



VIA EMAIL AND US MAIL

Armel.Biscocho@dor.ca.gov

November 30, 2021

Armel Biscocho, Deputy Director
Administrative Services Division
Department of Rehabilitation
P.O. Box 944222
Sacramento, CA 94244-2220

RICHARD
LOUIS BROWN
President

DAVID JIMENEZ
Vice President/
Secretary-Treasurer

ANICA WALLS
Vice President for
Organizing/Representation

IRENE GREEN
Vice President for Bargaining

Re: **CEASE AND DESIST BAD FAITH VACCINATION
REQUIREMENT**

Dear Mr. Biscocho:

SEIU Local 1000 represents its Bargaining Unit employees in your department. Your memo dated November 29, 2021, attached hereto, constitutes a unilateral change in violation of a settlement agreement reached in Unfair Practice Charge, PERB No. SA-CE-2205-S, which ensures that no employee would be subject to discipline regarding their vaccination status. Now, the Department of Rehabilitation (DOR) incorrectly states that employees will be subject to discipline if they do not provide evidence that they are fully vaccinated by the arbitrary deadline listed in your memo. (See Par. 5)

We can only conclude that this reverse course is in direct violation of employee rights as set forth in the attached settlement and as prescribed by the Dills Act. After the State and the Union endeavored to resolve this matter in a mutual settlement, the parties agreed to the following term:

6. The parties mutually agree and acknowledge that it is voluntary for any state employee represented by SEIU to disclose their vaccination status to their employer. Accordingly, Respondent agrees that no state employee represented by SEIU and covered by this settlement agreement shall be disciplined or threatened with discipline for declining to disclose their vaccination status. Respondent agrees that if discipline has been issued contrary to this provision, such action is inconsistent with this settlement agreement and state departments shall take all necessary administrative steps to revoke the disciplinary action or charges therein that are contrary to this Agreement. Respondent further agrees that no state employee represented by SEIU shall be retaliated or discriminated against for declining to disclose their vaccination status. However, all state employees represented by SEIU will be subject to Respondent's COVID-19 testing protocol unless they meet one or more of the conditions identified in paragraph three herein.

SERVICE EMPLOYEES
INTERNATIONAL UNION
CTW, CLC

1808 14th Street
Sacramento, CA 95811

866.471.SEIU (7348)
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It appears that DOR is now violating this very provision. DOR's demand for evidence of vaccination status under threat of discipline is unilaterally changing the rights employees have acquired by settlement and appears intentionally orchestrated to deter SEIU's efforts on behalf of its represented workers. Moreover, such a reversal of agreement to a settlement with a Union is blatantly anti-union and operates to chill employee reliance on Union representation.

This letter demands that DOR retract its memo and cease and desist from threatening discipline regarding employee vaccination status. If DOR fails to correct this unauthorized threat, Local 1000 will have no alternative but to assume that these actions constitute a unilateral change as well as employer interference with the Union's protected activity and even retaliation. SEIU Local 1000 intends to exercise all options available to it through PERB in order to protect the rights of its represented workers.

Very truly yours,



ANNE M. GIESE
Chief Counsel

AMG:rje

cc: Richard Louis Brown, President, SEIU Local 1000

From: Washington, Rose@DOR <Rosalie.Washington@dor.ca.gov>
Sent: Monday, November 29, 2021 8:55:32 AM
To: DOR Department of Rehabilitation (DORALL) <DORALL@dor.ca.gov>
Subject: Federal Contract Worker Vaccine Requirement

Subject: Federal Contract Worker Vaccine Requirement

TO: All DOR Employees (DORALL)
FROM: Armel Biscocho, Deputy Director
Administrative Services Division
DATE: November 29, 2021
SUBJECT: Federal Contract Worker Vaccine Requirement

[Presidential Executive Order 14042](#) and implementing guidance by the [Safer Federal Workforce Task Force](#) establishes the Federal Contract Worker Vaccine Requirement (Vaccine Requirement), which requires certain employees of the Department of Rehabilitation (DOR) to receive their first dose of a one-dose regimen or their second dose of a two-dose regimen by January 4, 2022, unless the employee is legally entitled to a reasonable accommodation. This memorandum provides information on the Vaccine Requirement and the DOR employees impacted.

1. Why does the Vaccine Requirement apply to DOR?

The Vaccine Requirement applies to certain employees of DOR because of the Business Enterprises Program's food service contracts at military bases in California (Federal Contract).

2. Who at DOR is required to comply with the Vaccine Requirement?

- The Vaccine Requirement applies to DOR employees working on or in connection with a Federal Contract, even if they are working remotely. "Working on or in connection with" includes all duties necessary to the performance of the Federal Contract, including work by employees who are not directly engaged in performing the specific work called for by the Federal Contract, such as human resources, accounting or legal services.

- The Vaccine Requirement also applies to all employees who work at DOR offices where employees work on or in connection with a Federal Contract work. At this time, we have determined that the Vaccine Requirement applies to all DOR employees who work or visit any of the following three DOR offices because some employees at these offices work on or in connection with a Federal Contract:
 - a. Central Office, 721 Capitol Mall, Sacramento, California 95814
 - b. San Diego District Office, 7575 Metropolitan Drive, Suite 107, San Diego, California 92108
 - c. Business Enterprises Program Office, 340 West Fourth Street, Suite 150, Los Angeles, California 90013

It is the Supervisor's responsibility to ensure these requirements are met.

