

# California sets Vaccine Mandate For Healthcare Workers and Visitors

*Order broadly applicable to hospitals of all kinds, skilled nursing, adult day health centers, ambulatory surgery centers, doctors offices and clinics, residential substance abuse facilities, and others.*

California issued orders over the past week (i) mandating healthcare workers become vaccinated, and (ii) mandating all hospital and long-term health facility visitors show proof of vaccination or recent negative Covid test. The implications of these orders for health care enterprises are wide-ranging, requiring additional human resources processes and front door processes to address new demands to check vaccination status of workers and visitors.

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## I. Vaccinations Required for Workers in Healthcare Facilities

[California Department of Public Health \("CDPH"\)](#) issued an order on August 5th, requiring healthcare workers who provide services in or have the potential for direct or indirect exposure to patients in hospitals, skilled nursing facilities, and other healthcare facilities to be vaccinated no later than September 30, 2021.

### A. Facilities covered by the order

The order applies to "healthcare facilities" and "workers." These definitions are broad. "Healthcare facilities" covers acute, subacute, and behavioral health facilities, including:

- General Acute Care Hospitals
- Skilled Nursing Facilities
- Intermediate Care Facilities
- Acute Psychiatric Hospitals
- Adult Day Health Care Centers
- Program of All-Inclusive Care for the Elderly Centers
- Ambulatory Surgery Centers
- Chemical Dependency Recovery Hospitals
- Clinics & Doctor Offices
- Congregate Living Health Facilities
- Dialysis Centers
- Hospice Facilities
- Pediatric Day Health and Respite Care Facilities
- Residential Substance Use Treatment and Mental Health Treatment Facilities

### B. Workers covered by the order

Similarly, "Workers" is an all-inclusive definition, not limited to just employees, covering employees, contractors, vendors, and volunteers, who are physically present wherever care is given or wherever patients have access in a healthcare facility. Workers include all people who are indoors who share space covered by common air handling, covering clinicians of all types, technicians, therapists, students, trainees, contractors not employed by but present in the healthcare facility, and persons not directly involved in patient care, but who are present in patient care and patient access areas, such as clerical, clergy, dietary, environmental services, laundry, security, engineering, facilities operations, administrative, billing, vendor, and volunteer personnel.

### C. Limited exemptions

There are limited exceptions based on bona fide religious beliefs and medical reasons. Exemption from the vaccination mandate may be sought through the worker submitting, in the case of the religious belief exemption, a signed form declaring opposition to the vaccine based on religious beliefs, or, in the case of medical exemption, a letter from a physician documenting that the worker has a "Qualifying Medical Reason" for not receiving the vaccine. To be eligible for a Qualifying Medical Reason exemption, the worker is required to provide the physician's letter stating that the worker qualifies for the exemption under the terms of the order but not necessarily documenting the underlying medical condition that constitutes the Qualifying Medical Reason. The letter s

also state anticipated duration of the worker's inability to receive the vaccine or whether the duration is permanent.

Employers who accept the exemptions must ensure that exempt workers are (i) screened for fever and other symptoms when reporting to work, (ii) tested weekly or biweekly for COVID-19, and (iii) required to wear a surgical mask or respirator at all times while at work. Testing may be either polymerase chain reaction or antigen tests. Testing is required twice weekly for exempt workers in acute health care and long-term care facilities, and once weekly for all other healthcare settings.

#### **D. Facility recordkeeping requirements**

Facilities subject to the order are required to make and retain a record of workers' vaccination pursuant to CDPH guidelines (available at: <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Vaccine-Record-Guidelines-Standards.aspx>). These guidelines require the facility to record (i) Worker's name and date of birth; (ii) date of vaccinations and vaccine manufacturer; or, if not vaccinated, (iii) documentation supporting the exemption and the ongoing lab test results. Such records should be treated as Personal Health Information maintained on a confidential basis. Local or state Public Health Officers or their designees are empowered to review and audit such records which must be provided promptly upon request (no later than one business day).

#### **E. Interaction with prior order**

The CDPH August 5 order does not replace or supersede its earlier July 26 order, that allowed testing and masking as an alternative to vaccination. The requirements of the July 26 order remain in place until September 30 (including vaccination status checks and periodic testing unvaccinated workers or workers whose status is uncertain), at which time the 'test and mask' alternative to vaccination will no longer be an option.

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## **II. Vaccinations required for Hospital and Long-term Care Facility Visitors**

Effective as of August 11<sup>th</sup>, a separate CDPH August 5 order prescribed strict limitations on visitors to hospitals and long-term care facilities. The order is applicable to general acute care hospitals, skilled nursing facilities, and intermediate care facilities. The order covers only indoor visitation.

The facilities covered by the order must either: (i) verify visitors are fully vaccinated, or (ii) for unvaccinated or incompletely vaccinated visitors, verify documentation of a negative COVID test within the prior 72 hours. Facilities must track visitors in the facility, and record and retain documentation of the vaccination record or negative test.

There is a limited exception where the visitor has neither proof of vaccination or negative test, when the visitor is seeking to visit a patient in critical condition, "when death may be imminent." Such exempt visitors are required to physically distance and wear a mask.

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## **III. Impact of Recent Orders**

From a practical standpoint, these orders impose significant recordkeeping, monitoring, and human resources requirements on covered facilities.

Under applicable CDPH and CalOSHA orders, entry screening continues to be required for all employees and visitors, and, in addition, covered facilities must provide a mechanism for visitors to submit their vaccination and/or negative test results, and record such documentation. These requirements for visitors start on August 11. Facilities must also have a mechanism for monitoring visitors as they enter and transit through the facility, including prominent identification that they are a visitor and their intended destination within the facility. Employees should be trained to address any visitor in areas not their intended destination in transit thereto.

Human resources departments, in conjunction with employee health in larger facilities, must establish secure processes to obtain and maintain records of all employee vaccination and exemption records. More problematic is addressing which internal entity should be responsible for establishing similar processes for contractors, vendors, and volunteers. Most larger facilities will establish protocols for human resources expand their operations to cover such non-employees in order to have a centralized record of vaccination status and/or exemption and test results. Whichever department(s) is/(are) established to collect the data, a centralized, secure data base or filing system should be created to allow for ease of response in the event of an audit by the p



health authorities.

Administration, human resources, and security departments must develop plans and protocols for addressing non-compliant employees, contractors, vendors, and volunteers. Whether an employee is terminated for non-compliance or placed on administrative leave pending completion of vaccination or exemption process should be considered on a case-by-case basis to ensure compliance with employment laws and/or union agreements. But it is clear that non-compliant persons of any type must be denied entry into the facility until they become compliant or are terminated.

If you have any questions about the recent orders, or the issues they raise in your operations, please [contact us](#) (310)203-2800.

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