



Top 10 HR Questions of 2021

**And What to Expect
in 2022**





Introduction

Mineral Experts™ have made it their mission to stay current and provide guidance on the employment laws and regulations that impact employers across the U.S. for over a decade. We've gathered and answered the most frequently asked questions of 2021, which include COVID-19 vaccines, federal relief programs, and persistent human resources challenges.

We hope it will answer any big questions you have as well as show how Mineral Experts are ready to support you in 2022.

89% of Mineral Experts say clients get most excited about Mineral when they get their problems solved.

COVID-19 Vaccination Questions

Questions about how to manage vaccinations in the workplace dominated the COVID-19 conversation in 2021. As you will see, the answers required legal expertise and practical approaches to a complicated issue.

1. Can I charge less/more to employees for health coverage based on COVID vaccination?

Potentially, but this can be a very complicated process because this decision must comply with a variety of rules, including those under the Health Insurance Portability and Accountability Act (HIPAA), the Americans with Disabilities Act (ADA), the Genetic Information Nondiscrimination Act (GINA), and potentially ERISA laws and IRS regulations. We encourage you to work with your health insurance provider and/or legal counsel offering expertise in these matters to ensure compliance.



In September 2021, 13% of Mineral clients were mandating vaccination in the workplace.

MINERAL HR PULSE CHECK OF
1,329 CLIENTS OF MINERAL

2. Can we require the COVID-19 vaccine?

Probably, but there are several factors to consider prior to implementation and enforcement. Under federal law, employers can require employees to get the COVID-19 vaccine as a condition of continued employment. However, employers need to consider the following:

- Making exceptions for employees who can't get vaccinated because of a disability, pregnancy, or religious belief.
- Whether a collective bargaining agreement is in effect (this may or may not affect your options - speak with your attorney)
- Whether your state has passed a law that prohibits or limits mandatory vaccines in the employment context.

Mandating vaccines may also create other challenges. For example, employees who don't want to get vaccinated will likely request an exemption, and granting or not granting those can create a lot of work (and angst) for the HR department. On the other hand, a potential downside of not requiring vaccination is decreased employee morale if you require employees who have been working remotely to return to the worksite and they don't feel it's safe.

One option that may strike a better balance, depending on your circumstances, is to encourage rather than require vaccines.

COVID-19 Vaccination Questions

3. Should we keep a record of who is vaccinated or make copies of vaccination cards? If we do, how long do we have to keep it for?

If you're asking about vaccination status, you'll want to keep some kind of record (so you don't have to ask multiple times). OSHA requires that vaccination records, if collected, are maintained for 30 years following the date the employee separates employment. State or local laws may have additional recordkeeping requirements. The OSHA ETS, if and when in effect, includes a much shorter storage rule, but that only applies to the records collected specifically to comply with the ETS. You should stick with the 30-year rule for vaccination records collected before or after the ETS is in effect, or for all vaccination records if you have fewer than 100 employees.

You may want to keep something simple like an excel spreadsheet with employees' names and a simple "yes" or "no" in the vaccination column, or you may prefer to take a copy of their vaccination card. However you keep track, that information should be kept with other employee medical information, separate from employee personnel files.



COVID-19 Vaccination Questions

4. Does our mandatory vaccine policy need to allow for accommodations? I have employees that say they can't get vaccinated because of a disability or religious belief.

If you have 15 or more employees, both Title VII of the Civil Rights Act of 1964 and the Americans with Disabilities Act will come into play and require these exceptions and accommodations. State law may require accommodations at an even lower employee count.

Religious Belief

According to the Equal Employment Opportunity Commission (EEOC), employers should generally assume that the employee's religious belief is sincerely held, but if "they have an objective basis for questioning either the religious nature or the sincerity of a particular belief or practice, the employer would be justified in seeking additional supporting information." It's important to realize that there could be overlap between a sincerely held religious belief and another belief, such as a political belief, which does not place it outside the scope of Title VII's religious protections. An employee could subscribe to their own personal religion, but if they said their beliefs were sincerely held and can explain how they conflict with vaccination, an employer is likely obligated to accommodate, unless it would cause an undue hardship. Likewise, just because the employee's church leadership has publicly stated that they support vaccination does not mean an employer can deny an accommodation outright, as the employee could have sincerely held beliefs that differ from their church leadership.