3. What does fully vaccinated mean?

Fully vaccinated means the employee received, at least 14 days prior, either the second dose in a two-dose COVID-19 vaccine series or a single-dose COVID-19 vaccine. Vaccines must be Food and Drug Administration (FDA) approved and have an emergency use authorization from the FDA, or for persons fully vaccinated outside the United States, be listed for emergency use by the World Health Organization. For more information, please see the [DORALL on New Vaccine Verification and Testing Requirements for State Employees \(July 30, 2021\)](#), which includes information on the meaning of fully vaccinated, acceptable proof of vaccination, and the process for providing your Supervisor with verification of vaccination.

4. Can an employee request a reasonable accommodation based on a religious or qualifying medical reason?

Yes, employees who believe that the Vaccine Requirement should not apply to them because of a religious or qualifying medical reason may request a reasonable accommodation by contacting DOR's Reasonable Accommodation Coordinator in the Office of Civil Rights at OCR@dor.ca.gov.

5. What are the consequences of not complying with the Vaccine Requirement?

DOR employees who are subject to the Vaccine Requirement must be fully vaccinated by January 18, 2022, unless exempted because of an approved reasonable accommodation. In situations of non-compliance with the Vaccine Requirement, the Supervisor will provide the employee with a disciplinary memo to document each incident of insubordination and dock the employee's pay for the days that the employee is unable to report to work because the employee refused to be fully vaccinated in accordance with the Vaccine Requirement. The Supervisor will work with their assigned Performance Management Analyst to go through the progressive discipline process, including adverse action up to termination.

6. Where can you find more information about the Vaccine Requirement?

Information about the Vaccine Requirement is available on the Federal Government's website at <https://www.saferfederalworkforce.gov/contractors/>.

7. How can you get fully vaccinated?

Visit <https://myturn.ca.gov> to find a walk-in clinic or make an appointment for a COVID-19 vaccine in your community. If you need to take time off work to get your vaccine, please contact your Supervisor to request a reasonable amount of Administrative Time Off. You may also find more information about COVID-19 vaccines from the California Department of Public Health's website at <https://covid19.ca.gov/>.

Employees who have already provided proof of full vaccination to their Supervisor do not need to show further documentation.

Your safety in the workplace is a priority for us. We appreciate your cooperation as we implement the Vaccine Requirement. If you have questions or need additional information, please contact your Supervisor or email our Health and Safety Specialist at bshasc@dor.ca.gov.

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10 Attorneys for Respondent

11 STATE OF CALIFORNIA
12 PUBLIC EMPLOYMENT RELATIONS BOARD
13

14 SERVICE EMPLOYEES INTERNATIONAL)	PERB Case No. SA-CE-2205-S
15 UNION, LOCAL 1000,)	
16 Charging Party,)	SETTLEMENT AGREEMENT
17 v.)	
18 STATE OF CALIFORNIA (DEPARTMENT)	
OF HUMAN RESOURCES),)	
19 Respondent.)	
20 _____)	

21
22 WHEREAS, in the interest of promoting harmonious labor relations and to avoid the
23 uncertainties of litigation, the parties to the matter herein have agreed upon a settlement of the
24 matter in dispute between them. The Service Employees International Union, Local 1000
25 (Charging Party or SEIU) and the State of California, Department of Human Resources
26 (Respondent or CalHR) hereby execute the following stipulation and release with regard to the
27 above-captioned unfair practice charge:

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1 1. Respondent acknowledges that SEIU is the exclusive employee representative for
2 state employees in its Bargaining Units, and that SEIU has the right under the Dills Act to bargain
3 on behalf of its represented workers over changes which impact the terms and conditions of
4 employment.

5 2. Respondent agrees to suspend and conclude its vaccine verification program as
6 described in Respondent's prior correspondence to employee representatives dated July 26, 2021,
7 ("July 26, 2021 Notice") as applied to state employees represented by SEIU, and notify departments
8 promptly. Respondent and SEIU acknowledge that this suspension specifically applies to the
9 vaccine verification portion of the July 26, 2021 Notice only, and does not affect the COVID-19
10 testing protocol described in that Notice. While the Notice also referenced the State's COVID-19
11 testing protocol, except as expressly set forth herein, this settlement does not constitute a waiver of
12 any right which SEIU may have to notice or to meet and confer regarding testing protocols. For
13 reference, a copy of this correspondence is attached to this settlement agreement as Exhibit 1.

14 3. Following the execution of this settlement agreement, Respondent will notify all
15 departments who employ state employees represented by SEIU that such state employees will not
16 be subject to Respondent's COVID-19 testing protocol if: (1) the employee has demonstrated they
17 are fully vaccinated for COVID-19 by providing documentation (as specified on page two,
18 paragraph two of Exhibit 1) that the person received, at least 14 days prior, either the second dose in
19 a two-dose COVID-19 vaccine series, or a single-dose COVID-19 vaccine. Vaccines must be FDA
20 approved, have an emergency use authorization from the FDA, or, for persons fully vaccinated
21 outside the United States, be listed for emergency use by the World Health Organization; (2) the
22 employee qualifies for a disability accommodation under the ADA and/or FEHA; or (3) the
23 employee qualifies for a religious accommodation under Title VII and/or FEHA. Respondent
24 reserves the right to alter the vaccine verification and/or testing protocols discussed herein (for
25 example, if dictated by updated medical science and/or public health information), but agrees to
26 promptly notice SEIU concerning any subsequent changes in these areas which impact the terms
27 and conditions of employment for SEIU members, and agrees to meet and confer with SEIU
28 concerning the impact of such changes, upon request. SEIU's agreement herein does not constitute

1 a waiver of the right to be notified of testing protocols issued by departments or of the right to
2 negotiate any additional exclusions, exemptions or protections within the scope of representation in
3 the meet and confers, if requested by SEIU.

