

Law Firms Must Be Decisive With Vaccine Mandates

By **Aebra Coe**

Law360 (August 24, 2021, 1:59 PM EDT) -- Law firms often take a wait-and-see approach around management decisions, but the time for equivocation has passed when it comes to COVID-19 safety measures such as vaccines, and with talent retention hanging in the balance, transparent, assertive decision-making is needed now.



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As the delta variant rages across the country, children return to school, vaccine hesitancy persists, and one of the COVID-19 vaccines receives full Food and Drug Administration approval, the factors swirling around law firms' decisions about how to create safe and healthy workplaces are coming to a head.

As of this week, Law360 Pulse has reported on nearly 50 law firms that have publicly chosen to adopt policies requiring attorneys and staff to get a vaccine before returning to work in person.

A slew of others have remained silent.

Based on my reporting, I believe the time to wait is over and decisiveness is now key.

Large law firms are made up of many partners and other stakeholders, and along with that comes many competing and conflicting voices, viewpoints and interests. The cacophony can be deafening and paralyzing for law firm management.

As the industry faces what some recruiters say is unprecedented demand for talent amid a fluid market for both associates and partners, a lack of action on the part of management now could affect their firm's ability to attract and retain lawyers going forward.

April Campbell, executive director of the Association of Legal Administrators, has a bird's-eye view of what the different law firms in her organization are doing, and what their decision-making processes have looked like.

According to Campbell, firms were surveying personnel early on in the pandemic to see how they felt about various safety measures, but many have begun to move away from that when it comes to vaccine mandates and toward more top-down decisions to ensure better safety and smooth business operations.

"Those decisions are not always best left up to consensus and are better made by those who understand all the risks and who are responsible for important strategic decisions," Campbell told me.

A recent survey of 1,600 employers by Littler Mendelson PC found a growing willingness across industries to mandate vaccines for employees. Nearly half of respondents said they are more strongly considering a vaccine mandate in light of the recent rise in COVID-19 cases, and only 22% said they have firmly decided not to institute a mandate.

Perkins Coie LLP Chief Talent Officer Jennifer Bluestein said the management team there had been monitoring vaccination rates among the firm's workforce and wasn't seeing them go up adequately as its October return-to-office date approached and the delta variant began to surge.

This month, the law firm announced it was adopting a vaccine requirement, which will include a testing alternative for those who are unvaccinated or prefer not to disclose their vaccination status.

The decision was made after extensive consultation with public health experts, the firm's COVID-19 task force, various members of management, and the law firm's employees. The decision, though, ultimately rested in the hands of the firm's management committee, Bluestein said.

Two main factors were at play in considering the decision: the firm's duty to keep its personnel safe and the competitive environment for legal talent in which sought-after attorneys can leave for a rival if they are unhappy with a policy.

"As the date was drawing nearer for the return to office and we weren't seeing vaccination rates go up within our population, we started hearing from people with small children in particular saying, 'I just don't feel comfortable going back when I don't know if the person I'm interacting with is vaccinated,'" she said. "That was a consistent concern over and over again even before delta. The delta variant just made it louder."

Not everyone at the law firm felt the same way, though, Bluestein said, as a "small number" of people at every level from staff to associates to partners were vaccine hesitant.

"We're not out to tell them they're wrong," she said. "We're careful to not engage in an argument. And yet we take that standpoint of business continuity and protecting our people as much as we can, and we try to stick to that."

One of the key pillars of Perkins Coie's COVID-19 mitigation strategy is communication. According to Bluestein, firm management engages in "very regular" communication with all staff and attorneys on its plans for preventing the spread of the virus.

Speaking to me on Friday, she said the firm's managing partner had provided an update to personnel

nine days earlier, she'd sent out a firmwide email on Thursday, and a town hall was scheduled for this Tuesday.

Heather McCullough, a law firm management consultant at Society 54, said that communication component and an adequate level of transparency is often missing from law firms' conversations and decisions around the vaccine.

A top-down decision does not mean that policies need to be created and administered in a black box.

Law firms should include their communication, marketing and business development professionals in conversations around COVID-19 prevention policies so that those professionals can ensure proper dissemination of information to both the firm's staff internally, and also their clients and other outside stakeholders, McCullough said.

Clearly laying out why and how a decision was made and what is expected of everyone coming into the office is a major component of that communication strategy.

"The conversations and the communication that come out about this need to be very clear," she said. "Having someone from the marketing and business development team involved from the beginning to craft what the messaging will look like is very important."

I recently spoke to a number of public relations experts who told me that law firms benefit from identifying their core values and then deciding what litigation to take on in a way that aligns with those values.

They called it a "values check," referencing the traditional conflicts checks firms conduct before taking on cases or clients.

As law firm leaders make decisions around whether to mandate vaccines, it may benefit them to run a similar values check, in addition to the obvious need to consult with public health experts.

According to Terry Isner, a marketing and branding consultant to law firms at PR firm Jaffe, firms need to ask themselves a number of questions in a values check.

Those questions include things like, who are we? How does this decision affect our reputation in the way we will grow internally with more talent? How does it affect our ability to retain and bring in more revenue opportunities through client relationships?

"How will our values that we choose restrict us, and how will they benefit us? And what are we willing as business owners to accept? Those are the questions that have to be asked," Isner told me as I researched the article on litigation decisions.

Law firm leaders may be hearing a cacophony of perspectives around COVID-19 mitigation measures right now, but their job is to home in on a single, unified strategy that aligns with their law firm's values and goals.

That isn't going to be easy, but through thoughtful reflection, good communication and leadership it is attainable, and I believe it's better than silence.

--Editing by Brian Baresch and Alyssa Miller.

The Bottom Line is a column by Aebrá Coe, appearing monthly. The opinions expressed are those of the author and do not necessarily reflect the views of Portfolio Media Inc. or any of its respective affiliates.