

## COVID-19 Vaccination Requirement for State, Healthcare, and Educational Workers

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Using emergency powers granted to the Governor during the COVID-19 pandemic, on August 20, 2021, Governor Inslee issued [Proclamation 21-14.1](#), which requires individuals working for state agencies, workers for operators of Educational Settings, and Health Care Providers to be fully vaccinated against COVID-19 by October 18, 2021. The following is a summary of the Proclamation and available guidance regarding the vaccination requirement and applicable exemptions.

### *Vaccinations Required for State, Healthcare, and Educational Workers*

Under the Proclamation, workers for state agencies, workers in Educational Settings, and Health Care Providers are prohibited from engaging in work after October 18, 2021, if they are not fully vaccinated against COVID-19. Similarly, state agencies, operators of Educational Settings, and operators of Health Care Settings are prohibited from permitting individuals who have not been fully vaccinated against COVID-19 from engaging in work after October 18, 2021. Employers subject to the order who have union workers should also be mindful of any requirements that may be posed by any applicable collective bargaining agreements and any duty to bargain the impacts of this vaccination requirement.

To qualify as fully vaccinated, individuals must have received their second dose of a two-dose vaccination or their dose of a one-dose vaccination at least two weeks prior to October 18.

The definition of “worker” in the Proclamation is quite broad and includes:

- employees, on-site volunteers, on-site contractors;
- executive officers of state agencies; and
- individuals appointed to serve on a board, commission, or similar body that is an executive cabinet agency or a small cabinet agency, the State Board for Community and Technical Colleges, a board of trustees for a community or technical college, or a governing board of a four-year institution of higher education.

The Proclamation makes it clear that the vaccination requirement applicable to “workers” does not apply to the following individuals:

- visitors and patrons;
- in educational settings: students and persons receiving service; on-site contractors who do not work in places where students or people receiving services are present; and family, friend and neighbor childcare providers; and
- individuals who are not compensated employees at certain state agencies that are not an executive cabinet agency or a small cabinet agency.

“Health Care Setting” is specifically defined in the Proclamation as any public or private setting that is primarily used for the delivery of in-person health care services to people, unless specifically exempted in

the Proclamation. The Proclamation contains a long, non-exclusive list of examples of facilities that qualify as health care settings, and are therefore subject to the vaccination mandate.

“Educational Setting” includes:

- The majority of public and private universities, colleges, community colleges, technical colleges, and private career or vocational schools;
- All public schools, public school districts, charter schools, private schools, educational service districts, the Washington School for the Deaf, the Washington State School for the Blind, and the Washington Youth Academy; and
- All early learning and child care programs serving groups of children from multiple households.

### ***Proof of Vaccination***

Workers subject to the vaccination requirement must provide their employer with proof of vaccination using one of the following four methods:

- a CDC COVID-19 Vaccination Records Card or a photo of the card;
- documentation of vaccination from a healthcare provider or electronic health record;
- a state immunization system record; or
- equivalent documentation for any individuals who were vaccinated outside of the U.S.

Employers subject to the vaccination requirement must see proof of vaccination for every worker who is not granted an accommodation, but are not required to keep a copy of record, although they may choose to do so. Employers subject to the order may also choose to require the employer of a contractor subject to the order to assume responsibility for vaccination verifications and accommodations.

### ***Disability and Religious Accommodations – Exemptions to Requirement***

Despite the sweeping nature of the Proclamation and the urgent public health need to get as many individuals vaccinated as possible, employers subject to the order must ensure that they are following all state and federal antidiscrimination laws when implementing its provisions. These include the Americans with Disabilities Act of 1990 (ADA), the Rehabilitation Act of 1973 (Rehabilitation Act), Title VII of the Civil Rights Act of 1964 (Title VII), and the Washington Law Against Discrimination (WLAD). To that end, the Proclamation acknowledges that employers subject to the order must provide the opportunity for workers to seek disability-related religious accommodations and sincerely held religious belief accommodations to the vaccination requirement.

Employers are required, to the extent permitted by law, to obtain medical documentation from workers who request a disability-related accommodation and to obtain a statement from workers regarding how the requirements of the order conflict with the worker’s sincerely held religious belief, practice, or observance for those seeking a religious accommodation.

The order specifically prohibits employers from “rubberstamping” accommodations. Employers are prohibited from providing accommodations:

- That the employer knows are based on false, misleading, or dishonest grounds or information;
- That they know are based on the worker's personal preferences alone; or
- Without making an individualized assessment and determination of each worker's need and justification for the accommodation.

Employers subject to the order must, to the extent allowed by law, require that individuals who receive accommodations take safety measures that are consistent with Department of Health recommendations for the setting where the individual works.

The tension between the responsibility and desire to provide accommodations for employees who request them and the mandates against granting accommodations to those who may be making false claims or claims based solely on personal preferences will make navigating this part of the order a challenge for many employers. It is important to proceed with caution when making the determination regarding whether a worker's claim of religious belief, practice, or observance is sincerely held. It is equally important to be deliberate when making the determination of whether a requested accommodation is not reasonable or would cause an undue hardship on an employer, and therefore does not need to be provided to the employee. In order to help employers navigate the challenges presented by these situations, the U.S. Equal Employment Opportunity Commission has published a series of technical assistance questions and answers regarding COVID-19 as it relates to federal nondiscrimination laws that can be found [here](#).

### ***Violators May Face Criminal Penalties***

Violators of any of the provisions contained in the Proclamation may be subject to criminal penalties pursuant to RCW 43.06.220(5), which makes it a gross misdemeanor to willfully violate an order issued by the Governor issued during a state of emergency.

### ***Additional Resources***

You may find the following resources related to this COVID-19 vaccine requirement helpful:

- [COVID-19 Vaccination Requirement for K-12 School Employees: Frequently Asked Questions](#)
- [Guidance for School Districts on Evaluating Religious Accommodation Requests](#)
- [Optional Template for School Districts: Medical Accommodation Request Form](#)
- [Optional Template for School Districts: Religious Accommodation Request Form](#)
- [Governor Inslee – Vaccine Mandate Frequently Asked Questions](#)

### ***Conclusion***

Navigating this COVID-19 vaccination requirement and requests for accommodations to the requirement will be challenging for many employers, as it requires a good working knowledge of the ADA, the Rehabilitation Act, Title VII, and WLAD. Furthermore, employers will have to decide how to handle situations when workers refuse to be vaccinated but do not qualify for a medical or religious

accommodation. We encourage all employers subject to the order to study it and all applicable antidiscrimination laws carefully, and to consult with legal counsel as questions arise.

If you have any questions regarding this information, please contact:

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