

The webinar will begin shortly





Cultivating a Culture of Caring Coupled with Compliance

February 3, 2022

* Although we will be providing legal information during this webinar, we will not be providing legal advice.

Limitations on Vaccine Policies

TEXAS

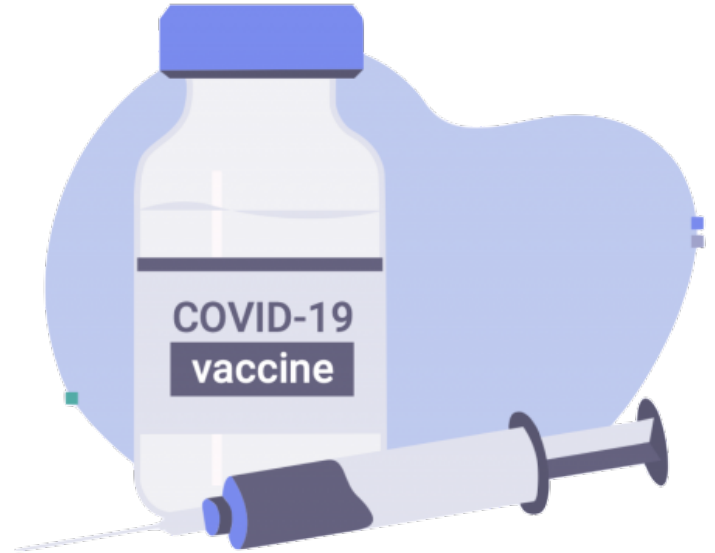
Allow exemptions “for any reason of personal conscience, based on a religious belief, or for medical reasons, including prior recovery from COVID-19.”

MONTANA

Prohibits discrimination in employment based on vaccination status

TENNESSEE

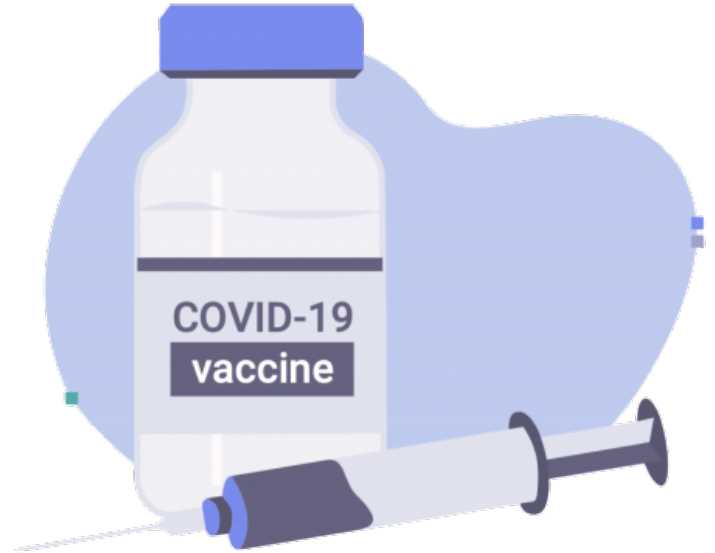
Mandatory policies banned



Limitations on Vaccine Policies cont.

Employers must provide certain exemptions/opt outs to vaccine policy:

- AR, FL, ND, WV - Proof of immunity (i.e. antibodies)
- FL – use of employer-provided PPE
- UT – “sincerely held personal belief”
- ND - “philosophical or moral beliefs”
- WV – previous COVID-19 infection



Masking Requirements



- Employers can require masks and treat vaccinated and unvaccinated employees differently by requiring unvaccinated employees to wear masks.
 - The one exception: Montana
- Competing state and local requirements put businesses in a hard place.
 - For example, Harris County, TX has a mask mandate for private employers, despite Gov. Abbott's executive order prohibiting mandates like this. Currently in litigation.
- Employers need to monitor state and local masking requirements.
 - **California:** Masks required for everyone over 2 yr. old in indoor public spaces, regardless of vaccination status, through Feb. 15.
 - Examples of counties that have mask mandates: Alameda, San Diego, Marin, Santa Clara
 - LA County requires employers to provide employees with medical-grade masks.
 - **Maryland:** Lifted state-wide mandate in July 2021, but Montgomery County has a mandate in place for indoor public places.