We recommend having employees fill out a religious accommodation request form that asks them to explain the conflict between their religion and the policy they are requesting to be exempted from. If your intent is to deny religious accommodations, we recommend speaking with an attorney first.



COVID-19 Vaccination Questions

Disability

If an employee requests an exception to your mandatory vaccination policy because of a disability, then you would be required to engage in the interactive process. The interactive process is essentially an ongoing conversation with the employee to explore potential accommodations.

Pregnancy

Under the Pregnancy Discrimination Act, employers are required to treat employees who are affected by pregnancy, childbirth, or related medical conditions the same as other employees who are similar in their ability or inability to work. This means that if an employee can't get vaccinated for a reason related to pregnancy, you would have to grant an accommodation if you do so for other employees who can't get vaccinated for other reasons.



Each time I call a Mineral Expert, I've gotten a detailed answer to my question along with a follow up email that clearly reiterates the solution. Every person I've talked to has provided expert advice and is clearly focused on getting me the answers I need. As a result, I have the confidence to make policies and decisions with the information I receive from Mineral."

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Deborah Critser, Office Manager, Choice Drilling, Inc.

Persistent HR Issues

Every year will bring new HR and compliance challenges. But some issues, like wage & hour, leave, and harassment compliance, continue to raise questions— especially when state and local laws evolve.

5. Can you tell me more about the California meal period penalty?

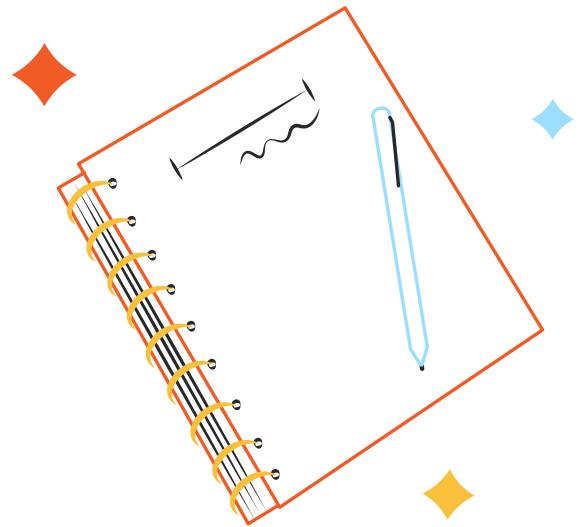
In California, if an employee is not allowed to take their meal break, or not allowed to take it on time, a meal penalty is due. If an employee is not allowed to take their rest break, a penalty is also due.

Ensure that each non-exempt employee is provided a 30-minute meal period that begins no later than the very start of the sixth hour of their workday (e.g., an employee who starts at 8:30 am must start their break absolutely no later than 1:30 pm). Make sure that during this time you:

- Relieve them of all duties
- Relinquish control over their activities
- Allow them to leave the workplace
- Do not impede or discourage them from taking their break
- Do not incentivize or encourage them to skip their break

Enforce your meal and rest break policies consistently and train managers to respect the break periods. While consistent enforcement is key to avoiding claims of discrimination, it will also result in a workforce that is more productive.

Note that other states may have robust wage & hour laws like California, so it's important to understand and comply with the laws in each state where your employees work out of.



Persistent HR Issues—cont'd

6. We are in California. I know we now have to offer leave to our employees for their own serious health condition since we have more than 4 employees. Can you help me understand what my employees are entitled to?

Employer Coverage

An employer is covered by California Family Rights Act (CFRA) provisions when it employs five or more employees nationwide. All employees are counted, including those who work part-time or are on leave. For employers whose employee count fluctuates, the standard is that they have five or more employees on a “regular basis,” which the Department of Fair Employment and Housing (DFEH) defines as “recurring, rather than constant.”

Employee Eligibility

To be eligible for CFRA leave, an employee must work for a covered employer (as described above) and:

- Have worked for that employer for at least 12 months; and
- Have worked at least 1,250 hours during the 12 months prior to the start of the leave.

If they are not eligible for CFRA, then you are required to consider providing leave as an accommodation under the Fair Employment and Housing Act (FEHA) and the Americans with Disabilities Act (ADA) unless it would create an undue hardship. Feel free to reach out to us for more information if this is the case.



