

CLIENT ALERT

August 2021



Mandatory COVID-19 Vaccinations for School Personnel Under Governor's Executive Order By Maureen A. Lemon

On Thursday, August 26, 2021, Governor Pritzker issued Executive Order 2021-20 (COVID-19 Executive Order 87) mandating that all school district personnel are vaccinated against the virus. All school personnel are expected to have the first dose of a two-dose vaccine series or a single-dose COVID-19 vaccine by September 5, 2021 --- 10 days after the Executive Order. Those needing a second shot must get it within 30 days following the first shot.

Who Must be Vaccinated?

The term "school personnel" is expansive, and includes any employee, volunteer, or contractor who would have close contact (fewer than 6 feet for more than 15 minutes) with any person in a school at least once a week. Note that it says close contact with any person, not merely students. Therefore, this order applies to not only employees, but anyone in a school more than 15 minutes a week—substitutes, coaches, volunteers, those assisting in school events, etc.

Given the expansive definition of school personnel, consider how your school will communicate with contracted employees, substitutes, volunteers, etc., to confirm the vaccination status and/or need to be tested per the Executive Order. Do parents volunteer regularly in the classroom or with extra-curricular or sports programs? A process to obtain proof of their vaccination status and/or weekly testing obligations will need to be established and communicated to them. If they aren't willing to comply, they should not be permitted to volunteer.

Do contracted nurses or joint special education cooperative employees work within your school district? What about employees of contracted food service vendors or transportation providers? You will need to clarify with the contracting agency how the vaccination status of such school personnel will be shared with your school district, how such records will be maintained, and what to do when a contracted individual does not comply with the Executive Order's mandate.

Who is Exempt from Being Vaccinated?

The Order further requires school districts to affirmatively "exclude" unvaccinated personnel from the premises. However, individuals not yet fully vaccinated (received the final dose of vaccine and allowed 2 weeks to pass) can still access the facility if they undergo a COVID-19 test at least one time / week. Likewise, anyone with a medical

contraindication or a sincerely held religious belief, practice, or observance that prevents them from being vaccinated is exempt from the vaccination. However, such individuals shall also undergo the (at minimum) weekly testing described below.

What Proof of Vaccination Status is Acceptable?

To establish that they are fully vaccinated, school personnel should provide one of the following to the school district:

- A CDC COVID-19 vaccination record card or photograph of the card,
- Documentation of vaccination from a health care provider or electronic health record, or
- State immunization records

What if School Personnel Refuse to Share Proof of their Vaccination Status?

If any school personnel does not share proof of their vaccination status, they will be subject to the school district's testing protocol. We recommend that you not ask a school personnel to justify their vaccination status. While the Executive Order mentions exemptions for medical and religious reasons, the Executive Order does not expressly limit the testing option to those with such exemptions. Rather, the Executive Order states that schools shall exclude School Personnel who are not fully vaccinated against COVID-19 from the premises unless they comply with the required testing protocol. Without further guidance, it is our interpretation that school personnel may enter schools as long as they comply with the testing requirements, regardless of the reason why they are not vaccinated.

How Does the Weekly Testing Work?

The test must either be a test that has Emergency Use Authorization by the FDA or be operating per the Laboratory Developed Test requirements by the U.S. Centers for Medicare and Medicaid Services. While the IDPH recommends a PCR test, the SHIELD Illinois saliva test is an acceptable test. The testing may be on a school district site or off-site. The logistics of the testing, including when, where, and whether it occurs as paid or unpaid time, may depend on the terms of any applicable collective bargaining agreements, COVID-19 memoranda of understanding, and/or school board policies.

What Communications Should Be Sent Out?

We recommend that you determine how you will receive and then maintain vaccination status records. Then, swiftly communicate with your school personnel (including volunteers, contracted employees, etc.), about the Mandate and how they can submit proof of their vaccination status by September 5, 2021. We also recommend that you communicate with your exclusive bargaining agents as we anticipate that they may ask to bargain the impact of the Executive Order.

What if School Personnel Refuse to Comply with the Testing Protocol?

The Executive Order requires schools to 'exclude from the premises' those who refuse to comply with its requirements. Individuals who are volunteers should not be allowed to enter the school district premises if they don't abide by the testing protocol. If a contracted individual does not comply, the school district will have to review its vendor contract with the outside agencies to determine what steps can be taken to address the situation. If school employees refuse, they may be required to take a sick day until they produce a negative test, or they may face other progressive discipline for failure to meet an essential job requirement. The school district must follow the processes and procedures contained in applicable school board policies and collective bargaining agreements/MOUs in administering such discipline.

What's Next?

We anticipate that the IDPH and ISBE may issue additional guidance regarding the vaccination mandate. In the meantime, if you have any questions regarding its implementation within your school district, please contact us at (630) 682-0085.

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