4 4. Respondent CalHR agrees to immediately meet and confer with Charging Party to
5 address any negotiable impacts relating to the vaccine verification program identified in paragraphs
6 two and three above.

7 5. To promote swift exchange of information, Respondent agrees that if SEIU also
8 elects to submit written questions to Respondent on issues relating to vaccine verification,
9 Respondent will provide a written response to any such questions as soon as possible, but no later
10 than five working days from the date Respondent receives the questions from SEIU.

11 6. The parties mutually agree and acknowledge that it is voluntary for any state
12 employee represented by SEIU to disclose their vaccination status to their employer. Accordingly,
13 Respondent agrees that no state employee represented by SEIU and covered by this settlement
14 agreement shall be disciplined or threatened with discipline for declining to disclose their
15 vaccination status. Respondent agrees that if discipline has been issued contrary to this provision,
16 such action is inconsistent with this settlement agreement and state departments shall take all
17 necessary administrative steps to revoke the disciplinary action or charges therein that are contrary
18 to this Agreement. Respondent further agrees that no state employee represented by SEIU shall be
19 retaliated or discriminated against for declining to disclose their vaccination status. However, all
20 state employees represented by SEIU will be subject to Respondent's COVID-19 testing protocol
21 unless they meet one or more of the conditions identified in paragraph three herein.

22 7. The parties recognize that the California State Personnel Board (Board) is the
23 constitutional agency charged with reviewing disciplinary actions (see Cal. Const. art. VII, § 3,
24 subd. (a)), and this agreement shall not be interpreted in a way which interferes with the Board's
25 ultimate authority and/or jurisdiction.

26 8. Respondent agrees to follow the expedited dispute resolution process set forth in
27 section 6.14 (mini-arbitration) of the master agreement between the state and SEIU to address any
28 alleged violations of this settlement agreement. The parties agree that participation in this dispute

1 resolution process shall be mandatory, although the state reserves its right to refuse to arbitrate if it
2 believes that the dispute is not fairly encompassed within the terms of this settlement agreement.

3 9. The parties agree that this settlement agreement shall not apply to state employees
4 represented by SEIU who are covered by the orders issued by the California Department of Public
5 Health relating to employees working in health care facilities and/or correctional settings. These
6 orders are attached to this settlement agreement as Exhibit 2. The parties agree that nothing in this
7 settlement will constitute a waiver of any right which SEIU may have to receive notice, to meet and
8 confer, or to otherwise represent the employees in its bargaining units regarding the orders
9 referenced in Exhibit 2.

10 10. Charging Party agrees to withdraw and hereby does withdraw unfair practice charge
11 number SA-CE-2205-S with prejudice.

12 11. The parties agree that nothing contained in this settlement agreement shall be
13 construed as an admission of wrongdoing or liability, or a violation of the Dills Act or any other
14 law.

15 12. The parties agree that nothing herein shall be deemed precedential or constitute a
16 past practice in any other matter.

17 13. SEIU agrees they will not initiate, pursue, assist, join or encourage any lawsuit,
18 grievance, or other legal proceeding against the State of California, Respondent, any related entities,
19 and their agents, officers, members and employees, arising from the vaccine verification dispute
20 settled herein. The parties agree this provision does not limit SEIU from enforcing its rights under
21 this settlement agreement as set forth in paragraph eight herein.

22 14. SEIU, on behalf of themselves, their heirs, executors, administrators and assigns
23 hereby expressly releases the State of California, Respondent, any related entities, and their agents,
24 officers, members and employees from any and all claims, causes of action, suits, demands,
25 grievances, debts, expenses, accounts, obligations, costs, agreements, liens, or damages of any kind,
26 which have arisen as a result of the circumstances surrounding the above-captioned unfair practice
27 charge.

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1 15. This settlement agreement also constitutes a release of all unknown, undisclosed, or
2 unanticipated injuries or damages related to the circumstances surrounding the above-captioned
3 unfair practice charge. California Civil Code section 1542 reads as follows:

4
5 A general release does not extend to claims which the creditor or releasing party does not
6 know or suspect to exist in his or her favor at the time of executing the release and that, if
7 known by him or her, would have materially affected his or her settlement with the debtor or
8 released party.

9 SEIU having consulted with counsel, or having the opportunity to do so, has read the provisions of
10 California Civil Code section 1542 and expressly waives to the fullest extent of the law all rights it
11 may otherwise have under the terms of that code section related to the circumstances surrounding
12 the above-captioned unfair practice charge. This paragraph shall not apply to any claim under the
13 California Workers' Compensation Act.

14 16. This agreement represents the entire agreement between the parties regarding
15 settlement of this matter, and there are no other understandings or representations which are not
16 included within this agreement.

17 17. The parties represent that they have read and understood the terms of this agreement,
18 and that they are authorized to execute this Settlement Agreement on behalf of their principals.

19 18. The parties enter into this agreement freely and voluntarily and with the advice of
20 counsel.

21 19. If any provision of this agreement is found to be illegal, invalid or unenforceable, the
22 remainder of this agreement shall not be affected thereby.

23 20. This agreement may be executed in counterparts, which upon execution shall
24 constitute the agreement. Scanned or copied signature pages shall be as effective as the original.

