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1) Who is an essential worker?

Essential workers are those who conduct a range of operations and services that are essential to continue critical infrastructure operations. Critical infrastructure is a large, umbrella term encompassing sectors from energy to defense and agriculture.

Essential workers are designated by the United States Department of Homeland Security, specifically the Cybersecurity and Infrastructure Security Agency (CISA). A list of essential workers can be found [here](#). 57.2% of North Dakotans are classified as essential workers.

2) Who has been identified as priority populations and where do essential workers fit into these [priority groups](#)?

Most essential workers fall into phase 1C for vaccination. Healthcare workers, first responders, teachers and childcare workers are in earlier phases of vaccination. All of North Dakota is currently vaccinating in phase 1C.

3) How are the priority groups for COVID-19 vaccine allocation and distribution created?

The federal [Advisory Committee on Immunization Practices](#) made recommendations regarding priorities for COVID-19 vaccination. The state needed to further prioritize amongst these groups due to limited vaccine supplies.

The North Dakota Advisory Committee on COVID-19 Vaccination Ethics was tasked with providing recommendations to Unified Command for allocating doses of vaccine as they arrive in the state. The Committee is comprised of five voting members: a physician, an ethicist, a local public health representative, a representative of the Department of Human Services and a representative of the Department of Health. The committee is facilitated by a retired medical epidemiologist who is acting as advisor to the Division of Immunization. For more information on this committee please see the [Advisory Committee on COVID-19 Vaccination Ethics FAQ](#) on the NDDoH website.

The committee unanimously voted to be guided by a set of ethical principles laid out by the National Academies of Science, Engineering and Medicine in a document called Framework for Equitable Allocation of COVID-19 Vaccination. The ethical principles can be summarized as follow:

- Achieving maximum societal benefit by optimally protecting health and socioeconomic well-being
- Ensuring that each human life is treated with equal dignity, worth and value
- Mitigating the disparities in disease impact on different populations

- Ensuring fairness and impartiality
- Acting transparently
- Making decisions based on the best available evidence

For more information on the ACIP's recommendations, please check out the [ACIPs' Ethical Principles for Allocating Initial Supplies of COVID-19 Vaccine - United States, 2020](#)

For more information on the North Dakota Advisory Committee please see the [Advisory Committee on COVID-19 Vaccination Ethics FAQ](#) on the NDDoH website.

4) Why was my group not considered in a higher tier in the priority groups?

Great consideration went into determining priority groups. The North Dakota Advisory Committee on COVID-19 Vaccination Ethics considers the following in determining priority:

- Risk and intensity of exposure to COVID-19
- Likelihood of adverse outcome if infected with COVID-19
- Critical role in ensuring survival of infected patients and ensuring the integrity of community function

In considering risk, many factors may fall under the above categories including living in a congregate setting, known impact of the epidemic on a population, provision of direct or indirect patient care especially to persons at increased risk or known to have COVID-19, having underlying health conditions or being age 65 or older. Separation of one group from another is often determined not just by the presence of a risk factor but by the number of factors each group has.

The committee recognizes that there is no one "right" answer, but some answers are better than others. ***Unfortunately, not everyone can be highest priority for vaccination.***

For more information on priority groups, please visit the CDC [website](#).

5) When will essential workers be vaccinated?

At this time, essential healthcare workers are or have been vaccinated in phase 1a. This includes all paid and unpaid persons serving in healthcare settings who have the potential for direct or indirect exposure to patients or infectious materials. This includes persons not involved in patient care, but potentially exposed to infectious agents while in a healthcare setting.

Essential non-healthcare workers will be vaccinated in phase 1b or 1c in North Dakota. As of March 9, 2021, all of the state has moved into Phase 1c. Please see the NDDoH website for

greater detail on North Dakota's [priority groups](#) and check out [North Dakota's COVID-19 Vaccine Locator](#) to see who is offering vaccine in your area and what priority group they are currently vaccinating.

6) Who will vaccinate essential workers?

Essential workers may be vaccinated in a number of ways. Some employers may be able to provide vaccination on-site. Employers are encouraged to reach out to the healthcare provider who usually provides influenza vaccination for employees to determine if this is an option. Some employers may recommend visiting a local public health unit, a satellite vaccination event, their local pharmacy or primary healthcare provider.

To see provider sites offering COVID-19 vaccine in your area and what priority group they are currently vaccinating, please visit the following:

- The NDDoH Vaccine Locator shows who is offering vaccine in your area, instructions on how to register for each site, and what priority group they are currently vaccinating. The locator can be accessed [here](#).
- Thrifty White Pharmacy, through the Federal Retail Pharmacy Program for COVID-19 Vaccination, is also providing vaccine. To see which Thrifty White Pharmacies have COVID-19 vaccine available, please check out their website [here](#).
- VaccineFinder is another free, online service where users can search for locations that offer vaccinations. You can access the VaccineFinder website [here](#).

