

Emerging Legal Landscape for Spring Programming

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**Ann Marie Noonan
Hurwit & Associates**

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Requiring Vaccines to Attend Events

- ▶ *The CDC has approved the use of several vaccines to prevent COVID-19 in children over 12 and adults. In many areas of the US vaccines are now readily available. Questions therefore arise concerning whether organization can and should require participants to show proof of vaccination in order to partake in certain events.*
- ▶ *The EEOC has indicated employers may be able to require vaccines in the workplace. However, as many employers have learned, the analysis does not end there.*

Americans with Disabilities Act (ADA)

- ▶ What if someone refuses to provide proof of vaccination?
- ▶ Title III of the ADA protects consumers from discrimination based on disability just as Title I protects employees from discrimination.
- ▶ Title III prohibits discrimination on the basis of disability in places of public accommodations (businesses that are generally open to the public and that fall into one of 12 categories listed in the ADA).



Public Accommodation

- ▶ Of the 12 listed categories the following are those most likely to be of interest to this group:
 - ▶ Places of Lodging - inns, motels, hotels, other places of lodging,
 - ▶ Places of entertainment - theaters, concert halls, stadiums, etc.
 - ▶ Places of public gathering - auditoriums, convention centers, lecture halls
 - ▶ Places of recreation - parks, amusement parks
 - ▶ Places of exercise and recreation - gym, golf course
 - ▶ Places that serve food or drink - restaurants and bars
 - ▶ Places of education - elementary, secondary, or private school

NOTE: These examples are not exhaustive.

Private Clubs

- ▶ Title III does not apply to Private Clubs
- ▶ Private clubs:
 - ▶ Members exercise a high degree of control over club operations.
 - ▶ Membership selection process is highly selective.
 - ▶ Substantial membership fees are charged.
 - ▶ Entry is operated on a non-profit basis.
- ▶ Note: a private club loses its exemption from the ADA if it is made available for use by non-members as places of public accommodation. This subjection to the ADA is generally limited to the operations that are opened up.

Direct Threats

- ▶ A person with a disability may be excluded if they pose a “direct threat” to the health and safety of others.
 - ▶ This is based on objective safety standards
 - ▶ That cannot be reduced/managed easily by appropriate changes to policies/procedures
- ▶ This last point notes that you must look at whether there are means to reduce this risk to a reasonable measure without excluding the person.
- ▶ Also need to continue to assess whether COVID-19 continues to be a “direct threat” as vaccines become more available.

Potential Accommodations for Unvaccinated

- ▶ Limiting who they can dance with to those they come with
- ▶ Requiring masking
- ▶ Requiring a temperature check
- ▶ Testing for COVID prior to admission
- ▶ Quarantining for a period of time prior to attending
- ▶ For multi-day/week programs - testing after arrival

Continue to Remember & Assess

- ▶ Even if you do decide to require vaccines, you must continue to ensure you are in compliance with Federal, State, and Local requirements.
- ▶ May need to follow the most protective/restrictive mandates
 - ▶ For instance, in preparing for this presentation CDC modified requirements such that vaccinated persons no longer need to wear masks indoors.
 - ▶ However, many states and local governments continue to require masks indoors.
- ▶ In addition, good ventilation continues to be advisable if not everyone is masked/vaccinated.
- ▶ Outdoor events are safest.
- ▶ Screening at the door may still be worthwhile.
- ▶ Suggest taking names and contact information to assist with contact tracing.

Can Event Organizer Be Liable if Someone Contracts COVID-19?

- ▶ This is an unprecedented question - meaning the law is emerging and there is no definitive answer at this time.
- ▶ Advisable to follow federal, state, and local requirements and any industry best practices.
- ▶ Informing attendees of the risk and having them waive liability is also advisable. [\[LINK\]](#)

Protective Measures

- ▶ Screen at the door
- ▶ Mask wearing for those not vaccinated
- ▶ Hand sanitation upon entry (and throughout)
- ▶ Ventilation & Open Windows and Doors
- ▶ Outdoor events (enjoy the summer months)
- ▶ Distance when possible
- ▶ For longer term programs - negative test and/or quarantining

Waivers

- ▶ General Information Regarding COVID-19
- ▶ General Information Regarding Methods to Prevent the Spread
- ▶ Potentially Include Questionnaire re: Symptoms and Travel
- ▶ Acknowledgement that Partaking Knowing the Risk
- ▶ Voluntarily undertaking that risk and waiving right to sue and release from any claims

Contact Information

Ann Marie Noonan
Hurwit & Associates
1150 Walnut Street
Newton, MA 02461

Tel (617) 630-6900
Fax (617) 928-3441

www.hurwitassociates.com

amnoonan@hurwitassociates.com