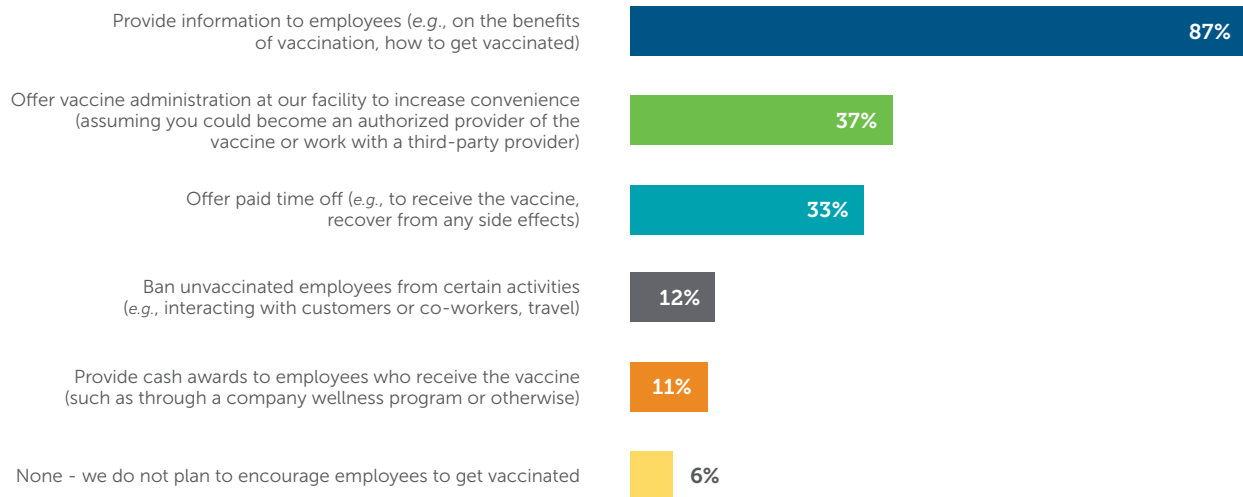
The largest companies surveyed (those with over 10,000 employees) expressed more concern about mandatory vaccination across several categories, including resistance from employees (85 percent), effectiveness of such a policy (65 percent) and bargaining with union representatives (28 percent). With a more diverse employee makeup and operations across states that have varying rollout plans, it's not surprising that larger employers are weighing more concerns. It also follows that a larger percentage (53 percent) have already decided against a mandatory vaccination policy.

Concern tended to be higher too for respondents with retail and hospitality companies – primarily customer-facing industries – including when it came to resistance from employees (86 percent), effectiveness of such a policy (64 percent) and administrative difficulties (59 percent).

With all these obstacles, it's understandable that 47 percent of employers said they would prefer states or municipalities make the decision about vaccine mandates for them. However, scant legislation on this front exists at this time. The legislation that has been introduced on this topic, including a [proposed](#) law in Wisconsin, focuses on prohibiting COVID-19 vaccine mandates.

Encouraging Vaccination

Which of the following actions, if any, is your organization planning to take to encourage employees to get a COVID-19 vaccine once they are readily available? (check all that apply)



Although it seems likely that most employers won't mandate vaccinations, there appears to be significant focus on *encouraging* employees to get the vaccine – in fact, only 6 percent plan not to. Eighty-seven percent said they would provide information to employees (such as the benefits of vaccination and how to get vaccinated), and 37 percent said they would offer vaccine administration at their own facility to increase convenience. In both areas, those numbers were even higher for respondents from companies with over 10,000 employees (93 percent and 48 percent, respectively).