7) How will essential workers be notified when they can receive vaccination?

The North Dakota Department of Health website and social media pages will be updated regularly to notify the public regarding who is eligible for COVID-19 vaccination. Additionally, local media may share updates (television, radio, social media, newspapers), local public health units may share information on their website or social media pages, and health systems may communicate directly with patients through letters, text messages, emails or patient portals.

For updated information on COVID-19 vaccination, please see the NDDoH [website](#).

8) Can essential workers get on a list to be vaccinated?

Employers are encouraged to reach out to their usual provider who administers influenza vaccine about providing on-site vaccination clinics. At this time, there is not a way for individuals or businesses to indicate their interest in COVID-19 vaccination and/or receive notification when vaccinations are available at a state level, please check with our local public health unit.

Individual healthcare providers or pharmacies may have wait lists for certain priority groups. Please check out the [North Dakota COVID-19 Vaccine Locator](#) to see which vaccine providers in your area have a waitlist and how you can be added to the waitlist.

9) Can people who have had COVID-19 receive the COVID-19 vaccine?

Yes. Even if you have already had COVID-19, you should still plan to get vaccinated to prevent reinfection from the virus. Variant viruses are becoming more common, so getting vaccinated will boost your immunity to COVID-19 and provide more protection. However, you can delay your vaccination for 90 days because reinfection is uncommon within this timeframe.

10) Will essential workers be required to provide evidence of their employment in order to be vaccinated?

This will vary by area and vaccine provider. It is possible that essential workers maybe be asked to provide proof of employment in essential functions in order to be vaccinated. Items that prove employment include, but are not limited to, ID badges and pay stubs.

11) Who should I contact about providing on-site vaccination to my employees?

If your worksite would like to make plans to vaccinate your employees on-site, there are a few options.

- If your company currently contracts with a pharmacy, local public health department or private healthcare provider to provide immunizations, like influenza, it is recommended that you contact them first to determine willingness and availability.
- If your company does not currently provide on-site immunizations, vaccinators in your area may be willing and able to vaccinate on-site. Please contact local pharmacies or local public health units to determine if this option is available.
- It is likely that on-site vaccination clinics will not be an option for each employer. In this case, we encourage individuals to attend satellite vaccination clinics or schedule an appointment for vaccination with their healthcare provider, local public health unit, or pharmacist.

12) Can employers mandate vaccination for their employees?

COVID-19 vaccine will not be mandated for all North Dakotans. The unique nature of COVID-19 vaccine being available under EUA (rather than full FDA licensure) when it will first be available is unprecedented.

It is possible that certain employers may request that employees get vaccinated in the future. At this time, mandates for COVID-19 vaccine under EUA have yet to be decided by the Secretary of HHS. Further, the CDC and the Equal Employment Opportunity Commission (EEOC) have yet to put out guidance for corporate policies regarding COVID-19 vaccine.

13) Where can I find information on mandating COVID-19 vaccine under EUA written in law?

It is stated in the provision section [360bbb-3 \(e\)\(1\)\(A\)\(ii\)\(III\) of the Food and Cosmetic Act – 21 U.S.C. 564](#), "Authorization for medical products for use in emergencies," which says:

(e)Conditions of authorization

(1)Unapproved product

(A)Required conditions

With respect to the [emergency use](#) of an [unapproved product](#), the Secretary, to the extent practicably given the applicable circumstances described in subsection (b)(1), shall for a person who carries out any activity for which the authorization is issued, establish such conditions on an authorization under this section as the Secretary finds necessary or appropriate to protect the public health, including the following:

(ii)Appropriate conditions designed to ensure that individuals to whom the product is administered are informed -

(III)***of the option to accept or refuse administration of the product***, of the consequences, if any, of refusing administration of the product, and of the alternatives to the product that are available and of their benefits and risk.

For more information on this topic, see the National Law Review [website](#).

14) Can an employer require an employee to get the COVID-19 vaccine even though it is only under Emergency Use Authorization (EUA) and not fully approved like most vaccines?

As it stands now, there is no precedent set that the EUA would change the ability of an employer to require the vaccine. This is being reviewed currently by many attorneys and law firms.

15) Should employees wear a mask and practice social distancing after being vaccinated?

Yes. Even though the currently available COVID-19 vaccines have high efficacy, masks and social distancing will continue to be a regular practice to slow the spread and until rates of COVID-19 vaccination increase. Vaccinating against COVID-19 is an important and pivotal step in ending the pandemic. But, it is important to note that when vaccine becomes available, returning back to "normal" will be a gradual process. It will take time to vaccinate enough of the public to stop the spread of COVID-19.