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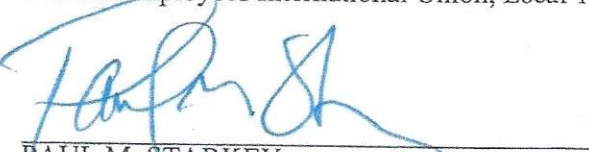
1
2 Dated: 9-28-2021


RICHARD LOUIS BROWN
President
Service Employees International Union, Local 1000

3
4
5 Dated: 09/28/21


ANNE GIESE
Chief Counsel
Service Employees International Union, Local 1000

6
7
8
9 Dated: 9/28/2021


PAUL M. STARKEY
Deputy Director of Labor Relations
Department of Human Resources

10
11
12
13
14 Dated: 9/29/2021



CHRISTOPHER E. THOMAS
Labor Relations Counsel
Department of Human Resources

EXHIBIT 1

Labor Relations Office

1515 S Street, North Building, Suite 500
Sacramento, CA 95811
(916) 324-0476 Fax (916) 322-0765

Governor Gavin Newsom
Secretary, Government Operations Agency Yolanda Richardson
Director Eraina Ortega

July 26, 2021

EMPLOYEE REPRESENTATIVES - Via Email Only

RE: Notice of CalHR Policy for COVID-19 Testing

Dear Labor Leaders,

The combination of low vaccination rates in some communities and the increased transmissibility of the Delta variant of COVID-19 has resulted in increasing case rates.

As of last week, the statewide case rate doubled from a low in May of 1.9 cases/100,000/day to at least 9.5/100,000/day. Our testing positivity was at a low of 0.7% in June, now it has risen to 5.2%. Our hospitalizations went from a low in June of under 900, and have now increased by almost 75%.

The vast majority of new cases involve unvaccinated individuals, with a 600% higher case rate among the unvaccinated compared with those who are vaccinated.

In response to this concerning increase in cases, CalHR is implementing COVID-19 testing of all unvaccinated state employees working on site as an additional health and safety standard to protect the state workforce and the public it serves, and to ensure that employees critical to the continuity of state operations will be able to perform their duties.

State departments will implement mandatory COVID-19 testing of unvaccinated state employees in addition to other precautions already required for unvaccinated employees. The testing protocol for state employees will be phased in over a period of weeks. Departments will provide notice to the designated employee representatives once the testing protocol and start date for their department is established.

Testing is a proven COVID-19 prevention strategy that will complement the other protections currently in place. Because the increase in cases is heavily concentrated in unvaccinated individuals, and consistent with guidance from the California Department of Public Health, the Centers for Disease Control, and the Emergency Temporary Standards approved by the California Occupational Safety and Health Board, fully vaccinated individuals are exempt from COVID-19 testing. Fully vaccinated individuals shall be allowed to elect to participate in COVID-19 testing.

Employee Representatives

July 26, 2021

Page 2

Self-attestation of vaccine status will not be sufficient evidence of vaccination for exemption from testing or wearing a face covering in state facilities. State departments are instructed to implement procedures to collect and maintain evidence of vaccination from employees as soon as possible with full compliance by Monday, August 2, 2021.

Any employee seeking to be exempt from COVID-19 testing or wearing a face covering must provide evidence of vaccination. Employees should access their Digital COVID-19 Vaccine Record to receive a link to a QR code* and digital copy of their vaccine record. If an employee cannot access their digital vaccine record, they may provide a vaccine card or other medical record establishing full vaccination.

More information will be provided in the coming days as we secure and begin to deploy testing resources.

For questions about this communication, please contact the assigned CalHR Labor Relations Officer.

Thank you for your ongoing cooperation and leadership as we work together to support a safe workplace.

Paul Starkey

Deputy Director, Labor Relations

California Department of Human Resources

*<https://myvaccinerecord.cdph.ca.gov>

EXHIBIT 2



State of California—Health and Human
Services Agency
**California Department of
Public Health**



July 26, 2021

TO: All Californians

SUBJECT: State Public Health Officer Order of July 26, 2021

State Public Health Officer Order of July 26, 2021

The COVID-19 pandemic remains a significant challenge in California. COVID-19 vaccines are effective in reducing infection and serious disease. At present, 62% of Californians 12 years of age and older are fully vaccinated with an additional 9% partially vaccinated. California is currently experiencing the fastest increase in COVID-19 cases during the entire pandemic with 11.2 new cases per 100,000 people per day, with case rates increasing fivefold within two months. The Delta variant, which is very highly contagious and possibly more virulent, is currently the most common variant causing new infections in California.

Unvaccinated persons are more likely to get infected and spread the virus, which is transmitted through the air. Most current hospitalizations and deaths are among unvaccinated persons. Thanks to vaccinations and to measures taken since March 2020, California's health care system is currently able to address the increase in cases and hospitalizations. However, additional statewide facility-directed measures are necessary to protect particularly vulnerable populations, and ensure a sufficient, consistent supply of workers in high-risk health care and congregate settings.

Hospitals, skilled nursing facilities (SNFs), and the other health care facility types identified in this order are particularly high-risk settings where COVID-19 outbreaks can have severe consequences for vulnerable populations including hospitalization, severe illness, and death. Further, the congregate and residential settings in this order share several features. They all are residential facilities where the residents have little ability to control the persons with whom they interact. There is frequent exposure to staff and other residents. In many of these settings, the residents are at high risk of severe COVID-19 disease due to underlying health conditions, advanced age, or both.

Vaccinations have been available in California from December 2020 to the present, and from January 1, 2021, to July 12, 2021, a total of 9,056 confirmed COVID-19 outbreaks and 110,734 outbreak-related cases were reported to CDPH. The two most common settings for these outbreaks were: Residential care facilities (22.7%) and SNFs (9.7%). There have been over 4,000 outbreaks in residential care facilities, over 2,000 outbreaks in SNFs, over 450 outbreaks in hospitals, over 200 outbreaks in correctional facilities, and over 450 outbreaks reported in shelters in

California to date. We also noted increasing numbers of health care workers as new positive cases, despite vaccinations being prioritized for this group when vaccines initially became available. Recent outbreaks in health care, SNFs, and other congregate settings have frequently been traced to unvaccinated staff members.