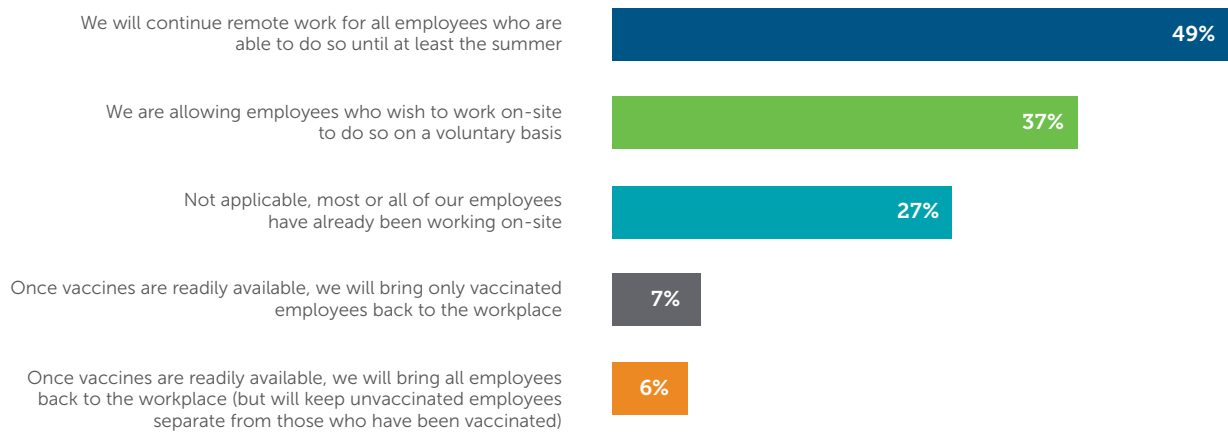
Given the evolving attitudes and information around COVID-19 vaccines and their distribution, providing positive, specific and fact-based messaging – along with removing or simplifying barriers to getting the vaccine – will be important elements of any employer's vaccination program. An in-house counsel for a large company summed up the goal this way: "Successfully encouraging employees to get it and making it as easy as possible for them to do so."

That, however, may be easier said than done. For instance, administering the vaccine on-site is no easy task. Unlike, say, the flu shot, the COVID-19 vaccine requires a sophisticated process to administer. Other incentives may be simpler, such as offering paid time off to receive the vaccine or recover from its side effects, which 33 percent of respondents selected.

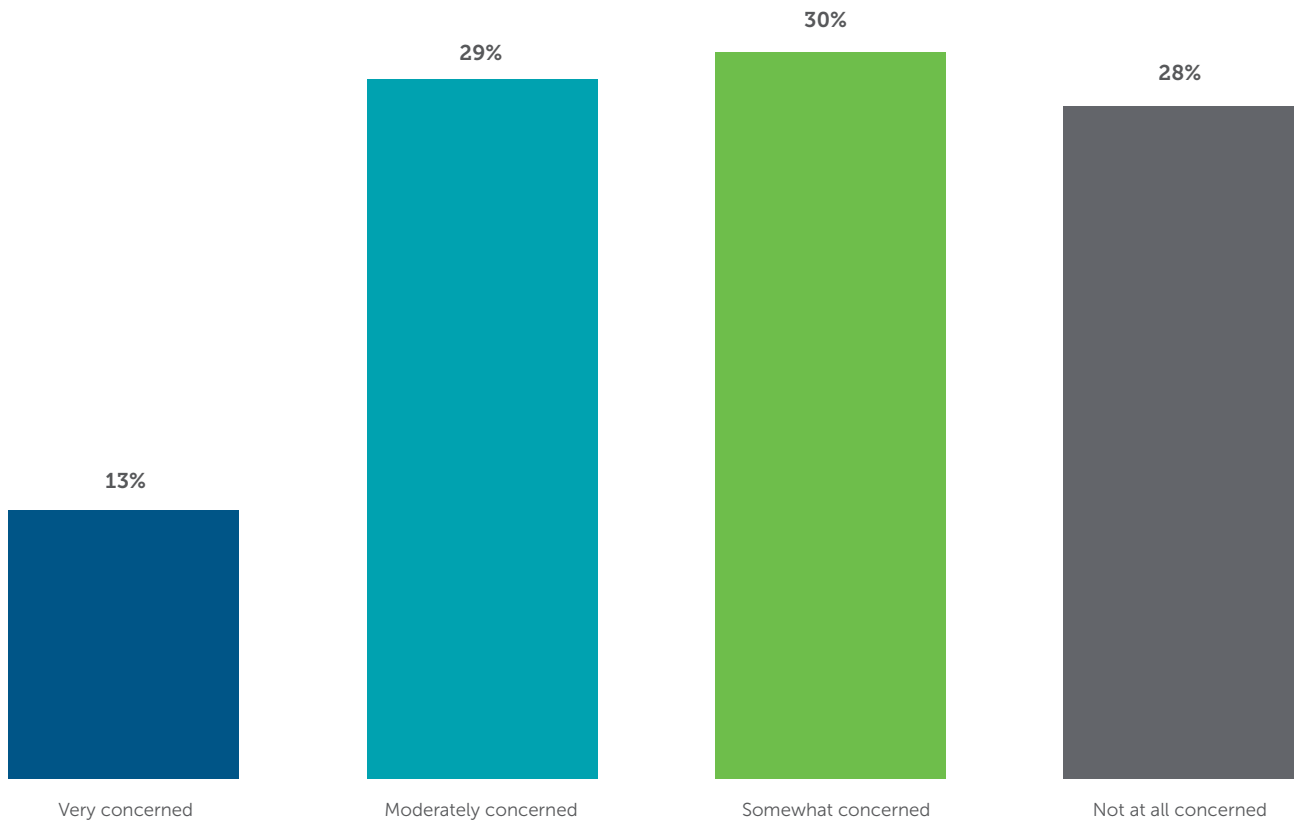
Another option is to provide incentives to employees to receive the vaccine, such as cash awards or other monetary benefits. While only 11 percent of respondents say they are currently planning to offer this incentive, it is an option many employers are actively considering as vaccines become more widely available. The lower percentage also likely reflects the complicated issues involved in administering such a policy that require careful legal guidance, including employee benefits and wage and hour issues.

