



SNVSHRM 2021 April Happenings

Upcoming Events

- April 8, 2021 – Kamer Zucker Abbott Webinar
 - Webinar
 - \$25
 - [Register Here](#)
- April 13, 2021 – WEBINAR Series: Taking DEI from Concept to Habit – Part 2
 - Webinar
 - \$10
 - [Register Here](#)
- May 11, 2021 – WEBINAR Series: Taking DEI from Concept to Habit – Part 3
 - Webinar
 - \$10
 - [Register Here](#)

[Click Here](#) for More Information on this series!

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Meet Your Board



Name: Marilyn Ennis

Fun Fact about Me! Love to bake, travel and read.

Company Name & Years in Human Resources - Culinary Health Fund 5 years Total in HR 15 yrs

About Me Professionally - HR Professional combining 15+ of senior management experience with an emphasis on HR strategies, Organizational Development and Operational Excellence

Years as a SHRM Member - 12

Years on a SHRM Board – 2

The Volunteer Roles I have held with SHRM or other organizations - SNVSHRM Board Member at large, Team Leader volunteer for SHRM2019 conference, Volunteer SHRM15 conference

How I want to make a difference while on the SNV SHRM Board - I would like to see an HR presence in Las Vegas to help HR professionals in their daily roles

Legal Brief

Employer-Mandated COVID Vaccinations: How to Avoid Being Stuck

By: Jared Hague

With three different COVID-19 vaccines now authorized under the FDA's emergency use protocols and widening availability of the vaccine in all states, many Nevada employers are asking the question: Can I require my employees to receive the vaccine as a condition of employment? The answer from federal and state agencies generally appears to be "yes," but with some important caveats of which employers must be aware. However other issues not addressed by these agencies leave ambiguity on the subject over which employers will want to exercise caution before adopting their own positions. The bottom line, as explained herein, is that employers should (1) tread carefully in adopting mandatory vaccination requirements, (2) be prepared to justify with specific facts the reason(s) an employer has adopted a mandatory vaccination requirements, and (3) address employee concerns on a case-by-case basis.

First, note that the Equal Employment Opportunity Commission issued guidance on this topic in its December 16, 2020 Technical Assistance Questions and Answers, which you can access [here](#). The December 2020 guidance reminds employers of the important fact that guidance from public health authorities is likely to change as the COVID-19 pandemic evolves. Thus, there is no substitute for employer vigilance of changes and modifications on current guidance from both state and federal authorities. The Nevada Equal Rights Commission also issued guidance earlier this year on issues related to the COVID-19 vaccine and vaccination leave suggesting that its views are in harmony with the EEOC, which you can find [here](#).

The consensus of both federal and state agencies is that employers may require employees to receive a COVID-19 vaccination and/or require employees to show proof of receipt of a COVID-19 vaccination as a condition of employment. Neither the administration of the vaccination, nor simply requesting proof of receipt of the vaccination constitutes a “medical examination” for purposes of applicable law. However, the more difficult issues surface in the context of employees who cannot furnish the requested proof of vaccination, or who indicate the existence of medical reasons and/or disabilities that may make the individual unable to receive any of the current vaccinations.

EEOC guidance on these points is instructive. While clarifying that there is nothing wrong with asking or requiring an employee to furnish proof of receipt of the vaccine, the guidance points out that where the employee has not been vaccinated, asking the reasons for such “may elicit information about a disability and would be subject to the pertinent ADA standard that [questions] be ‘job-related and consistent with business necessity.’ If an employer requires employees to provide proof that they have received a COVID-19 vaccination from a pharmacy or their own health care provider, the employer may want to warn the employee not to provide any medical information as part of the proof in order to avoid implicating the ADA.”

Further, the EEOC warns against any safety-based qualification standards, such as a COVID-19 vaccination requirement, that “screens out or tends to screen out an individual with a disability.” On this point, the EEOC guidance states that if employers impose such requirements, they must be able to show that an unvaccinated employee would pose a direct threat due to a “significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation.” Thus, the EEOC advises employers that they should “conduct an individualized assessment of four factors in determining whether a direct threat exists: the duration of the risk; the nature and severity of the potential harm; the likelihood that the potential harm will occur; and the imminence of the potential harm.” The EEOC’s guidance continues with a caution to employers who, after conducting the aforementioned assessment, decide to exclude an unvaccinated employee from the workplace. Such employers are warned that an exclusion should not take place until after the employer determines that no reasonable accommodation exists that would alleviate the “direct threat” to the health of the other employees. Employers are advised to consult with the EEOC’s Job Accommodation Network (“JAN” at www.askjan.org) as a resource for potential accommodations.