Thus, current requirements of staff in health care settings, such as universal mask requirements for all staff, are not proving sufficient to prevent transmission of the Delta variant, which is more transmissible and may cause more severe illness. Vaccination against COVID-19 is the most effective means of preventing infection with the COVID-19 virus, and subsequent transmission and outbreaks. As we respond to the dramatic increase in cases, transmission prevention measures must be increased for the significant proportion of unvaccinated health and congregate care workers remaining to reduce the chance of transmission to vulnerable populations. Reinforcement of well-fitting facemasks for source control, emphasis on increased respiratory protection with respirators in some settings, and regular testing (when appropriately followed by isolation of individuals who test positive), should contribute to reduction of transmission risk in these high-risk settings to mitigate the absence of vaccination protection.

For these reasons, COVID-19 remains a concern to public health and, in order to prevent its further spread in hospitals, SNFs, high-risk congregate settings and other health care settings, limited and temporary public health requirements are necessary at this time.

I, as State Public Health Officer of the State of California, order:

I. This Order applies to the following facilities:

A. Acute Health Care and Long-Term Care Settings:

1. General Acute Care Hospitals
2. Skilled Nursing Facilities (including Subacute Facilities)
3. Intermediate Care Facilities

B. High-Risk Congregate Settings:

4. Adult and Senior Care Facilities
5. Homeless Shelters
6. State and Local Correctional Facilities and Detention Centers

C. Other Health Care Settings:

7. Acute Psychiatric Hospitals
8. Adult Day Health Care Centers
9. Adult Day Programs Licensed by the California Department of Social Services
10. Program of All-Inclusive Care for the Elderly (PACE) and PACE Centers
11. Ambulatory Surgery Centers
12. Chemical Dependency Recovery Hospitals
13. Clinics & Doctor Offices (including behavioral health, surgical)
14. Congregate Living Health Facilities
15. Dental Offices
16. Dialysis Centers
17. Hospice Facilities
18. Pediatric Day Health and Respite Care Facilities
19. Residential Substance Use Treatment and Mental Health Treatment Facilities

II. All facilities identified in this Order must verify vaccine status of all workers.

A. Pursuant to the CDPH Guidance for Vaccine Records Guidelines & Standards, only the following modes may be used as proof of vaccination:

1. COVID-19 Vaccination Record Card (issued by the Department of Health and Human Services Centers for Disease Control & Prevention or WHO Yellow Card) which includes name of person vaccinated, type of vaccine provided and date last dose administered); OR
2. a photo of a Vaccination Record Card as a separate document; OR
3. a photo of the client's Vaccination Record Card stored on a phone or electronic device; OR
4. documentation of COVID-19 vaccination from a health care provider; OR
5. digital record that includes a QR code that when scanned by a SMART Health Card reader displays to the reader client name, date of birth, vaccine dates and vaccine type. The QR code must also confirm the vaccine record as an official record of the state of California; OR
6. documentation of vaccination from other contracted employers who follow these vaccination records guidelines and standards.

In the absence of knowledge to the contrary, a facility may accept the documentation presented as valid.

B. Facilities must have a plan in place for tracking verified worker vaccination status. Records of vaccination verification must be made available, upon request, to the local health jurisdiction for purposes of case investigation.

C. Workers who are not fully vaccinated, or for whom vaccine status is unknown or documentation is not provided, must be considered unvaccinated.

III. Respirator or mask requirements:

A. All facilities identified in this Order must strictly adhere to current CDPH Masking Guidance. To the extent they are already applicable, facilities must also continue to adhere to Cal/OSHA's standards for Aerosol Transmissible Diseases (ATD), which requires respirator use in areas where suspected and confirmed COVID-19 cases may be present, and the Emergency Temporary Standards (ETS) that requires all unvaccinated workers be provided a respirator upon request.

B. Acute Health Care and Long-Term Care Settings:

In addition to respirators required under Title 8 of the California Code of Regulations, facilities must provide respirators to all unvaccinated or incompletely vaccinated workers who work in indoor work settings where (1) care is provided to patients or residents, or (2) to which patients or residents have access for any purpose. Workers are strongly encouraged to wear respirators in all such settings. The facility must provide the respirators at no cost, and workers must be instructed how to properly wear the respirator and how to perform a seal check according to the manufacturer's instructions.

C. High-Risk Congregate Settings and Other Health Care Settings:

Where Title 8 of the California Code of Regulations does not require the use of respirators, facilities shall provide all unvaccinated or incompletely vaccinated workers with FDA-cleared surgical masks. Workers are required to wear FDA-cleared surgical masks in indoor settings anywhere they are working with another person.

IV. Testing requirements:

A. Acute Health Care and Long-Term Care Settings:

1. Asymptomatic **unvaccinated** or incompletely vaccinated workers are **required to undergo** diagnostic screening testing.
2. Workers may choose either antigen or molecular tests to satisfy this requirement, but unvaccinated or incompletely vaccinated workers must be tested **at least twice weekly** with either PCR testing or antigen testing. Any PCR (molecular) or antigen test used must either have Emergency Use Authorization by the U.S. Food and Drug Administration or be operating per the Laboratory Developed Test requirements by the U.S. Centers for Medicare and Medicaid Services.

B. High-Risk Congregate Settings and Other Health Care Settings:

1. Asymptomatic **unvaccinated** or incompletely vaccinated workers are **required to undergo** diagnostic screening testing.
2. Workers may choose either antigen or molecular tests to satisfy this requirement, but unvaccinated or incompletely vaccinated workers must be tested **at least once weekly** with either PCR testing or antigen testing. More frequent testing improves outbreak prevention and control and is encouraged, especially with antigen testing. Any PCR (molecular) or antigen test used must either have Emergency Use Authorization by the U.S. Food and Drug Administration or be operating per the Laboratory Developed Test requirements by the U.S. Centers for Medicare and Medicaid Services.

