

# Got accommodations?

Exploring the intersection of COVID related disabilities, anxieties, race and socio-economic status

Susan B. Smith, Senior Counsel, Temple University

Bacardi Jackson, Managing Attorney, Southern Poverty Law Center

Michael Sullivan, Partner, Paul, Plevin, Sullivan & Connaughton

1

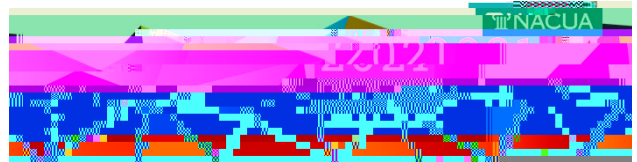
## Summary of Presentation

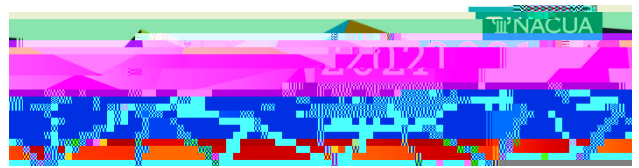
- Returning to campus
- Accommodation keys
- “Regarded as”
- Vaccination
- Role of race
- Operationalizing for justice
- Equity concerns for remote work
- Panel questions and scenarios

2

# Working From Home/returning to Campus

- What is a disability?
- What information can be requested/expected from the employee/student?





# The Role of Race in Workplace Accommodations

- Systemic inequality links race to poverty and disability
- Black people are more likely to have a disability and the disability is likely to have a greater impact
- Disability is both a cause and consequence of poverty
  - Exacerbates circumstances of poorer outcomes in education, income and employment caused by systemic inequality



## Operationalize for Justice

- Disparate Impact of COVID-19 and Returning to Work
  - Essential v. Non-essential
    - BIPOC people more likely to be deemed essential, exposed, and have more severe health consequences
  - WFH not required, but virtual workplace more equitable
    - People with disabilities (accessibility)
    - Women (childcare, harassment, promotional opportunities)
    - BIPOC people (greater health/healthcare challenges)
    - People experiencing poverty (lower healthcare accessibility)



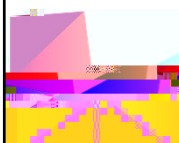
## Equity Concerns with Remote Work

- Connectivity
- Accessibility of online environment for certain impairments (e.g., visual)
- Productivity of caregivers
- Housing insecurity or shared living environments



9

## Panel questions



10



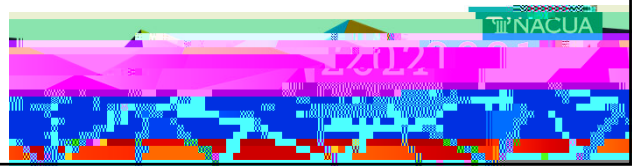
## Scenario #2

- Your university found that remote teaching was largely effective and opts to continue a hybrid approach.
- How do you manage legal claims or union grievances by employees who are not given remote work options?
- What about the fact that most of those not offered remote work are lower wage earners?
- What about morale and fairness issues?



# Accommodation

- How do you separate, if you do, generalized fear from phobia?
- How does this impact treatment of other fears (i.e., not related to COVID)?



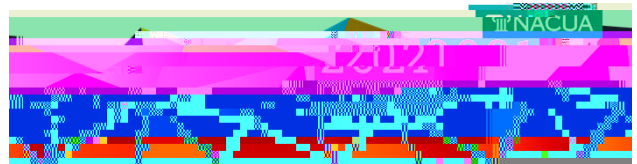
# Accommodation





# Vaccination

- What if an employee refuses vaccination because they believe it will alter their DNA?



# Vaccination

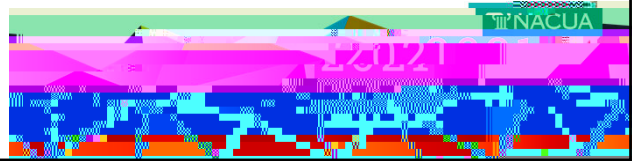
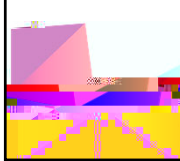
- How deeply can an employer probe into an employee's claim of a religious exception to mandatory vaccination?
- What constitutes a sincerely held religious belief?
- Should an institution's religious accommodation policy be revised?



19

# Vaccination

- What should an institution do with the unvaccinated?
  - Physical separation of employees?
  - Designated dorm floors for students?



20

# Vaccination

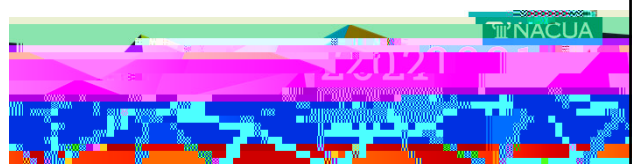
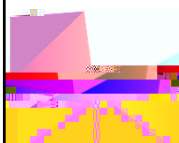
- How do we deal with the refusal by others to interact with individuals who are not vaccinated?
- How does an institution prepare for claims of vaccination harassment?



21

# Vaccination

- If you incentivize vaccination, how do you deal with those who were already vaccinated?
- What about those who require accommodation or who have sincerely held race-related concerns regarding vaccination?



22

# Takeaway Points

- Preparation for issues won't solve them, but will help
  - Policies
  - Staying current
  - Templates
- Repeatedly request information, but don't relinquish control
- Consistency of process must be juxtaposed with individual evaluation
- Don't stop communicating (and documenting)
- Consider equity considerations beyond legal requirements

NACUA materials, PowerPoint slides and recordings available as part of this program are offered as educational materials for higher education lawyers and administrators. They are prepared by presenters and are not reviewed for legal content by NACUA. They express the legal opinions and interpretations of the authors.

Answers to legal questions often depend on specific facts, and state and local laws, as well as institutional policies and practices. The materials, PowerPoint slides and comments of the presenters should not be used as legal advice. Legal questions should be directed to institutional legal counsel.

Those wishing to re-use the materials, PowerPoint slides or recordings should contact NACUA ([nacua@nacua.org](mailto:nacua@nacua.org)) prior to any re-use.