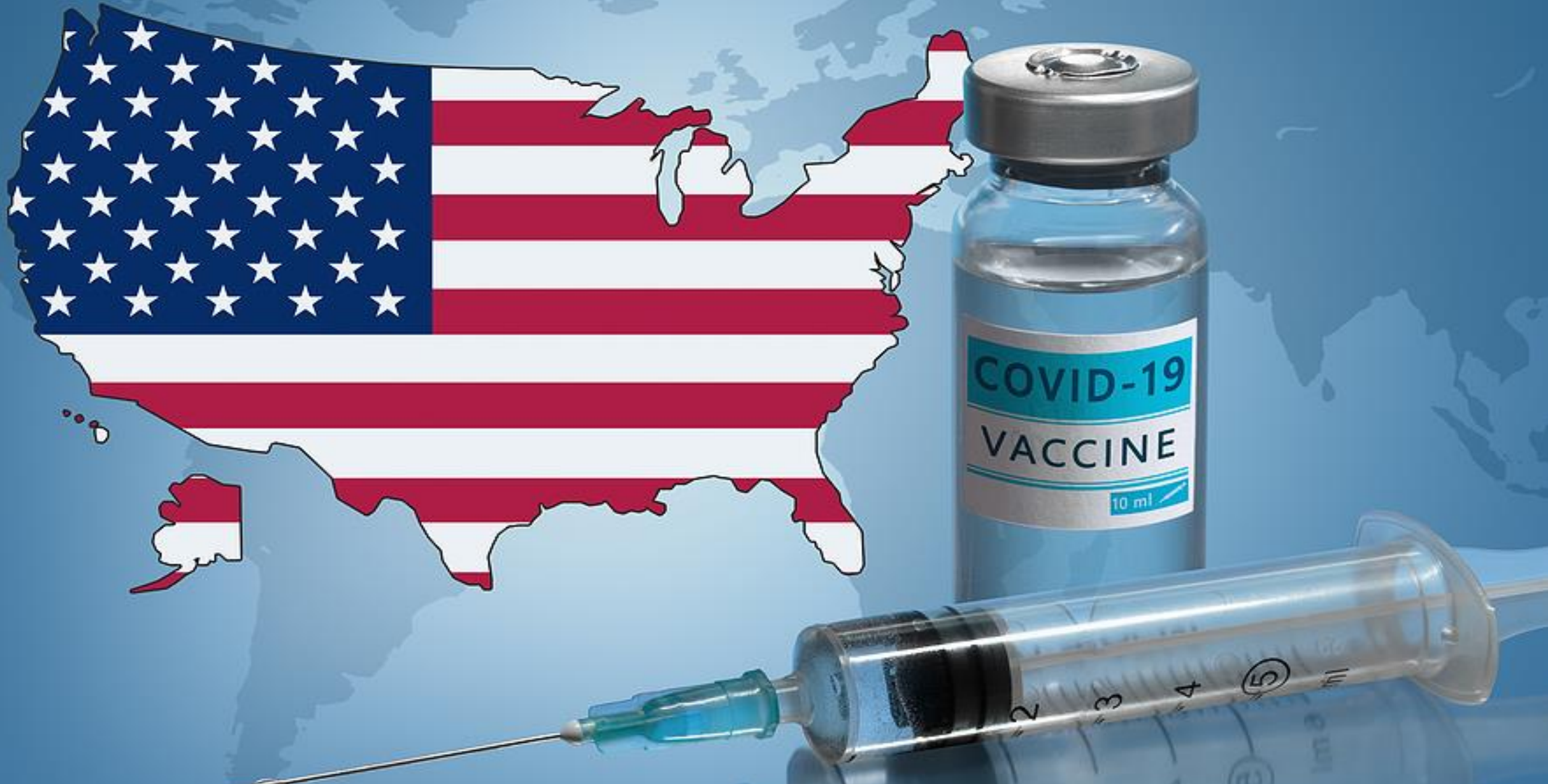


# COVID-19 Vaccination State of the Union



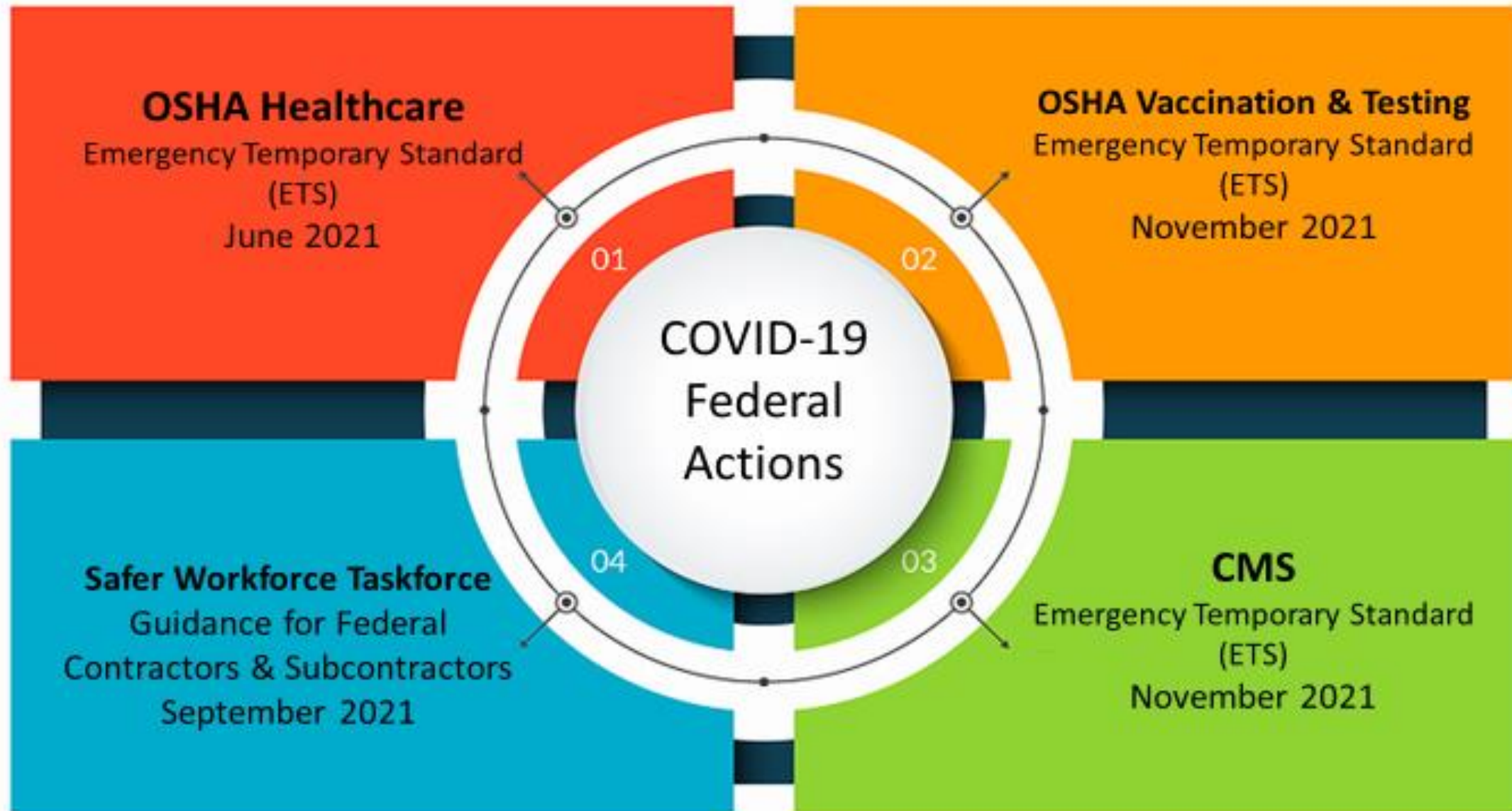
# SCOTT MOORE, ESQ

OWNER, MOORE EMS CONSULTING, LLC  
FOUNDER, NEWTON 360

[smoore@mooreemsconsulting.com](mailto:smoore@mooreemsconsulting.com)



# Executive Orders Issued September 9, 2021





# Federal Contractor Rules

Executive Order 14042

- Must have policies and procedures for determining employee vaccination status
- Maintain a roster of all employees
- Masking & Physical Distancing
- Designate Workplace Coordinator





# Interim Final Rule (IFC) Medicare and Medicaid Programs; Omnibus COVID-19 Health Care Staff Vaccination

Certified Healthcare Facilities subject to:

- Conditions of Participation (CoP)
- Conditions for Coverage (CfC)

Require vaccination for all staff who:

- Interact with patients
- Interact with patient care providers
- Except those with Medical or Religious Accommodations
- There is no testing option





# OSHA Vaccination & Testing ETS

November 2021



- Employers with 100 or more employees
- Not those subject to the OSHA Healthcare ETS (June 2021)
  - Stand-alone non-healthcare settings
- Federal Contractors not covered
- Mandate vaccination; or
- Masking & regular COVID-19 testing
- Provide employees paid time to get vaccinated and recover from any side effects (four hours) (existing paid time)(if vax outside of work, not required to pay)
- Effective Immediately
  - 30 days primary vaccination
  - 60 days all doses





