

Feature - Human Resources

Employment Law FAQ

Like almost every other aspect of life, being an employer/manager has been upended by the pandemic. In March and April 2020, we put together a list of frequently asked questions related to employment law issues surrounding the pandemic. Now that we are in July of 2021, the rules are again changing as we thankfully, and hopefully, start figuring out what everyone means when they talk about this idea of “new normal.” Two topics that are coming up repeatedly relate to open meetings and vaccinations. There may be many more questions on these and other post-pandemic questions. We at ISAC, as always, are here to assist you. Please do not hesitate to reach out with your questions. Additionally, you should work with your county attorney on these questions before setting policies.

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Open Meetings

Q: When does the current ability to conduct virtual meetings end?

A: Per Governor Reynolds’ executive order on May 27, 2021, the Public Health Emergency Proclamation is extended until June 26, 2021. Under Section 67 of this Proclamation, the Governor suspended Iowa Code §§21.8, 26.12, and 414.12.

- These sections are suspended to the extent to which they would prevent a governmental body from holding the meeting electronically.
- These sections are also suspended to the extent to which they prevent a governmental body from limiting the number of people present at an in-person meeting, so long as a telephone/electronic method of participating is provided.

Q: When the Proclamation expires, under what circumstances can meetings be conducted virtually?

A: When these provisions of the Proclamation end, meetings may still be held electronically, provided it is impractical or impossible to hold the meeting in-person, per Iowa Code §21.8. In such cases, the governmental body must still:

- Provide public access to the meeting to the extent possible.
- Provide notice at least 24 hours in advance (unless it is impossible or impractical to do so).
- Record the minutes of the meeting, including a statement of why it was impossible or impractical to hold the meeting in-person.

Q: Can some members of a board participate electronically while still having an in-person meeting?

A: Yes. The code is not explicit on this issue, likely because before a year ago this would have been essentially a non-issue. However, the relevant sections of the Iowa Code appear to permit electronic participation by some members of a board while a majority (quorum) still participate in person.

- “Meetings” are defined by Iowa Code § 21.2 as a gathering of a majority of the members of a government body either in-person or by electronic means where official duties are being conducted.
- So, if a majority of board members are participating in-person, that is likely just an in-person meeting with some members joining electronically. There is nothing in the code that prohibits this.
- If more than a quorum of the board is not on-site, then it becomes less clear if that is an electronic meeting. The key may be that the public have a physical location to listen to the meeting, but any time you are going to have a majority of the members of the board meet electronically, you should talk to your county attorney.

Q: If some members are away from the meeting site, does that make an in-person meeting impossible or impractical or is a higher threshold required to meet that standard?

A: Neither Iowa Code §21.2 nor §21.8 define what makes an in-person meeting impossible or impractical. But given the language in §21.8, which permits an electronic meeting “only in circumstances where such a meeting in-person is impossible or impractical,” it appears that more than voluntary non-appearance is required to trigger the permissibility of an electronic meeting.

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Vaccinations

Q: Can employers ask employees if they have been vaccinated against COVID-19?

A: Yes, an employer is allowed to ask employees if they have been vaccinated against COVID-19. However, documentation or other confirmation of COVID-19 vaccination status is considered confidential medical information according to the ADA and should be stored separately from the employee's personnel files.

Q: Can an employer ask employees for proof they have been vaccinated against COVID-19?

A: Yes, employers can ask for proof employees have been vaccinated against COVID-19, such as a copy of their COVID-19 vaccination card. The EEOC has stated that requesting proof of receipt of a COVID-19 vaccination is not a disability-related inquiry under the ADA. However, follow-up questions about why someone has not been vaccinated may be considered a disability-related inquiry and be subject to ADA standards. To avoid disability-related inquiries, an employer could ask employees not to provide any medical information when providing proof of vaccination.

Documentation or other confirmation of COVID-19 vaccination status is considered confidential medical information according to the ADA and should be stored separately from the employee's personnel files.

Q: Does the Health Insurance Portability and Accountability Act (HIPAA) prevent employees from telling their employer if they have been vaccinated against COVID-19?

A: No, HIPAA does not prevent an employee from answering an employer's question about whether they have been vaccinated against COVID-19. HIPAA only prevents covered entities (health care provider, health plan, health care clearinghouse) and business associates of covered entities from disclosing someone's COVID-19 vaccination status.

Q: Can employers require employees to receive a COVID-19 vaccine?

A: The answer to this question is not clear at the time of writing. Nothing under federal law explicitly prevents employers from mandating employees to receive vaccinations as long as employers are not discriminatory against employees who cannot receive a vaccination due to a disability or a sincerely held religious belief, practice, or observance (ADA, Title VII, Iowa Civil Rights Act). There is also pending litigation questioning whether an employer can mandate employees receive a COVID-19 vaccine since it is currently available only under Emergency Use Authorization and has not received approval from the U.S. Food and Drug Administration.

Q: Can counties require visitors on county property to provide their vaccination information?

A: No. The Iowa Legislature passed HF 889 on this topic. The bill makes a business or governmental entity that requires "a customer, patron, client, patient, or other person who is invited onto the premises of the business or governmental entity to furnish proof of having received a vaccination for COVID-19" ineligible to receive grants or contracts funded by state revenue.

Resources:

- <https://www.ahlerslaw.com/client-alerts/covid-19-vaccinations>
- <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>