16) Why do we have to wear a mask and practice social distancing following a COVID-19 vaccination?

Vaccinations teach the body to successfully recognize and fight a virus without actually getting sick. Public health measures such as social distancing and mask wearing help to *decrease*

exposure to the virus. To effectively contain this pandemic, vaccinating campaigns AND reducing exposure to the virus must continue.

We must persist to use public health measures following vaccination for the following reasons:

- ***Vaccination does not provide immediate immunity.*** Both the Pfizer and Moderna vaccines require two doses, weeks apart. The Johnson & Johnson vaccine only requires one dose. It takes time for your body to build protection after any vaccination. It typically takes a week or two following completion of the series (either after 1 dose for Johnson & Johnson or 2 doses for Moderna and Pfizer) to build immunity. During this time, it is still possible to contract an infection and fall ill.
- ***We don't yet know whether vaccines prevent transmission of COVID-19.*** The Moderna, Pfizer, and Johnson & Johnson vaccines have shown to prevent symptomatic and severe COVID-19 infections remarkably well, but we still do not have enough data to make conclusions regarding their effectiveness at preventing asymptomatic infections. Asymptomatic carriers may not show symptoms, but speaking, breathing, and sneezing can still potentially transmit the virus to others. It is likely that vaccines will prevent asymptomatic infections, but future studies will have to evaluate whether vaccination decreases viral transmission before the role of public health measures are re-evaluated.
- ***We don't know how much protection COVID-19 vaccines will provide under real-life conditions.*** While the Moderna, Pfizer, and Johnson & Johnson vaccines have been shown to be efficacious in clinical trial, we have yet to determine how effective the vaccines will be in real-life. Under the controlled and ideal setting of the clinical trial, these vaccines were found to be highly effective at preventing severe disease, hospitalization, and death associated with COVID-19, but real-world factors (e.g. how vaccine is stored, transported, administered) doesn't mimic a controlled clinical trial. [New data](#) has shown promising results that vaccines are maintaining effectiveness in real-world settings.
- ***The herd immunity threshold for COVID-19 is unknown.*** It is still uncertain when enough of Americans will be vaccinated to reach a threshold of protection, also known as herd immunity. The more contagious a pathogen is, the more people must become immune in order to stop it. It is also important to understand that as cases caused by variants emerge and persist that are more easily and quickly spread, it is of even more importance that we vaccinate. The percentage of the population requiring immunization to acquire herd immunity against COVID-19 is not entirely known, but is estimated to be between 70-90%.
- ***It will be impossible to know who is and isn't vaccinated in your community.*** Vaccine is being allocated in a phased approach, and although you may want to get

vaccinated, your priority group may not be able to get vaccinated right away. It is going to take time for vaccine to be distributed and enough of the population to be vaccinated to reach potential herd immunity.

- ***We don't know the duration of vaccine protection.*** Information regarding the length of protection from Pfizer, Moderna, and Johnson & Johnson vaccines are still being studied.

17) Who will pay for the vaccine?

Employers will **not** be required to pay for the vaccine because COVID-19 vaccines are expected to be free. It is possible that health care providers may charge a fee to administer the vaccine. Health insurance will cover these fees. Those who are uninsured and unable to pay the administration fee cannot be turned away.

18) Can residents of other states who are working in North Dakota receive their COVID-19 vaccine in North Dakota?

Yes. Residents of other states who are working in North Dakota are able to receive COVID-19 vaccine in North Dakota when their priority group is eligible for vaccine.

19) What COVID-19 vaccine related employment policies should I consider discussing with my assigned legal counsel before implementing them at my organization or facility?

The NDDoH suggests the following questions/considerations should be determined by employers and their assigned legal counsel regarding COVID-19 vaccination and employment policies:

- Requiring/requesting employees to receive the COVID-19 vaccine.
- Requiring proof of vaccination from employees on potential new hires.
- Offering sick or paid leave for employees following vaccination (e.g. recovery from vaccination).
- Requiring masks if employees choose not to vaccinate.
- Requiring employees to use their own PTO (not CARES Act Funds) to cover any time off should quarantine or isolation be required for those who refuse a COVID-19 vaccine.

For more information on the Department of Labor and OSHA guidelines regarding COVID-19, please visit their [website](#).

For more information on the EEOC guidelines regarding COVID-19, please visit their [website](#).

20) As an employer, can I be held liable for administering COVID-19 vaccinations onsite?

The [Public Readiness and Emergency Preparedness Act](#) may provide employers immunity from claims related to side effects of a vaccine or other injury at the employer's vaccination site if the employer supervises or administers an onsite vaccination program.

21) As an employer, can I fire an employee for refusing to get a COVID-19 vaccination?

