

# FREQUENTLY ASKED QUESTIONS ABOUT THE COVID-19 VACCINATION REQUIREMENT

AUGUST 10, 2021

## Is California's [Healthcare Worker Vaccine Requirement](#) legal?

Yes. We have consulted with NUHW's attorney about the mandate. In a [memo](#), he informed us that states such as California have wide latitude to take broad actions to protect the health and safety of state residents. There is strong precedent for state vaccination mandates dating back more than a century to laws requiring vaccinations for smallpox. No union has the legal ability to oppose this order.

## Can NUHW negotiate with my employer over whether to require vaccination?

No. This is a state—rather than employer—mandate requiring healthcare workers to be vaccinated. We cannot bargain with employers over the existence of this mandate because it's a matter of employers following California law. However, we will be bargaining with employers to demand several provisions including onsite access to vaccinations during work time at no cost to members as well as additional paid leave for vaccine related symptoms necessitating time off from work.

## Does NUHW have a legal obligation to protect a member's individual right to refuse vaccination?

No. As our attorney stated in his memo, NUHW has a "duty of fair representation" to represent our members fairly and without discrimination in collective bargaining. This obligation does not require our union to simply do whatever any one individual or group of individual members want. While our union is always ready to defend and protect our members against illegal and retaliatory actions by employers, we can't defend individuals who choose not to comply with a state public health requirement.

## Does my employer have the right to require proof of COVID-19 vaccination? Is it a HIPAA violation?

Employers have the right to require employees to show proof of COVID-19 vaccination. It is not a violation of the Health Insurance Portability and Accountability Act (HIPAA), which is a narrow law limiting the right of a healthcare provider to disclose confidential patient medical information. HIPAA does not apply to the right of an employer (even one who is a healthcare provider) to demand the disclosure of vaccination status from an employee.

## Can the state mandate vaccines that are still under Emergency Use Authorization?

Yes. The state has the right to mandate COVID-19 vaccination even while under Emergency Use Authorization from the U.S. Food and Drug Administration (FDA).

The COVID-19 vaccines underwent the same rigorous clinical trials for safety and efficacy that all fully approved vaccines undergo, including Phase 1, 2, and 3 clinical trials in humans. The Pfizer, Moderna, and Johnson & Johnson vaccine trials each enrolled tens of thousands of study participants of diverse

If you have questions,  
please talk to your  
organizer or contact  
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or [covid19@nuhw.org](mailto:covid19@nuhw.org).

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gender, age, and racial backgrounds. Since these trials, hundreds of millions of doses of the vaccines have been administered in the U.S.

Contrary to what disinformation campaigns on the internet may be saying, these vaccines are NOT considered “experimental.” An experimental medical product is something that has not gone through clinical trials and authorization or approval processes. In contrast, COVID-19 vaccines under Emergency Use Authorization are well studied products that have been determined to be both safe and effective through clinical trials followed by an authorization process overseen by numerous medical experts. Full approval of the vaccines is expected in the months ahead with Pfizer possibly gaining approval by September. For more information on Emergency Use Authorizations, see this [explainer from the FDA](#).

## **What qualifies as a medical exemption? What about pregnancy?**

California’s order does not list specific examples of medical exemptions, but instead states that, “to be eligible for a Qualified Medical Reasons exemption, the worker must also provide to their employer a written statement signed by a physician, nurse practitioner, or other licensed medical professional practicing under the license of a physician stating that the individual qualifies for the exemption.”

If you think you may qualify for medical exemption, we recommend you consult with your medical provider, but you should be aware that eligibility for medical exemption is likely to be very limited. ([One example per the CDC](#) is someone who experienced a “severe allergic reaction (e.g., anaphylaxis) after a previous dose or to a component of the COVID-19 vaccine.”)

Pregnant individuals are eligible to receive COVID-19 vaccines, and the [American College of Obstetricians and Gynecologists \(ACOG\) recommends](#) that all pregnant individuals be vaccinated against COVID-19. If you are pregnant and have concerns or questions about vaccination, we recommend you consult your medical provider.

## **What qualifies as a religious exemption?**

California’s order does not list specific examples of religious exemptions. Healthcare workers who have sincerely held religious beliefs and participate in a religious program that prohibits a COVID-19 vaccination may qualify for an exemption. Healthcare workers seeking an exemption must submit a declination form (your employer can provide this form). Employers may require additional documentation demonstrating participation in a religion that prohibits vaccination.

## **What will happen to those who refuse to get vaccinated?**

The requirement that all healthcare workers in the types of facilities listed in the order be fully vaccinated by September 30 is clear. Unless healthcare workers in these settings qualify for either a medical or religious exemption, they must be vaccinated to continue working.

## **Will testing be required for those who are vaccinated?**

Currently, the order requires twice weekly testing only for those unvaccinated healthcare workers who qualify for either a medical or religious exemption. However, county or state public health authorities may issue new requirements to test even fully vaccinated healthcare workers in response to changing trends in the pandemic.

## **If I am vaccinated and have symptoms, what protocols should my employer follow?**

Even if you are fully vaccinated, if you have symptoms of COVID-19 you should stay home, notify your employer, and call your doctor. You should not return to work until COVID-19 has been ruled out through a negative test and you have been cleared to return to work by a doctor. If you are told to report to work when you have COVID-19 symptoms, immediately notify your NUHW organizer.