What is a Reasonable Accommodation?



A Change:

"A change in the work environment or the way things are customarily done that would enable a qualified individual ... to enjoy equal employment opportunities



ADA (15 or more employees)

- Physical or mental impairment or
- Regarded as having such an impairment
- Meets the skill, experience, education, or other requirements and can perform the essential functions of the role¹⁸.



Title VII

- Religion or Sincerely Held Religious Belief defined broadly
- Religious practice may be sincerely held even if not consistently observed
- Does not include: social, political, or economic philosophies or personal preferences

REASONABLE ACCOMMODATIONS



Undue Hardship



Undue hardship is not reasonable

- An employer does not have to provide the requested accommodation
- Employer may choose as long as the accommodation chosen is effective



ADA

- Significant difficulty or expense



Title VII

- More than a minimal burden on operations



When should they be provided?

Apply for a
Job



Perform a
Job



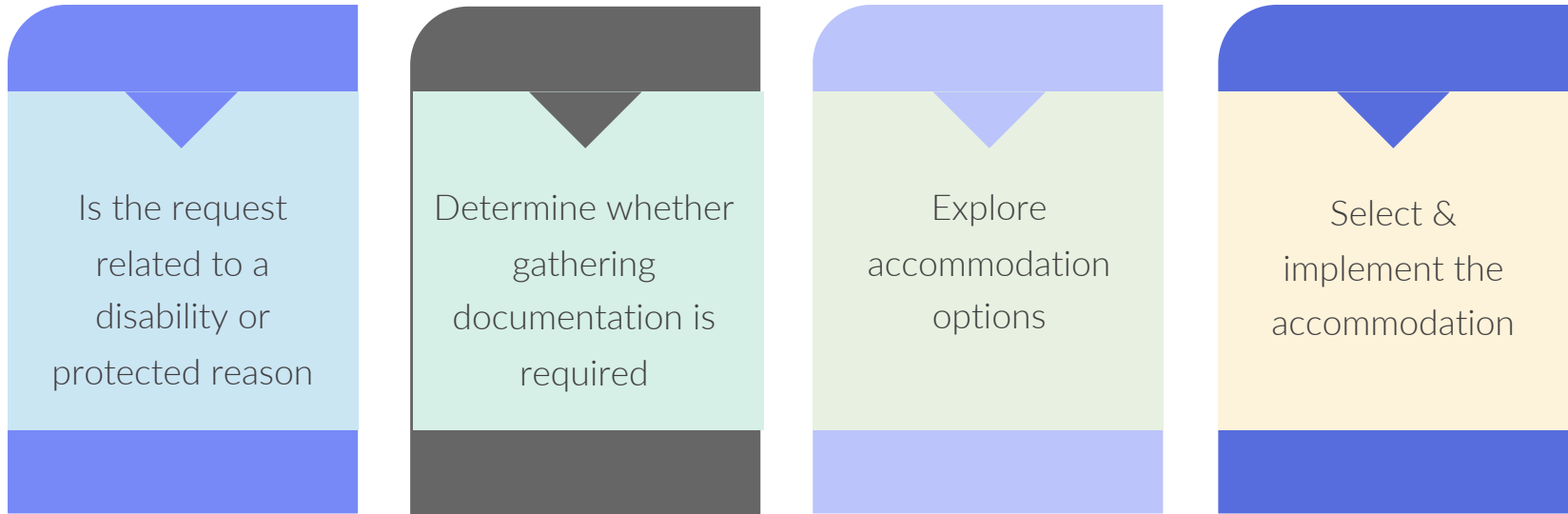
Benefits and
Privileges of
Employment



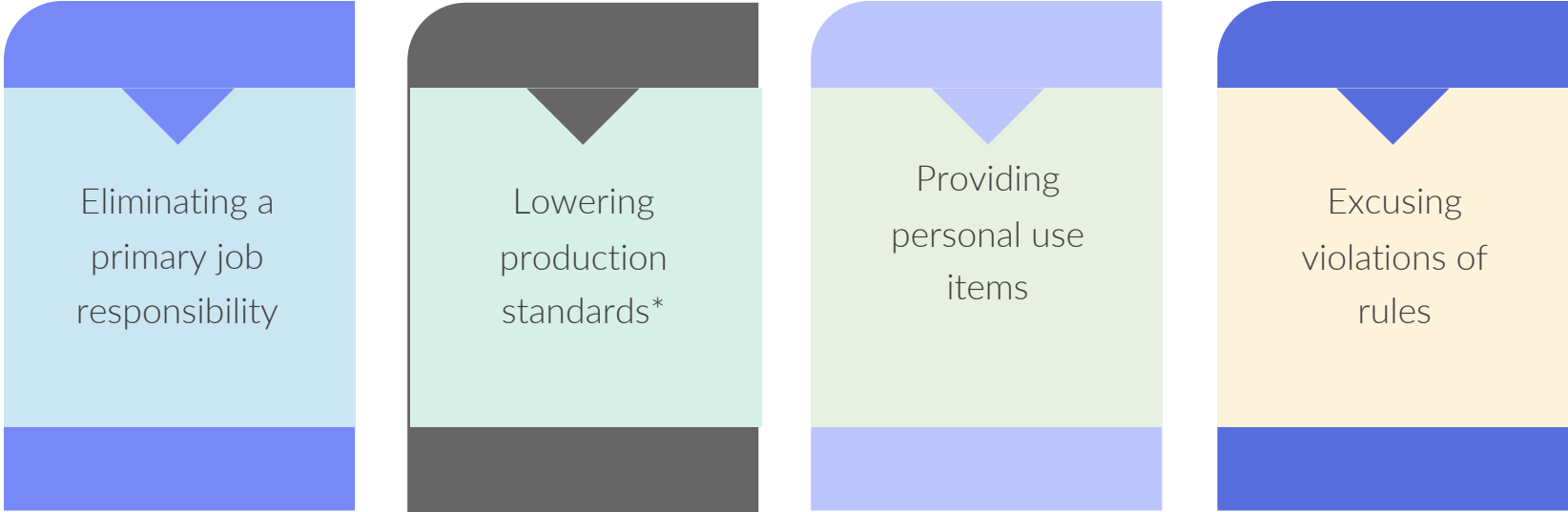
No Undue
Hardship



Accommodation Request Flowchart



What is not included?



Eliminating a
primary job
responsibility

Lowering
production
standards*

Providing
personal use
items

Excusing
violations of
rules

