

COVID-19 Workplace Vaccination Policy FAQs for Employers

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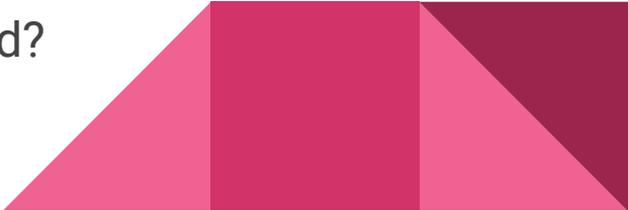
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Today's Presentation

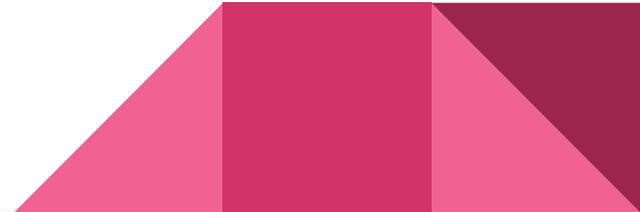
- Are child care providers required to be vaccinated?
 - Should I mandate COVID-19 vaccines?
 - Can I require my employees to get a vaccine?
 - Can I require proof of vaccination?
 - What should a vaccination policy include?
 - What other factors should I consider?
 - How do I respond to employees who fail to comply with vaccination requirements and fail to request reasonable accommodations?
 - Can I require that parents and children get vaccinated?
 - Questions
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Are providers required to be vaccinated?

- Currently, there are no federal, state, or local laws mandating child care providers to be vaccinated against COVID-19 in order to operate a child care program.
 - However, Federal contractor employees must be fully-vaccinated by January 18, 2022. Head Start and Early Head Start providers will have until January 31, 2022 to be vaccinated.
- “Licensees and providers **must** continue to mitigate the spread of COVID-19.” *Guidance for Child Care Providers and Programs*, California Department of Public Health, June 29, 2021 (emphasis in original).

Should I mandate vaccines?

- Benefits to mandating vaccines
 - Protecting workplace and community health
 - Reducing costs of absences and lost productivity
 - Reducing business closures
 - Reducing the risk of liability



Can I require my employees to get a vaccine?

- Yes, subject to potential exceptions
 1. Disability-related accommodations
 2. Religion-related accommodations
 3. Pregnancy exemption
- Authorized vaccines
 - Pfizer-BioNTech
 - Moderna
 - Janssen



1. Disability-related Accommodations

- Requirement to accommodate
 - Employers must reasonably accommodate employees' known disabilities
 - Employer must engage in a "timely, good faith, interactive process,"
 - Retaliation and disclosure are prohibited

- Examples of reasonable accommodations
 - Providing and requiring the use of PPE
 - Social distancing
 - Reconfiguring workspaces
 - Eliminating common spaces
 - Increasing ventilation
 - Reduced office capacity
 - Modified shifts
 - Requiring periodic COVID-19 tests
 - Remote working arrangements
 - Allowing the employee to use paid leave
 - Reassignment of the employee

What if reasonable accommodations cannot be made?

- Employer may exclude the employee from the workplace if:
 1. The accommodation imposes an “undue hardship”;
 2. The employee is unable to perform essential duties even with reasonable accommodations; or
 3. The employee cannot perform those duties in a manner that does not pose a “direct threat” to the health or safety of individuals in the workplace.
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What is undue hardship?

- Undue hardship requires “significant difficulty or expense” in consideration of numerous factors including:
 1. The nature and cost of the accommodation;
 2. The employer’s financial ability to provide the accommodation, the total number of employees, and the impact of the accommodations on the operation of the business; and
 3. The nature of the business or operation.



What is a direct threat to health and safety?

- A direct threat is a “significant risk of bodily harm,” and can take into consideration:
 1. Whether the requested accommodation would constitute a direct threat to the health or safety of others;
 2. Whether the risk would cause substantial physical damage to the property of others; and
 3. If such risks cannot be sufficiently mitigated or eliminated by another reasonable accommodation.
 - Employers should conduct an individualized assessment that relies on objective evidence.
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2. Religion-related Accommodations

- Requirement to accommodate
 - Employer must reasonably accommodate an employee's sincerely held religious beliefs, practices, or observances
 - Unless doing so would result in an "undue hardship"
 - Retaliation is prohibited
- Examples of reasonable accommodations
 - One that "eliminates the conflict" between the sincerely-held religious belief or practice and the vaccination requirement
 - May include job restructuring, job reassignment, or modification of work practices