C. All Facilities:

1. Unvaccinated or incompletely vaccinated workers must also observe all other infection control requirements, including masking, and are not exempted from the testing requirement even if they have a medical contraindication to vaccination, since they are still potentially able to spread the illness. Previous history of COVID-19 from which the individual recovered more than 90 days earlier, or a previous positive antibody test for COVID-19, **do not** waive this requirement for testing.
2. Diagnostic screening testing of asymptomatic fully vaccinated workers is not currently required. However, fully vaccinated workers may consider continuing routine diagnostic screening testing if they have underlying immunocompromising conditions (e.g., organ transplantation, cancer treatment), which might impact the level of protection provided by COVID-19 vaccine.
3. Facilities with workers required to undergo workplace diagnostic screening testing should have a plan in place for tracking test results, conducting workplace contact tracing, and must report results to local public health departments. There are IT platforms available that can facilitate these processes for facilities.

V. Definitions: For purposes of this Order, the following definitions apply:

A. "Fully Vaccinated" means individuals who are considered fully vaccinated for COVID-19: two weeks or more after they have received the second dose in a 2-dose series (Pfizer-BioNTech or Moderna or vaccine authorized by the World Health Organization), or two weeks or more after they have received a single-dose vaccine (Johnson and Johnson [J&J]/Janssen). COVID-19 vaccines that are currently authorized for emergency use:

1. By the US Food and Drug Administration, are listed at <https://www.fda.gov/emergency-preparedness-and-response/coronavirus-disease-2019-covid-19/covid-19-vaccines>.
2. By the World Health Organization, are listed at <https://extranet.who.int/pqweb/vaccines/covid-19-vaccines>

- B. "Incompletely vaccinated" means persons who have received at least one dose of COVID-19 vaccine but do not meet the definition of **fully vaccinated**.
- C. "Respirator" means a respiratory protection device approved by the National Institute for Occupational Safety and Health (NIOSH) to protect the wearer from particulate matter, such as an N95 filtering facepiece respirator.
- D. "Unvaccinated" means persons who have not received any doses of COVID-19 vaccine or whose status is unknown.
- E. "WHO Yellow Card" refers to the original World Health Organization International Certificate of Vaccination or Prophylaxis issued to the individual following administration of the COVID-19 vaccine in a foreign country.
- F. "Worker" refers to all paid and unpaid persons serving in health care, other health care or congregate settings who have the potential for direct or indirect exposure to patients/clients/residents or SARS-CoV-2 airborne aerosols. Workers include, but are not limited to, nurses, nursing assistants, physicians, technicians, therapists, phlebotomists, pharmacists, students and trainees, contractual staff not employed by the health care facility, and persons not directly involved in patient care, but who could be exposed to infectious agents that can be transmitted in the health care setting (e.g., clerical, dietary, environmental services, laundry, security, engineering and facilities management, administrative, billing, and volunteer personnel).

VI. The Terms of this Order supersede any conflicting terms in any other CDPH orders, directives, or guidance.

VII. Except to the extent this Order provides otherwise, all other terms in my Order of June 11, 2021 remain in effect and shall continue to apply statewide.

VIII. This Order shall take effect on August 9, 2021, at 12:01 am. Facilities must be in full compliance with the Order by August 23, 2021.

IX. This Order is issued pursuant to Health and Safety Code sections 120125, 120140, 120175, 120195 and 131080 and other applicable law.



Tomás J. Aragón, M.D., Dr.P.H.

Director & State Public Health Officer

California Department of Public Health

California Department of Public Health
PO Box, 997377, MS 0500, Sacramento, CA 95899-7377
Department Website (cdph.ca.gov)





State of California—Health and Human
Services Agency
**California Department of
Public Health**



August 5, 2021

TO: All Californians

SUBJECT: Health Care Worker Vaccine Requirement

State Public Health Officer Order of August 5, 2021

The COVID-19 pandemic remains a significant challenge in California. COVID-19 vaccines are effective in reducing infection and serious disease. At present, 63% of Californians 12 years of age and older are fully vaccinated with an additional 10% partially vaccinated. California is currently experiencing the fastest increase in COVID-19 cases during the entire pandemic with 18.3 new cases per 100,000 people per day, with case rates increasing ninefold within two months. The Delta variant is highly transmissible and may cause more severe illness. In fact, recent data suggests that viral load is roughly 1,000 times higher in people infected with the Delta variant than those infected with the original coronavirus strain, according to a recent study. The Delta variant is currently the most common variant causing new infections in California.

Unvaccinated persons are more likely to get infected and spread the virus, which is transmitted through the air. Most current hospitalizations and deaths are among unvaccinated persons. Thanks to vaccinations and to measures taken since March 2020, California's health care system is currently able to address the increase in cases and hospitalizations. However, additional statewide facility-directed measures are necessary to protect particularly vulnerable populations, and ensure a sufficient, consistent supply of workers in high-risk health care settings.

Hospitals, skilled nursing facilities (SNFs), and the other health care facility types identified in this order are particularly high-risk settings where COVID-19 outbreaks can have severe consequences for vulnerable populations including hospitalization, severe illness, and death. Further, the settings in this order share several features. There is frequent exposure to staff and highly vulnerable patients, including elderly, chronically ill, critically ill, medically fragile, and disabled patients. In many of these settings, the patients are at high risk of severe COVID-19 disease due to underlying health conditions, advanced age, or both.