COVID Accommodations



Remote working

- Where possible given the role
- Implement days in and days out policies



Testing

- ETS recommendation could be used to create a testing alternative to vaccination
- Account for availability of tests in your area
- Decide who pays for the testing



Limit Employee Interactions on Site

- Keep the same job description. adjust the locations
- Change job description in a way that allows the company to meet safety concerns
- Implement common space rules
- Require PPE

Implementing a Remote Work Accommodation



Equipment

- Can the same equipment used in the office be used in the home office?
- If not, is there an effective alternative?



Support

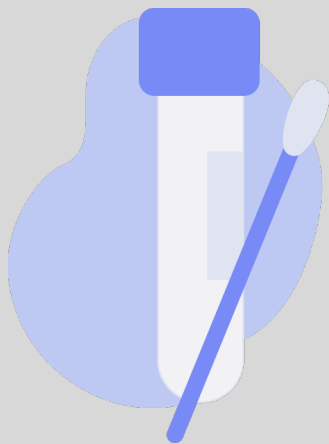
- Make adequate tech support available



Additional Accommodations

- Go through the flowchart to determine whether additional accommodations are needed

Implementing a Testing Accommodation



Location

- Home, off-site facility, work?



The test

- Employee pays or company pays?
- Find a third party provider?



Support

- Clear policy and instructions
- Potential test pooling



Additional Accommodations

- Adjusted schedule

Pitfalls

- Loss of title / Position
- Loss of opportunity for promotions
- Restricting training or other benefits to in-person employees
- Restricting accommodations based on federal law when there is a more expansive state law in place