Remote Work Policies and Return-to-Work Considerations

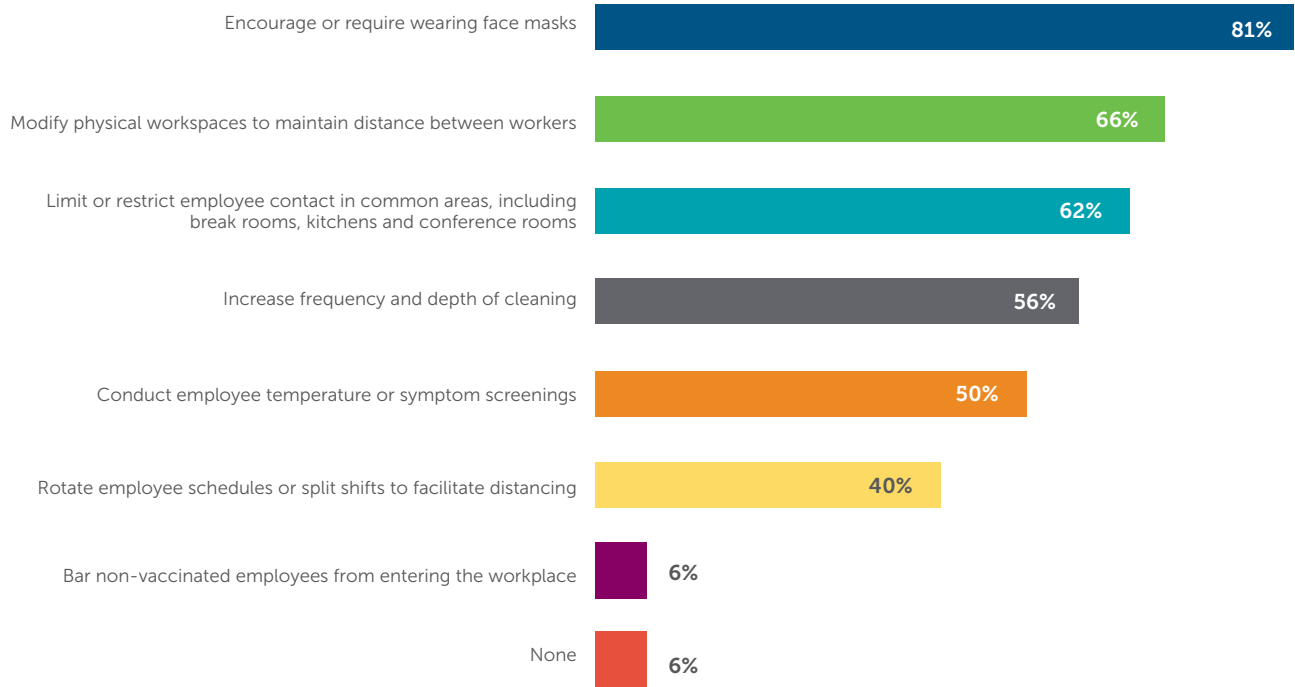
Which of the following describes your organization’s current plans for bringing employees who have been working remotely back to the physical workplace? (check all that apply)



Once vaccines are readily available and more employees return to the physical workplace, to what extent is your organization concerned about providing reasonable accommodations to those who cannot or who refuse to get vaccinated?