Vaccinations have been available in California from December 2020 to the present, and from January 1, 2021, to July 12, 2021, a total of 9,371 confirmed COVID-19 outbreaks and 113,196 outbreak-related cases were reported to CDPH. Increasing numbers of health care workers are among the new positive cases, despite vaccinations being

prioritized for this group when vaccines initially became available. Recent outbreaks in health care settings have frequently been traced to unvaccinated staff members.

Vaccination against COVID-19 is the most effective means of preventing infection with the COVID-19 virus, and subsequent transmission and outbreaks. As we respond to the dramatic increase in cases, all health care workers must be vaccinated to reduce the chance of transmission to vulnerable populations.

For these reasons, COVID-19 remains a concern to public health and, in order to prevent its further spread in hospitals, SNFs, and other health care settings, new public health requirements are necessary at this time.

NOW, THEREFORE, I, as State Public Health Officer of the State of California, order:

1. All workers who provide services or work in facilities described in subdivision (a) have their first dose of a one-dose regimen or their second dose of a two-dose regimen by September 30, 2021:

a. Health Care Facilities:

- i. General Acute Care Hospitals
- ii. Skilled Nursing Facilities (including Subacute Facilities)
- iii. Intermediate Care Facilities
- iv. Acute Psychiatric Hospitals
- v. Adult Day Health Care Centers
- vi. Program of All-Inclusive Care for the Elderly (PACE) and PACE Centers
- vii. Ambulatory Surgery Centers
- viii. Chemical Dependency Recovery Hospitals
- ix. Clinics & Doctor Offices (including behavioral health, surgical)
- x. Congregate Living Health Facilities
- xi. Dialysis Centers
- xii. Hospice Facilities
- xiii. Pediatric Day Health and Respite Care Facilities
- xiv. Residential Substance Use Treatment and Mental Health Treatment Facilities

b. Two-dose vaccines include: Pfizer-BioNTech or Moderna or vaccine authorized by the World Health Organization. The one-dose vaccine is: Johnson and Johnson [J&J]/Janssen. All COVID-19 vaccines that are currently authorized for emergency use can be found at the following links:

- i. By the US Food and Drug Administration (FDA), are listed at the FDA COVID-19 Vaccines webpage.
- ii. By the World Health Organization (WHO), are listed at the WHO COVID-19 Vaccines webpage.

c. "Worker" refers to all paid and unpaid individuals who work in indoor settings where (1) care is provided to patients, or (2) patients have access for any purpose. This includes workers serving in health care or other health care settings who have the potential for direct or indirect exposure to patients or SARS-CoV-2 airborne aerosols. Workers include, but are not limited to, nurses, nursing assistants, physicians, technicians, therapists, phlebotomists, pharmacists, students and trainees, contractual staff not employed by the health care facility, and persons not directly involved in patient care, but who could be exposed to infectious agents that can be transmitted in the health care setting (e.g., clerical, dietary, environmental services, laundry, security, engineering and facilities management, administrative, billing, and volunteer personnel).

2. Workers may be exempt from the vaccination requirements under section (1) only upon providing the operator of the facility a declination form, signed by the individual stating either of the following: (1) the worker is declining vaccination based on Religious Beliefs, or (2) the worker is excused from receiving any COVID-19 vaccine due to Qualifying Medical Reasons.

a. To be eligible for a Qualified Medical Reasons exemption the worker must also provide to their employer a written statement signed by a physician, nurse practitioner, or other licensed medical professional practicing under the license of a physician stating that the individual qualifies for the exemption (but the statement should not describe the underlying medical condition or disability) and indicating the probable duration of the worker's inability to receive the vaccine (or if the duration is unknown or permanent, so indicate).

3. If an operator of a facility listed above under section (1) deems a worker to have met the requirements of an exemption pursuant to section (2), the unvaccinated exempt worker must meet the following requirements when entering or working in such facility:

a. Test for COVID-19 with either PCR or antigen test that either has Emergency Use Authorization by the U.S. Food and Drug Administration or be operating per the Laboratory Developed Test requirements by the U.S. Centers for Medicare and Medicaid Services. Testing must occur twice weekly for unvaccinated exempt workers in acute health care and long-term care settings, and once weekly for such workers in other health care settings.

b. Wear a surgical mask or higher-level respirator approved by the National Institute of Occupational Safety and Health (NIOSH), such as an N95 filtering facepiece respirator, at all times while in the facility.

4. Consistent with applicable privacy laws and regulations, the operator of the facility must maintain records of workers' vaccination or exemption status. If the worker is exempt pursuant to section (2), the operator of the facility then also must maintain records of the workers' testing results pursuant to section (3).

- a. The facility must provide such records to the local or state Public Health Officer or their designee promptly upon request, and in any event no later than the next business day after receiving the request.
 - b. Operators of the facilities subject to the requirement under section (1) must maintain records pursuant to the CDPH Guidance for Vaccine Records Guidelines & Standards with the following information: (1) full name and date of birth; (2) vaccine manufacturer; and (3) date of vaccine administration (for first dose and, if applicable, second dose).
 - c. For unvaccinated workers: signed declination forms with written health care provider's statement where applicable, as described in section (2) above. Testing records pursuant to section (3) must be maintained.
5. Nothing in this Order limits otherwise applicable requirements related to Personal Protective Equipment, personnel training, and infection control policies and practices.
6. Facilities covered by this Order are encouraged to provide onsite vaccinations, easy access to nearby vaccinations, and education and outreach on vaccinations, including:
- a. access to epidemiologists, physicians, and other counselors who can answer questions or concerns related to vaccinations and provide culturally sensitive advice; and
 - b. access to online resources providing up to date information on COVID-19 science and research.
7. The July 26 Public Health Order will continue to apply.
8. This Order shall take effect on August 5, 2021, and facilities must be in full compliance with the Order by September 30, 2021.
9. This Order is issued pursuant to Health and Safety Code sections 120125, 120140, 120175, 120195 and 131080 and other applicable law.