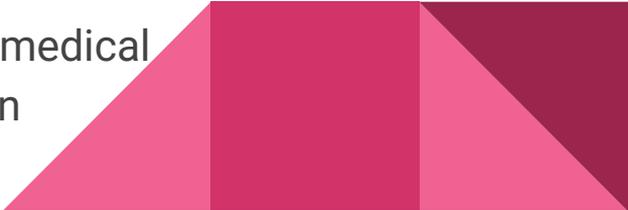


3. Pregnancy Exemption

- Requirement to accommodate
 - An employer cannot discriminate against an employee on the basis of pregnancy
 - Employer must reasonably accommodate an employee who is pregnant to the extent accommodations are provided to similarly situated employees
 - Retaliation is prohibited
- Examples of reasonable accommodations
 - Remote work arrangements
 - Changes to work schedules or assignments
 - Temporary leave



Can I require proof of vaccination?

- Proof of receipt of vaccine
 - Subject to the exemptions mentioned earlier, employer may require employees to submit a proof of receipt of a COVID-19 vaccination
 - Proof must be maintained as confidential medical records separate from other employee files
 - Asking follow-up questions
 - Employer is limited by the types of inquiries allowable regarding an employee's disability, religious creed, or medical status
 - Employer should limit scope of follow-up questions
 - Employer should instruct their employees to omit any medical or family-history information from such documentation
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Can I disclose an employee's vaccination status?

- No, an employer cannot disclose an employee's vaccination status to others, as this is confidential medical information.
- Other considerations
 - Keep confidential any employee health information obtained
 - Keep an employee's medical file separate from the employee's personnel file
- What can you share?
 - Aggregated and anonymous numbers about vaccination rates
 - That the employer has a mandatory vaccination policy in place
 - Employees may voluntarily share information with others

What should a vaccination policy include?

- Consider a written policy so that expectations are clear. Things to include:
 - Scope of policy and which employees it applies to
 - Rationale for policy behind mandating vaccination
 - Deadline by when employees must be fully vaccinated
 - Clearly identify the vaccination verification process, including records the employee must provide and the information an employee should not provide
 - Clearly state the potential consequences of violation, including reasonable disciplinary policies and practices to which employees may be subject
 - An outline of the legally authorized exemptions to the vaccine
 - Information on the steps to take to request a reasonable accommodation
 - A statement that the employer is not obligated to accept every accommodation. Only reasonable accommodations must be made, except in the case of undue hardship

What other factors should I consider?

- Payroll obligations
 - If employer mandates vaccination or COVID-testing, employer must pay employee for time spent getting vaccine/testing (including travel time)
 - Employers with more than 25 employees must provide paid COVID-19 related sick leave - this leave may be used for vaccine related side effects
 - Reimburse employees for out-of-pockets costs for vaccination
- Incentives
 - Employers can offer incentives for vaccinations
 - Should not be an incentive that would tend to discriminate against a whole group
 - Employees with a legitimate exemption should be offered alternative options to earn the incentive

How to respond to employees who fail to comply with vaccination requirements and fail to request a reasonable accommodation?

- Follow up with employee to understand why they have not provided proof of vaccination and/or better understand their concerns
 - If appropriate, provide resources on vaccine safety and efficacy and importance of vaccine to controlling the COVID-19 pandemic
 - For employees who need time to schedule vaccination, provide support
 - If employee continues to refuse vaccination for an unprotected reason, decide next steps for further action.
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Can I require parents and children to be vaccinated?

- Yes, subject to potential disability related accommodations
- If a provider does mandate COVID-19 vaccinations for children and/or parents, CDPH recommends that the confirmation be documented in the same way immunizations are documented and maintained in the facility file. Those confirming may review and accept a hard copy or digital record of vaccine receipt.



Resources

- Public Counsel's COVID-19 Workplace Vaccination Policy FAQ For California Employers :
<http://www.publiccounsel.org/tools/assets/files/1643.pdf>
- EEOC COVID-19 Guidance: <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>
- Cal. DFEH COVID-19 Guidance: https://www.dfeh.ca.gov/wp-content/uploads/sites/32/2020/03/DFEH-Employment-Information-on-COVID-19-FAQ_ENG.pdf
- CDPH COVID-19 Guidance for Child Care Providers:
<https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Child-Care-Guidance.aspx#>
- Cal. DIR COVID-19 Guidance:
<https://www.dir.ca.gov/dosh/coronavirus/COVID19FAQs.html#vaccin>

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Questions & Answers

Contact Us

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Online Intake Form:

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