Finally, EEOC guidance on vaccinations also underscores an employer’s obligation to accommodate employees’ sincerely held religious practices or beliefs that may cause an employee to take the position that they are unable to receive the COVID-19 vaccination. In those cases, the employer must provide a reasonable accommodation for the practice or belief unless it would pose an undue hardship under Title VII of the Civil Rights Act.

Going beyond the EEOC’s guidance, employers may note that there is some controversy surrounding the fact that the FDA directed use of all current variations of the vaccine under its Emergency Use Authorizations (“EUA”), rather than under the more extensive general approval protocols. Current fact sheets accompanying the vaccines suggest that because the FDA approved their use under the EUA, the administration and receipt of the vaccine must be voluntary. However, other commentators point out that these statements apply to the FDA and drug makers and do not explicitly require employers to leave the question of vaccine administration up to employee. While, on balance, the factors appear to weigh in favor of an employer’s right to require receipt of the vaccination or proof of receipt as a condition of continued employment, assertion of that right is not completely without risk.

The takeaway from the above guidance is that employers should proceed with caution in deciding whether to require employees to receive the vaccination as a condition of employment. The EEOC’s guidance

appears to suggest that not every employer will be able to satisfy the four-part test to reach the conclusion that an unvaccinated worker will pose a direct threat to his or her co-workers. Guidance also implies that even after concluding that a direct threat exists many employers may be able to provide a reasonable accommodation to unvaccinated employees that would allow them safely to enter the workplace. In addition, it is patently clear that employers must provide a reasonable accommodation to employees who object to the vaccine because of sincerely held religious practices or beliefs. Some degree of risk will also remain present until the FDA approves use of the vaccine under its general approval benchmarks. Employers are advised to consult with legal counsel in undertaking the reviews and decision-making processes described above.

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## **SHRM LEARNING SYSTEM CHAPTER STUDY GROUP**

We are excited to announce that registration for the **FALL 2021 Virtual** Southern Nevada SHRM Chapter Study Group is now OPEN!

If you are planning to sit for any HR certification exam, participation in our Southern Nevada SHRM Chapter Study Group will give you the edge that will make a difference.

In addition to being revised around the updated 2021 SHRM BoCK (Body of Competencies and Knowledge), the 2021 SHRM Learning System includes many new features to enhance the learners' experience:

- Competencies in Action: engaging activities to promote and differentiate the behavioral competencies.
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- Access to downloadable e-files: for use via an e-reader device, providing disconnected access for students on the go.

The SNV SHRM Chapter Study Group price of only \$700 is the lowest of all HR Certification test preparation courses even with the service fee of \$65 to cover shipping and handling. The total fee is \$700. This fee is a reduced fee, only available to participants in the SNV SHRM Chapter Study Group and is the lowest fee available anywhere. These materials will cost you more than \$1,200 if you purchase them directly from SHRM on its website.

In addition, we provide access to local, certified HR professionals to answer your questions for no additional charge, a service that is not available if you purchase the SHRM Learning System on your own.

Topics covered will include:

- How to Prepare for your Exam
- Employment Laws & Regulations
- HR Strategic Planning
- Employee Engagement
- Employee Relations
- Learning and Development
- Corporate Social Responsibility
- Diversity and Inclusion
- HR in the Global Context

- Structure of the HR Function
- Workforce Management
- Talent Acquisition
- Organizational Effectiveness and Development
- Total Rewards
- Technology Management
- Risk Management
- Practice Exam Answers and Discussion
- What to do Next?

The first session of the Fall 2021 Chapter Study Group will meet **VIRTUALLY** on Wednesday, September 15, 2021 from 6-9 pm and 11 weeks thereafter. In order for you to have time to receive your online materials and prepare for the first session, **we will need your payment by AUGUST 31, 2021.** Your written materials will be delivered to you by FedEx at the address that you request one week after the group order is placed, before the first session of the study group.

**However, we must have five participants in order for you to receive this reduced fee for the SHRM Learning System Materials...**

To register or for more information email [connyeharper@gmail.com](mailto:connyeharper@gmail.com)

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As a recognized Affiliate Chapter of the National SHRM organization, we strive to educate and collaborate with our members to elevate the profession! Our membership is comprised of all levels of practicing HR Professionals, business owners and employees. All of them supporting their industries with Human Resource capital! With a large and growing membership roster, we know we need to ensure that these individuals have the opportunity to learn from the best speakers and educators as well as stay abreast of new products, technologies and services.

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