Which of the following COVID-19 precautions, if any, does your organization intend to put or keep in place even after vaccines are readily available? (check all that apply)



For those who elect not to mandate vaccinations – and even for those who do – there will inevitably become workplace divisions among those who have and have not been vaccinated. It follows that 72 percent of respondents expressed at least some concern about providing reasonable accommodations to those who cannot or who refuse to get vaccinated.

Verbatim responses tell a story about how the split of vaccinated and non-vaccinated employees in the workplace might strain company culture, employee morale and high-level administrative decisions – particularly around remote work accommodations.

“If we can’t mandate an employee gets vaccinated and COVID-19 is still a viable threat in the community,” said one C-suite executive, “then we have this potential double standard where people who stepped up and got the vaccine are ‘penalized’ for having to go into the office while others are theoretically ‘rewarded’ for their refusal.”

That may explain why most employers appear to be decoupling remote work policies from vaccinations: Just 7 percent said they would bring only vaccinated employees back into the workplace once vaccines are widely available, and only 6 percent said they would bring all employees back (and keep unvaccinated employees separate).

What's more, 49 percent of employers – and 64 percent of those with over 10,000 employees – are extending remote work at least into the summer. And 37 percent are allowing employees who wish to work on-site the opportunity to do so on a voluntary basis. This may buy organizations some time to make decisions about vaccination policies and other return-to-work issues.

The survey data also reflects a growing sense that, as one HR professional put it, “We look forward to the vaccine, but it is not defining how we move forward.”

In other words, there are still COVID-19 precautions that must be maintained and administrative hurdles that must be met to bring employees back to the workplace. Respondents identified a wide range of policies they plan to keep in place even after vaccines are readily available, including encouraging or requiring wearing face masks (81 percent), modifying physical workplaces to maintain distance between workers (66 percent), limiting or restricting employee contact in common areas (62 percent), increasing frequency and depth of cleaning (56 percent), and conducting employee temperature or symptom screenings (50 percent).

In fact, in updated [guidance](#) released on January 29 – just after this survey was administered – the Occupational Safety and Health Administration (OSHA) recommended that companies continue to require workers to wear masks and take other precautions to reduce the risk of COVID-19 spreading in the workplace, even after workers have been vaccinated.