Persistent HR Issues—cont'd

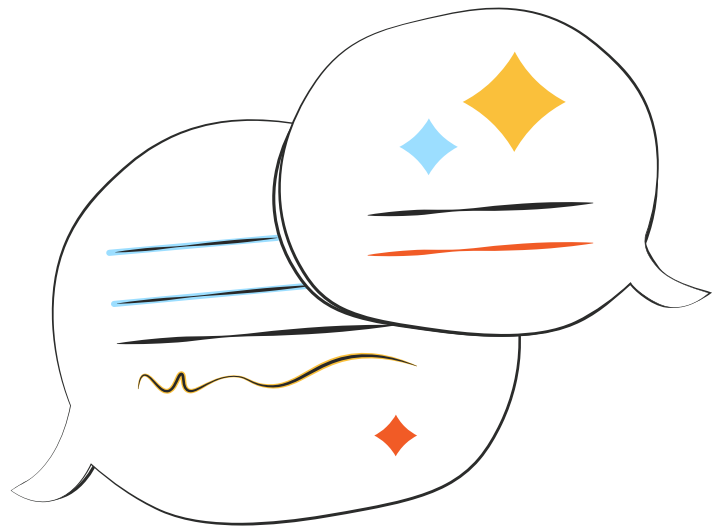
Serious Health Condition

CFRA provides leave, both continuous and intermittent/reduced schedule, for an employee's own "serious health condition." A "serious health condition" is defined as an illness, injury, impairment, or physical or mental condition that involves inpatient care or continuing treatment by a health care provider.

Certification/Designation Process

You are required to provide a variety of forms and paperwork to an employee requesting leave under CFRA, which we can help you find.

As a note, many states and local governments have their own medical and family leave laws that may apply to employers.



HR Compliance Library

Mineral's HR Compliance Library allows you to filter by state and category to find legal summaries, guides, videos, and policies that help you comply with state and local laws that apply to your workplace.

Explore

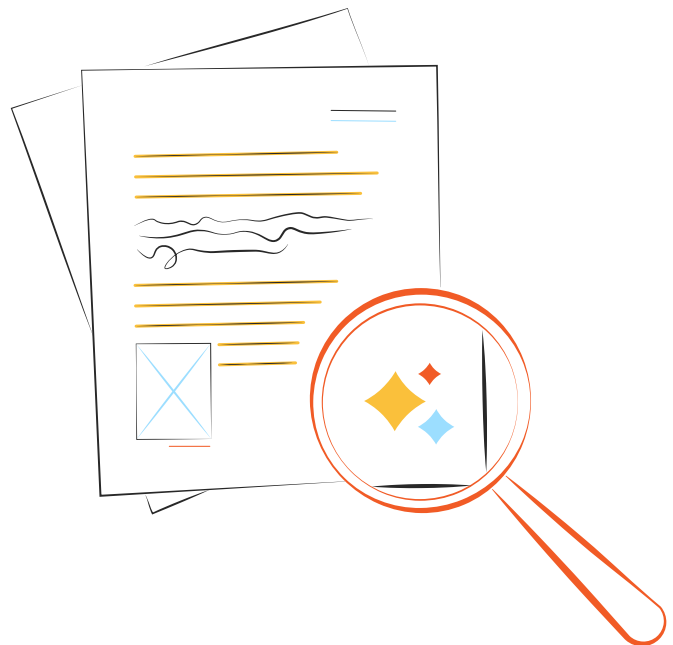
Persistent HR Issues—cont'd

7. How do we respond to a harassment complaint?

When an employer is informed or has good reason to believe that an employee has violated its harassment or discrimination policy, they need to conduct a complete and well-documented investigation into the allegations. This includes speaking with the employee who made the complaint (if they know who that is), the accused employee, and any witnesses they name, as well as reviewing any relevant evidence such as emails, video footage, or texts.

An investigation generally includes a series of interviews conducted by an impartial manager, company officer, or Human Resources representative. This individual should approach the investigation process without a presumption of guilt or innocence and with the commitment to treat the situation as fairly as possible. It's also helpful to have another manager or HR Representative present during the interviews to serve as a third-party witness and to take detailed notes. The questions asked during the interview should be unbiased and open-ended. Formulating them in advance is a best practice. It's also important not to promise a particular outcome to employees participating in the investigation. Once the investigation interviews are complete, you should document your conclusions and actions taken. If you determine that the accused employee did violate the company's harassment or other workplace policy, we recommend taking the appropriate disciplinary measures, which depending on the severity of behavior may include termination of employment. A memo summarizing the findings should be placed in the accused employee's file.

