

# WAGE AND LEAVE GUIDANCE ANNOUNCED FOR EMPLOYER VACCINATION PROGRAMS IN ILLINOIS

While there are currently no recommended vaccine incentives at the federal level, the Illinois Department of Labor (IDOL) is explicitly encouraging employers with Illinois employees to offer such incentives to persuade their employees to get vaccinated. In the first quarter of 2021, the Equal Employment Opportunity Commission (EEOC) published and then withdrew proposed regulations that would have endorsed only “de minimis” incentives, such as a water bottle or “a gift card of modest value.” In contrast, IDOL published guidance in March 2021 explicitly recommending vaccination incentives that include paid leave or other compensation covering time off to get up to two doses of the COVID-19 vaccine.

In addition to encouraging paid leave incentives for Illinois employees, IDOL’s guidance advises that employers should update their personnel policies to provide “flexibility” for employees to obtain the vaccine; indicates that the wage and paid leave requirements that apply to employer vaccination programs will depend on whether the program is mandatory or optional for employees; and clarifies how paid leave benefits should be provided to employees who get vaccinated or who need time off for their family members’ vaccinations.

## COMPENSABLE TIME AND PAID LEAVE FOR *MANDATORY* VACCINATIONS

- IDOL advises that “if an employer requires employees to get vaccinated, the time the employee spends obtaining the vaccine is likely compensable, even if it is non-working time.” This will likely also be the case under federal law.
- Additionally, IDOL’s guidance indicates that employers with mandatory vaccination programs should offer paid leave or otherwise “provide compensation” to cover “the time taken by the employee to comply with an employer-mandated vaccine requirement.”

## IDOL: EMPLOYERS “SHOULD” PROVIDE PAID LEAVE EVEN FOR

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### **OPTIONAL VACCINATIONS**

While indicating that employers may not be required to provide paid leave to employees to get vaccinated voluntarily, IDOL's guidance expresses the approach that employers "should" take to encourage vaccination:

- IDOL explains that employees voluntarily choosing vaccination "should be allowed to utilize sick leave, vacation time or other paid time off...to receive the 1st and 2nd dose of the COVID-19 vaccine."
- As an alternative, IDOL recommends that such employers "should consider offering...FLEX time" so that employees can obtain the vaccination without missing their paid work hours.
- As a last resort, IDOL's guidance indicates that an employer not providing paid leave or FLEX time "should allow" employees "to take the time off unpaid" for vaccination.

### **PAID LEAVE TO ASSIST FAMILY MEMBERS WITH VACCINATIONS**

IDOL's guidance also points out that sick leave benefits covering absences to assist with the vaccination of certain family members may be required *as a result of* an Illinois employer's decision to allow employees to use sick leave to cover their own vaccine-related absences.

- IDOL emphasizes that the state's Employer Sick Leave Act (ESLA) requires that employers permit use of employer-provided sick leave for absences related to a qualifying family member's receipt of COVID-19 vaccine doses if the employer permits such sick leave to be used for the employee's own vaccination.
- Under the ESLA, qualifying family members include the employee's child, stepchild, spouse, domestic partners, sibling, parent, mother-in-law, father-in-law, grandchild, grandparents or stepparent.

With limited exceptions, IDOL's guidance includes recommendations for businesses to incentivize Illinois workers to be vaccinated against COVID-19. These measures are, for the most part, not required. Businesses should consider this guidance and a host of other legal issues when structuring vaccination programs—especially where their geographic footprint covers multiple jurisdictions given that COVID-19-related employment laws have varied throughout the pandemic across cities, counties and states.