United States Court of Appeals  
for the Fifth Circuit

No. 21-55845

BST HOLDINGS, L.L.C.; RV TROSCLAIR, L.L.C.; TROSCLAIR AIRLINE, L.L.C.; TROSCLAIR ALMONASTER, L.L.C.; TROSCLAIR AND SONS, L.L.C.; TROSCLAIR | TROSCLAIR, INCORPORATED; TROSCLAIR CARMELTON, L.L.C.; TROSCLAIR CLAIBORNE, L.L.C.; TROSCLAIR DONALDSONVILLE, L.L.C.; TROSCLAIR HOUMA, L.L.C.; TROSCLAIR JUDGE PEREZ, L.L.C.; TROSCLAIR LAKE FOREST, L.L.C.; TROSCLAIR MORRISON, L.L.C.; TROSCLAIR FARM, L.L.C.; TROSCLAIR TERRY, L.L.C.; TROSCLAIR WILLIAMS, L.L.C.; RYAN DAILEY; JARAND GAMBLE; CHRISTOPHER L. JONES; DAVID JOHN LOSCHEN; SAMUEL ALBERT REINA; KIP STONALL; ANSWERS IN GENERAL, INCORPORATED; AMERICAN FAMILY ASSOCIATION, INCORPORATED; BURNETT SPECIALISTS; CHORICE STAFFING, L.L.C.; STAFF FORCE, INCORPORATED; LEADINGSIDE PERSONNEL, LIMITED; STATE OF TEXAS; HT STAFFING, LIMITED; DOING BUSINESS AS HT GROUP; THE STATE OF LOUISIANA; COX OPERATING, L.L.C.; DUE-TRAN STEEL, L.L.C.; DUE-TRAN PACKAGED SUBSTITUTIONS, L.L.C.; BETA ENGINEERING, L.L.C.; OUTSIDE FIELD SERVICES, L.L.C.; THE STATE OF MISSISSIPPI; GULF COAST RESTAURANT GROUP, INCORPORATED; THE STATE OF SOUTH CAROLINA; THE STATE OF UTAH; WORD OF GOD FELLOWSHIP, INCORPORATED, DOING BUSINESS AS DAVESTAR TELEVISION NETWORK.

*Plaintiffs,*

*vs.*

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION,  
UNITED STATES DEPARTMENT OF LABOR; UNITED STATES

- Exceed power to regulate interstate commerce
- Violated the “nondelegation doctrine”
- If a “grave danger” exists and vaccination has been approved for nearly a year, why now and not then?





UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
MONROE DIVISION

THE STATE OF LOUISIANA,  
By and through its Attorney General, JEFF  
LANDRY;

THE STATE OF MONTANA,  
By and through its Attorney General, AUSTIN  
KNUDSEN;

THE STATE OF ARIZONA, By and through  
its Attorney General, MARK BRNOVICH;

THE STATE OF ALABAMA, By and through  
its Attorney General, STEVE MARSHALL;

THE STATE OF GEORGIA, By and through  
its Attorney General, CHRISTOPHER CARR;

THE STATE OF IDAHO, By and through its  
Attorney General, LAWRENCE G. WASDEN;

THE STATE OF INDIANA, By and through  
its Attorney General, THEODORE M.  
ROKITA;

THE STATE OF MISSISSIPPI, By and through  
its Attorney General, LYNN FITCH;

THE STATE OF OKLAHOMA, By and  
through its Attorney General, JOHN M.  
O'CONNOR;

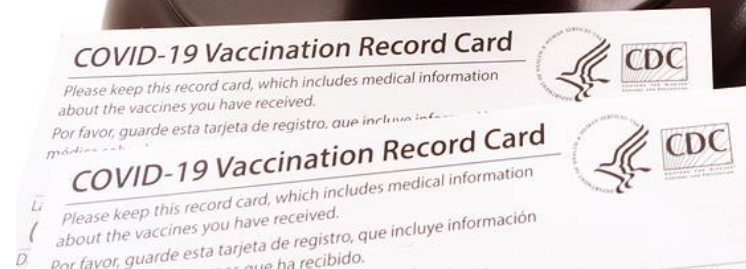
THE STATE OF SOUTH CAROLINA, By  
and through its Attorney General, ALAN WIL-  
SON;

THE STATE OF UTAH, By and through its  
Attorney General, SEAN D. REYES;

THE STATE OF WEST VIRGINIA, By and  
through its Attorney General, PATRICK MOR-  
RISEY;

CIVIL ACTION No. \_\_\_\_\_

- Exceed Statutory Authority
- Violates 42 U.S.C. § 1395
- Administrative Procedures Act (APA)
- Violates the Spending Clause
- Anti-Commandeering Clause
- 10<sup>th</sup> Amendment



# Accommodation Requests

**EMPLOYEE REASONABLE ACCOMMODATION REQUEST FORM**

**Reasonable Accommodation:** A reasonable accommodation is any change to the workplace or the way things are customarily done that enables an individual with a disability to perform the essential functions of the job.

