



SCHOOL & COLLEGE LEGAL SERVICES OF CALIFORNIA

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LEGAL UPDATE

October 5, 2021

To: Superintendents, Member School Districts (K-12)
From: Kaitlyn Schwendeman, Assistant General Counsel *KAS*
Subject: Governor Newsom Announces COVID-19 Vaccine Mandate
Memo No. 31-2021

On Friday, October 1, 2021, Governor Newsom announced that all staff and students in California schools¹ will be required to receive a vaccine protecting against COVID-19. A copy of the announcement can be [accessed here](#). The requirement will be clarified in the coming months by regulations promulgated by the California Department of Public Health (“CDPH”).

Students

The Governor announced that all students attending in-person instruction will be required to obtain the COVID-19 vaccine, adding COVID-19 vaccine to the list of other mandatory vaccinations.

Once the U.S. Food and Drug Administration (“FDA”) gives full approval to a COVID-19 vaccination for individuals younger than 18 years old, the requirement for vaccination will go into effect the following legislative term (January 1 or July 1).

The Governor announced that the requirement will apply to students in two grade spans - 7-12 and K-6 - based on when FDA approval for the corresponding age is received. Students who are not age-eligible for vaccination but are within the grade span will be required to be vaccinated within a reasonable amount of time once they attain the applicable age. The State currently anticipates the requirement would apply to grades 7-12 starting July 1, 2022, subject to action by the FDA.

Vaccination will be a requirement for in-person instruction for those students in the applicable range. Students who are enrolled in independent study will not be required to be vaccinated, but may not return to in-person instruction until vaccinated as required.

Employees

¹ The mandate will apply to students in “any private or public elementary or secondary school.” Health and Welfare Code § 120335, sub. (b).



All K-12 school employees will be required to be vaccinated against COVID-19. Staff members will be required to be vaccinated “no later than when the first phase of the student requirement becomes effective.”

Once the requirement is in effect, there will no longer be an option for employees to forego vaccination by testing.

Exemptions to Requirement

The announcement noted that Health and Safety Code Section 120335 allows CDPH to add to the list of required immunizations for school admission. However, Health and Safety Code Section 120338 provides that if CDPH expands the list of required immunizations they must permit exemptions “for both medical reasons and personal beliefs.” The scope of these exemptions will be addressed through the rulemaking process by CDPH. We recommend that schools work with legal counsel to address any questions related to requests for exemption from students or staff.

Local Control

The Governor underscored that the purpose of this mandate was to set a minimum requirement for the State. He encouraged local counties and schools to “move forward with their own vaccine requirements,” similar to other districts that have already adopted vaccination mandates.

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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