Absent a medical or religious exemption from a mandatory vaccination requirement, an employer may be able to make a COVID-19 vaccination a condition of employment and [terminate employees](#) who do not comply. However, employers should tread carefully with this practice and consult legal counsel prior to making termination decisions.

22) As an employer, can I provide incentives for employees who get the COVID-19 vaccine?

Yes, if the employer maintains a voluntary vaccination program, to encourage employee participation the employer may provide incentives for employees to get the vaccine. Some examples are as follows:

- Paid incentives - e.g. \$100.00 to employees who complete 2nd dose of vaccine
- Paid time off (PTO) requirements - e.g. individuals who refuse vaccination must use their own PTO for quarantine and isolation associated with COVID-19 exposure and illness
- Emphasize that CDC has new recommendations for quarantine in vaccinated persons - fully vaccinated persons who meet the [criteria](#) will no longer be required to quarantine following an exposure to someone with COVID-19.
- Educate employees - just as employers have been educating workers throughout this pandemic on masking, handwashing, and social distancing, employers can proactively educate and encourage COVID-19 vaccination.

However, if the employer requires vaccination as a mandatory requirement of employment, providing incentives is not advisable as it may create a disparate impact across certain protected characteristics such as age, disability, and religion, among other discrimination concerns.

23) How can I encourage my employees to get the COVID-19 vaccine?

The NDDoH has created a [toolkit](#) to encourage essential workers to get vaccinated, including a document for company leadership titled, "[Best Practices Document for Addressing COVID-19 Vaccination in the Workplace](#)".

To encourage employees to get the vaccine, provide credible resources and educational materials and offer opportunities for employees to have any questions answered. Consider hosting a vaccination clinic at your workplace, and contact your local health department for

guidance. Offer the vaccination during work hours. If hosting a vaccination clinic at your workplace is not possible, consider other steps to encouraging vaccination, such as:

- Be flexible in your human resources policies. Establish policies that allow employees to take paid leave to seek COVID-19 vaccination in the community. Support transportation to off-site vaccination clinics.
- Use promotional posters/flyers to advertise locations offering COVID-19 vaccination in the community. Display posters about COVID-19 vaccination in break rooms, cafeterias, and other high-traffic areas.
- Post articles in company communications (e.g. newsletters, intranet, emails, portals) about the importance of COVID-19 vaccination and where to get the vaccine in the community.

24) What responsibilities does the employer have under OSHA to offer the vaccine?

To date, OSHA has not issued any specific standards that would obligate an employer to require employees to provide the vaccine. Their guidance on mitigating and preventing the spread of COVID-19 in the workplace does suggest employers to cover employee vaccination for COVID-19 and to not distinguish between workers who are vaccinated and those who are not. To see OSHA's current guidelines visit their [website](#).

25) Where can I find translated COVID-19 vaccine materials for my employees?

The NDDoH has translated some COVID-19 vaccine materials into other languages. Those materials can be found [here](#).

26) Are there resources out there for employers regarding COVID-19 vaccine?

Yes. There are a number of resources for employers regarding promoting and preparing for COVID-19 vaccination. Please feel free to check out the following resources below:

- [CDC Workplace Vaccination Program](#)
- [CDC COVID-19 Vaccine Communication Toolkit for Essential Workers](#)
- [CDC FAQs about COVID-19 Vaccination in the Workplace: For Employers](#)
- [U.S. Equal Employment Opportunity Commission Technical Assistance Questions and Answers](#)
- [SHRM COVID-19 Vaccination Resources](#)
- [SHRM COVID-19 FAQ](#)

27) Are there resources out there for employees regarding COVID-19 vaccine?

Yes. There are a number of resources available for essential workers online. Feel free to check out the following resources:

- [CDC Essential Workers & Employees: When & How to Get Vaccinated](#)

- [CDC 8 Things to Know about the U.S. COVID-19 Vaccination Program](#)
- [CDC FAQs about COVID-19 Vaccination in the Workplace: For Workers](#)

If you're an essential employee and you have not yet heard from your employer about COVID-19 vaccine yet, please be patient. Vaccine will be extremely limited and administered by North Dakota's priority groups.

28) Where can I find more information about COVID-19 Vaccine?

The North Dakota Department of Health [COVID-19 Vaccination website](#) includes information on COVID-19 vaccine,

The North Dakota Department of Health has developed a [Frequently Asked Questions](#) handout on COVID-9 vaccine for the general public.

Additional information about COVID-19 vaccine is available on [CDC's COVID-19 vaccine website](#).

DISCLAIMER: This document is not intended as legal advice. Any responses to specific questions are based on the facts as we understand them. They are not intended to apply to any other situation. If you need legal advice, please consult an attorney.