**The EOE provides reasonable accommodation:**

- When an individual with a disability needs an accommodation to perform the essential functions of the job.
- When an employee with a disability needs an accommodation to perform the essential functions of the job.
- When an employee with a disability needs an accommodation to perform the essential functions of the job.

**Provide Employee Name/Job Title/Department/Supervisor Name:**

**Address:** \_\_\_\_\_

**City:** \_\_\_\_\_ **State:** \_\_\_\_\_ **Zip:** \_\_\_\_\_

**Phone:** \_\_\_\_\_

**Supervisor:** \_\_\_\_\_

**Supervisor Name:** \_\_\_\_\_

**Identify the limitation resulting from the disability:**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Accommodation(s) and/or modification(s) sought:**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Employee Name:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Employee Signature:** \_\_\_\_\_

**HUMAN RESOURCES REASONABLE ACCOMMODATION PROCESS FORM**

**Provide Employee Name/Job Title/Department/Supervisor Name:**

**Position Title:** \_\_\_\_\_

**Department:** \_\_\_\_\_

**Supervisor Name:** \_\_\_\_\_

**Accommodation(s) and/or modification(s) sought:**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**HR Representative Name:** \_\_\_\_\_ **Date/Time:** \_\_\_\_\_

**STEP 1**

**Review Job Description:** Human Resources must review the job description for the position of the employee requesting the reasonable accommodation to determine the essential functions of the position. Identify non-essential functions that may be reassignable to other employees for purposes of accommodation.

**Accommodation(s) and/or modification(s) sought:**

\_\_\_\_\_

**STEP 2**

**Engage in the interactive process:** The employee initiates the need for assistance based on disability, consistent with the following steps:

- Document all efforts and interactions taken as part of the interactive process related to the accommodation request.
- Include Data Communication Method, Summary of Communication, etc.
- Determine whether there is medical documentation or other relevant objective information provided that the employee has a physical or mental impairment that substantially limits a major life activity.
- Document all communications with the employee, the employee's health care provider, and supervisors who have knowledge of the employee and the job. (e.g., employee's supervisor, supervisor, employee assistance program (EAP) counselor, or a counselor or rehabilitation counselor, as appropriate).
- Determine whether the employee's physical or mental impairment substantially limits the employee's ability to perform the essential functions of the position or to engage and interact with the accommodation.
- Include documentation that includes the factors considered and reviewed as part of the process.
- If requested accommodation results in an undue hardship, document how providing the accommodation would involve great difficulty or expense.

**HR Representative Name:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**HR Representative Signature:** \_\_\_\_\_

**Accommodation(s) and/or modification(s) sought:**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Employee Name:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Employee Signature:** \_\_\_\_\_

- Have a consistent policy & procedure for requesting the accommodation
- Document the interactive process
- Be consistent
- Must be confidential

\*\*\*Train supervisors to recognize accommodation requests



# Medical



- May request medical information
- “only seek medical information sufficient to explain:
  - The nature of the disability
  - Individual’s need for a reasonable accommodation
  - How the requested accommodation will assist the individual in performing the essential functions of the job
  - May provide a list of question for the healthcare provider to answer
  - Can be reviewed by a company healthcare provider



mericans with

isabilities

ct



# Religious Objections

- “Sincerely held religious belief”
- Interpreted broadly
- If the employer has an objective basis for questioning either the religious nature or the sincerity of a particular belief or practice, the employer could seek additional supporting information.
- Have they received other vaccinations

No churches officially oppose vaccinations in general, & very few openly discourage them.



A cross-shaped arrangement of wooden blocks on a blue background. The horizontal row of blocks spells out the word 'FAKE' in black capital letters. The vertical row of blocks spells out the word 'FACT' in black capital letters. In the bottom right corner, there is a red, stylized icon of a virus or coronavirus with several spikes.



**CERTIFIED EXEMPTION**

**COVID VACCINE WAIVER**

**PATIENT INFORMATION**

Name: Scott Moore

Date: 08/18/2021

**Physician Signature**

*[Signature]*

**Robert C. Cady, M.D.** - Northwood Medical Group

**US**

**Thank you for your purchase!**

For best results, provide card and say, "I am medically unable to receive the COVID vaccine, and my doctor has provided this documentation of that fact."

Gatekeepers are NOT allowed to ask about the circumstances of your waiver or what medical reason makes you ineligible for the vaccine.