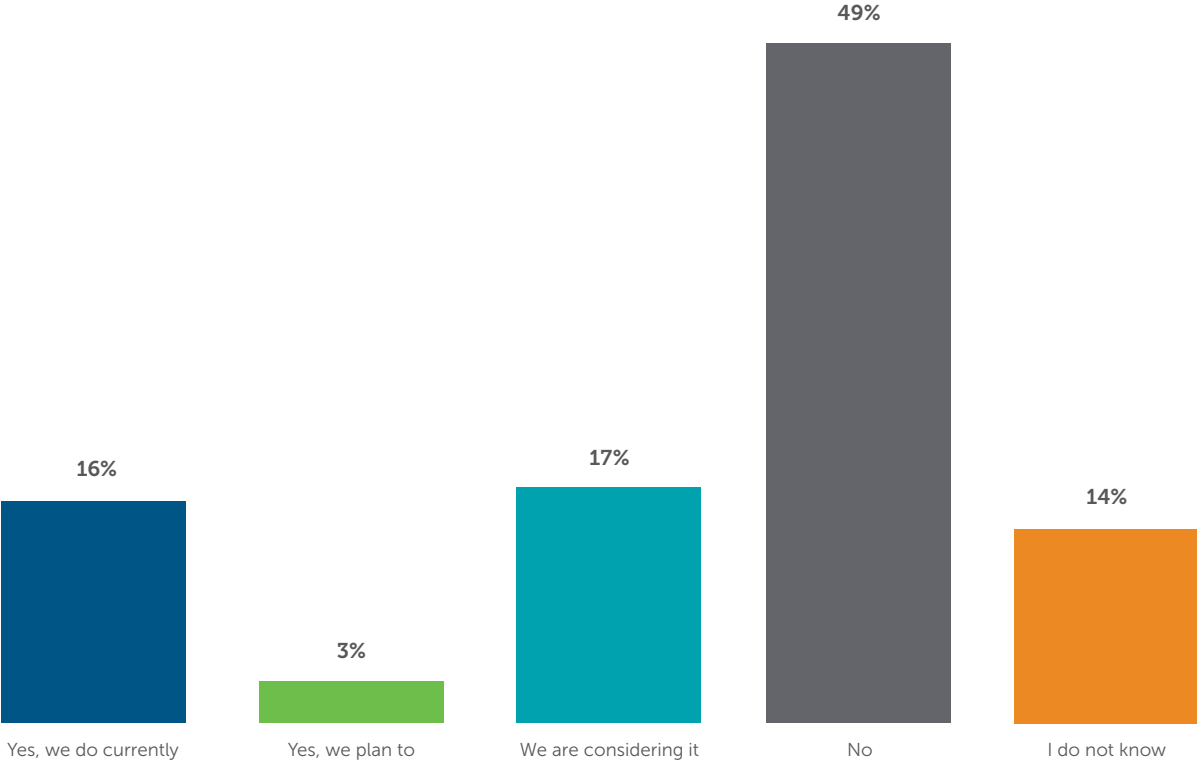
“

It's tempting to see vaccines as a cure-all for the extreme disruption wrought by COVID-19. But the reality is they are just one arrow in the quiver for employers, who must continue existing safety protocols, including symptom screenings, travel restrictions, face masks and distancing. Especially in the transition period – when some workers are vaccinated, and others are not – organizations must remain hypervigilant in enforcing these policies as a matter of workplace safety, while being mindful of employee morale.

[Devjani Mishra](#), a leader of Littler's COVID-19 Task Force and Return-to-Work Team



Is your organization currently, or do you plan to, provide employees with access to COVID-19 testing before they enter, or at, the workplace?



Providing access to COVID-19 testing is another way to keep employees safe in the workplace: 36 percent of respondents are either currently providing testing, planning to test or considering it. The percentage of those currently testing rises sharply, from 16 percent to 36 percent, for healthcare or pharmaceutical industry employers, and to 21 percent for organizations with more than 10,000 employees.

The 49 percent that do not plan to provide COVID-19 testing does not necessarily reflect a rejection of testing as a risk mitigation tool. Instead, it more likely is a reaction to the high cost and myriad [legal issues](#) raised by testing – be it privacy and information security requirements for handling test results, OSHA recordkeeping mandates or wage and hour compliance.

The pronouncement in the Biden administration’s [National Strategy for the COVID-19 Response and Pandemic Preparedness](#) that “America must have widespread testing,” coupled with its detailed plan for expanding testing, likely will encourage more employers to conduct testing. With this survey conducted just before Inauguration Day, we can expect the percentage of employers that implement testing to rise in the coming months.



Workplace testing is a critical part of the return-to-work conversation, especially given that symptom screening will not identify infected, but asymptomatic, employees. The recent appearance of more infectious strains of COVID-19 make workplace testing that much more critical. The Biden administration’s push for expanded testing should lead to more employers providing testing. Before doing so, employers need to be prepared to navigate thorny legal issues around employee privacy and information security.

[Philip Gordon](#), co-chair of Littler’s Privacy and Background Checks practice group



Methodology and Demographics

From January 13-22, 2021, 1,802 professionals from a variety of industries completed the **Littler COVID-19 Vaccine Employer Survey** via an online survey tool.

Respondents were based across the United States and included:

- Human resources professionals (51 percent)
- General counsel/in-house attorneys (31 percent)
- C-suite executives or other professionals (18 percent)

Companies represented were of a variety of sizes:

- More than 10,000 employees (14 percent)
- 5,001 to 10,000 employees (8 percent)
- 1,001 to 5,000 employees (20 percent)
- 501 to 1,000 employees (12 percent)
- 101 to 500 employees (28 percent)
- 1 to 100 employees (18 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](#).