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LEGAL UPDATE

August 13, 2021

To: Superintendents, Member School Districts (K-12)
From: Jennifer Henry, Associate General Counsel *J.H.*
Subject: CDPH Orders School Employee Vaccination Verification
Memo No. 25-2021

On August 11, 2021, California Department of Public Health (“CDPH”) issued a State Public Health Officer Order (“Order”) for all public and private K-12 schools to verify whether their workers are vaccinated.¹ This Order applies to all public and private schools serving students in transitional kindergarten through grade 12, but does not apply to home schools, child care, or higher education. The Order goes into effect on August 12, and all schools must be in full compliance by October 15. Employees who are not fully vaccinated must be tested at least once a week.

The new requirements, for all K-12 Schools:

- All K-12 schools must verify the vaccine status of all of its workers by October 15. Proof of vaccination can be from the person’s COVID-19 Vaccination Record Card, a photo of the Vaccination Record Card, health care provider documentation, or a SMART Health Card digital record. In the absence of knowledge to the contrary, a school may accept the documentation as valid.
- Unvaccinated workers are required to undergo PCR or antigen testing at least once weekly. Free testing resources are available through the California Schools Testing Program.² Schools may also use ESSER funds, GEER funds, and In-Person Instruction Grant funds (AB 86).
- Schools must have a plan for tracking worker vaccination status. Records of the verification must be made available upon request to the local health jurisdiction. Schools must also have a plan for tracking test results and conducting contact tracing.
- Workers who are not fully vaccinated (only received 1 of 2 doses) or who do

¹ <https://www.gov.ca.gov/2021/08/11/california-implements-first-in-the-nation-measure-to-encourage-teachers-and-school-staff-to-get-vaccinated/>.

² <https://testing.covid19.ca.gov/school-testing/>.



not provide vaccination records, are considered unvaccinated.

- Applies to “workers,” defined as all paid and unpaid adults serving in the school setting, including certificated, classified staff, private school teachers/staff, and volunteers who are on campus.³

This Order does not affect the August 2, 2021 CDPH Guidance requiring masking indoors for all students and adults sharing a space with students.⁴

The Order is supported by Governor Newsom, California Teachers Association (CTA), California School Employees Association (CSEA), Service Employees International Union (SEIU), California State PTA, California Federation of Teachers (CFT), Association of California School Administrators (ACSA), and California Charter Schools Association (CCSA).⁵

Attached is a sample Employee Vaccination Verification Form for districts to use.

Please contact our office with questions regarding this Legal Update or any other legal matter.

The information in this Legal Update is provided as a summary of law and is not intended as legal advice. Application of the law may vary depending on the particular facts and circumstances at issue. We, therefore, recommend that you consult legal counsel to advise you on how the law applies to your specific situation.

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³ Based on the broad language of the Order (all public and private schools), a conservative approach is to consider all administrators, including the superintendent, and other “district office” staff to be “workers” subject to this mandate. The definition of “worker” does not appear to include elected officials, such as district/county board of education trustees and county superintendents. That said, these elected officials may choose to participate in their agencies’ immunization verification process.

⁴ <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/K-12-Guidance-2021-22-School-Year.aspx>.

⁵ <https://www.gov.ca.gov/2021/08/11/california-implements-first-in-the-nation-measure-to-encourage-teachers-and-school-staff-to-get-vaccinated/>, <https://edsources.org/2021/vaccinations-or-regular-covid-tests-required-for-all-california-school-staff-newsom-says/659414>.

[LEA letterhead]

EMPLOYEE VACCINATION VERIFICATION

Employee Name: _____

Employee Title: _____

Employee Worksite: _____

Consistent with the California Department of Public Health Order dated August 11, 2021, Government Newsom's announcement of the same date, and in order with Cal/OSHA regulations and guidance, we are required to determine our employees' vaccination status in order to address safety conditions that may arise due to the presence of COVID-19 in the workplace. "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 a 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:

- By the US Food and Drug Administration (FDA), are listed at the FDA COVID-19 Vaccines webpage
- By the World Health Organization (WHO), are listed at WHO COVID-19 Vaccines webpage
- "Incompletely vaccinated" means persons who have received at least one dose of COVID-19 vaccine but do not meet the definition of fully vaccinated.

In light of this, please provide information requested below to [insert name, title] who will verify the provision of the required information by checking the appropriate box and signing this form.

- Your 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
- A photo of a Vaccination Record Card as a separate document; OR
- A photo of the client's Vaccination Record Card stored on a phone or electronic device; OR
- Documentation of COVID-19 vaccination from a health care provider; OR
- A 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; OR
- Documentation of vaccination from other contracted employers who follow these vaccination records guidelines and standards, i.e. we received the above documentation from an employer with whom you contract.

“Incompletely vaccinated” means persons who have received at least one dose of COVID-19 vaccine but do not meet the definition of fully vaccinated. “Unvaccinated” means persons who have not received any doses of COVID-19 vaccine or whose status is unknown.

If you decline to provide information about your vaccination status, are not fully vaccinated, or if your status is unknown, we are required to assume you are unvaccinated for purposes of rules or requirements in the workplace. These include:

- Asymptomatic unvaccinated or incompletely vaccinated workers are required to undergo diagnostic screening testing. Such workers may be tested with 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. 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.
- Unvaccinated or incompletely vaccinated workers must also observe all other infection control requirements, 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. A 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.

District Use Only:

- Vaccination status is verified as noted in the box checked above.
- Vaccination status is unverified. Employee is asymptomatic unvaccinated or incompletely vaccinated and must undergo diagnostic screening testing. Unvaccinated or incompletely vaccinated workers must also observe all other infection control requirements, 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. Note: A 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.

Signature: _____ Date: _____

[Name]

[Title]