A handwritten signature in black ink that reads "Tomás Aragón". The signature is fluid and cursive, with the first name "Tomás" and last name "Aragón" clearly distinguishable.

Tomás J. Aragón, MD, DrPH

Director and State Public Health Officer

California Department of Public Health





State of California—Health and Human
Services Agency
**California Department of
Public Health**



August 19, 2021

TO: All Californians

SUBJECT: State and Local Correctional Facilities and Detention Centers Health Care Worker Vaccination Requirement

State Public Health Officer Order of August 19, 2021

I, as State Public Health Officer of the State of California, order:

1. All individuals in section (2) below must have their first dose of a one-dose regimen or their second dose of a two-dose regimen by October 14, 2021:
 - a. Two-dose vaccines include: Pfizer-BioNTech or Moderna or vaccine authorized by the World Health Organization. The one-dose vaccine is: Johnson and Johnson [J&J]/Janssen. All COVID-19 vaccines that are currently authorized for emergency use can be found at the following links:
 - i. By the US Food and Drug Administration (FDA), are listed at the FDA COVID-19 Vaccines webpage.
 - ii. By the World Health Organization (WHO), are listed at the WHO COVID-19 Vaccines webpage.
2. The following workers are subject to the requirements of this Order:

- a. All paid and unpaid individuals who are regularly assigned to provide health care or health care services to inmates, prisoners, or detainees. This may include nurses, nursing assistants, nurse practitioners, physicians, physician assistants, technicians, therapists, phlebotomists, pharmacists, mental health providers, students and trainees, dietary, and contractual staff not employed by the correctional facility or detention center.
 - b. All paid and unpaid individuals who are regularly assigned to work within hospitals, skilled nursing facilities, intermediate care facilities, or the equivalent that are integrated into the correctional facility or detention center in areas where health care is provided. This includes workers providing health care to inmates, prisoners, and detainees, as well as persons not directly involved in delivering health care, but who could be exposed to infectious agents that can be transmitted in the health care setting (e.g., clerical, dietary, janitorial services, laundry, correctional officers, facilities maintenance staff, administrative, inmate workers, and volunteer personnel).
3. Workers in section (2) may be exempt from the vaccination requirements under section (1) only upon providing the operator of the correctional facility or detention center a declination form, signed by the individual stating either of the following: (1) the worker is declining vaccination based on religious beliefs, or (2) the worker is excused from receiving any COVID-19 vaccine due to Qualifying Medical Reasons.
 - a. To be eligible for a Qualified Medical Reasons exemption the worker must also provide to their employer a written statement signed by a physician, nurse practitioner, or other licensed medical professional practicing under the license of a physician stating that the individual qualifies for the exemption (but the statement should not describe the underlying medical condition or disability) and indicating the probable duration of the worker's inability to receive the vaccine (or if the duration is unknown or permanent, so indicate).
4. If an operator of a correctional facility or detention center deems a worker to have met the requirements of an exemption pursuant to section (3), the unvaccinated exempt worker must meet the following requirements when entering or working in such facility:
 - a. Test for COVID-19 with either PCR or antigen test that either has Emergency Use Authorization by the U.S. Food and Drug Administration or be operating per the Laboratory Developed Test requirements by the U.S. Centers for Medicare and Medicaid Services. Testing must occur twice weekly for unvaccinated exempt workers in acute health care and long-term care settings, and once weekly for such workers in other health care settings.
 - b. Wear a surgical mask or higher-level respirator approved by the National Institute of Occupational Safety and Health (NIOSH), such as an N95 filtering facepiece respirator, at all times while in the facility.

5. Consistent with applicable privacy laws and regulations, the operator of the correctional facility or detention center must maintain records of workers' vaccination or exemption status. If the worker is exempt pursuant to section (3), the operator of the correctional facility or detention center then also must maintain records of the workers' testing results pursuant to section (4).

a. The correctional facility or detention center must provide such records to the local or state Public Health Officer or their designee promptly upon request, and in any event no later than the next business day after receiving the request.

b. Operators of correctional facility or detention center facilities subject to this Order must maintain records pursuant to the CDPH Guidance for Vaccine Records Guidelines & Standards with the following information: (1) full name and date of birth; (2) vaccine manufacturer; and (3) date of vaccine administration (for first dose and, if applicable, second dose).

c. For unvaccinated workers: signed declination forms with written health care provider's statement where applicable, as described in section (3) above. Testing records pursuant to section (3) must be maintained.

6. Nothing in this Order limits otherwise applicable requirements related to Personal Protective Equipment, personnel training, and infection control policies and practices.

7. Facilities covered by this Order are encouraged to provide onsite vaccinations, easy access to nearby vaccinations, and education and outreach on vaccinations, including:

a. access to epidemiologists, physicians, and other counselors who can answer questions or concerns related to vaccinations and provide culturally sensitive advice; and

b. access to online resources providing up to date information on COVID-19 science and research.

8. The July 26 Public Health Order will continue to apply.

9. This Order shall take effect on August 19, 2021, and facilities must be in full compliance with the Order by October 14, 2021.

10. This Order is issued pursuant to Health and Safety Code sections 120125, 120140, 120175, 120195 and 131080 and other applicable law.



Tomás J. Aragón, MD, DrPH

Director and State Public Health Officer

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