If the results of the investigation do not warrant terminating the accused employee, we recommend corrective measures such as a written warning and additional training on your harassment policy. The discipline should be proportionate to the severity of the harassment. It is then important to inform both the accused employee and the accuser about the conclusions of the investigation and any disciplinary measures taken. The complaining employee doesn't need to know the specific disciplinary action, just that appropriate corrective action has been taken.



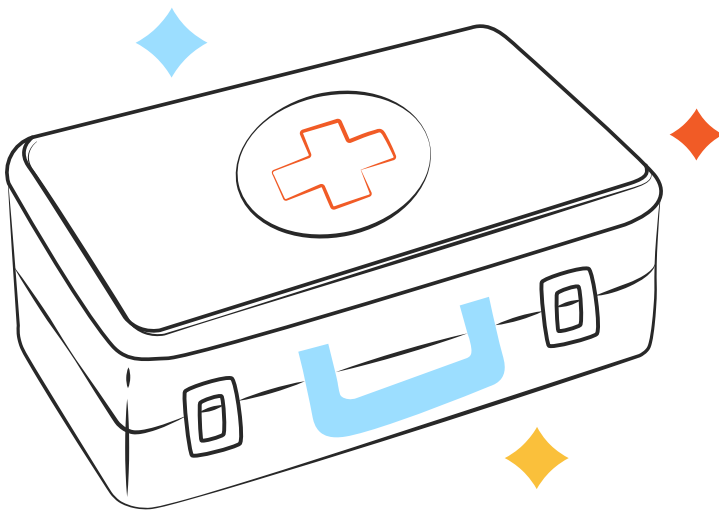
Federal Relief Programs

Two big federal laws took a lot of attention, the Families First Coronavirus Rescue Act (FFCRA) and the American Rescue Plan Act (ARPA) in 2021. While both laws had temporary provisions that don't apply anymore, at the time they required experts to translate the laws, explain them in simple language, and deliver practical guidance.

8. Who is eligible for the COBRA subsidy under APRA, and how does it work?

9. Can you tell me more about the ARPA? And explain what Emergency Paid Sick Leave (EPSL) and Emergency Family Medical Leave (EFMLA) are?

10. Did the FFCRA get extended for 2021?



What Our Experts Think This Means for 2022

If we learned anything from the past couple of years, it's that a lot can change in the workplace in a short amount of time. Still, our experts believe that three major HR and compliance issues will remain prominent in 2022.

State Paid Family Leave

Nine states and D.C. had paid family leave laws on the books at the end of 2021. While not a large percentage, the lingering impacts of COVID-19, increased visibility of family needs in the U.S., and the lack of federal policy are expected to influence more states to pass paid family leave laws in 2022, possibly beginning as soon as March.

Hiring & Retention

For a variety of reasons, U.S. workers are expecting more out of their jobs in the form of higher pay and flexible work schedules. Many unemployed workers are holding out for better opportunities than what employers may be willing or able to offer. As both sides are learning to adapt to a new paradigm, we expect this "stalemate" to likely continue well into 2022.

Vaccine & Testing Mandates and Limitation on Mandates

It is unclear how the federal vaccine mandate will play out for employers with 100 or more employees, given the legal challenges. However, a handful of state and local governments have already taken measures to mandate vaccines and testing in certain industries. On the flip side, some states are limiting the ability of employers to mandate vaccination. And as long as COVID-19 continues, we expect to see more of the same.



87% of surveyed organizations rate Mineral Experts 4 and above out of 5 by the value it brings to their business.

TechValidate survey of 165 clients of Mineral with an employee count of 50-100.

Conclusion

With an average of 18+ years of human resources experience, Mineral™ Experts are certified HR experts that give employers like you personalized guidance in language you can actually understand. From recruitment to termination and everything in between, they are ready to help you manage all your workplace challenges.



Meet Our Experts

Learn who our Mineral Experts are, and how they help growing businesses like yours, by checking out their video on our website.

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About

Mineral is the HR and compliance leader for growing businesses. Through a combination of data, technology and human expertise, our proactive solutions take the guesswork out of HR and compliance, giving clients peace of mind. To learn more visit trustmineral.com.