

LAW OFFICE OF LORI A. GOLDSTEIN, LLC

CLIENT BULLETIN

COVID COMPLIANCE UPDATE – September 2021



As companies continue to delay their planned return to the office, there has been a flurry of recent activity on the national state and local levels, affecting public and private employers, employees and contractors. While things will continue to change, here's the latest.

Federal Vaccine Mandates

On September 9, President Biden announced a plan to ensure 2/3 of the American work force (over 1 million workers) are vaccinated against COVID-19. This includes **private sector employees**, health care workers and federal contractors, as well as most federal workers, who could face disciplinary measures if they refuse. Subject to medical and religious exemptions, the plan specifics cover:

- Employers: OSHA will soon draft a rule requiring businesses with **100+ employees** to require **vaccination or weekly testing**, with penalties of \$14,000 per violation. The effective date is TBD, but workers will be given sufficient time to get vaccinated. The rule will also require these companies to provide **paid time off for vaccination**.
- Federal government workers: Under a new Executive Order, **government employees and contractors** will have to get vaccinated within 75 days or risk discipline or termination. Weekly testing will no longer be sufficient.
- Schools: School staff funded by the federal government must get vaccinated.
- Airlines: **Fines will double** for people who refuse to wear masks on airplanes.
- Health Care: The DOL rule will also apply to workers at health care facilities that receive Medicare or Medicaid reimbursement (extending a July mandate for nursing home staff to other healthcare settings including hospitals, home-health agencies and dialysis centers.)

Vaccine **booster shots** are on the horizon to bolster protection against the more transmissible Delta variant. Officials are aiming to administer the booster shots about 8 months after the one-dose vaccine or the second dose of the two-dose vaccines. Also, the FDA has granted full approval to Pfizer-BioNTech's coronavirus vaccine for people **16 and older**.

Exemptions from Vaccine Mandates

Under applicable federal and state employment discrimination and accommodations laws, employers can lawfully mandate COVID-19 vaccines for employees and applicants, with **2 exceptions**. The federal Equal Employment Opportunity Commission confirmed this, and to date, courts have upheld COVID vaccine mandates.

Exceptions apply if an individual has a **disability/medical reason** (as supported by medical documentation from a healthcare provider) or a **sincerely held religious belief, practice or observance** that prevents them from getting the vaccine. Whether or not the person has refused ALL vaccines in the past may impact a religious exemption.

If an exemption exists, the employer must make "**reasonable accommodations**" (e.g. a vaccine waiver or remote work), if it enables the individual to perform their duties without a **direct threat** to the health or safety of the worker or others at the workplace, and if it does not create an **undue hardship** to the company.

In **Illinois**, this obligation extends to **independent contractors**. Last year, the Illinois Human Rights Act (IHRA) expanded to cover Illinois contractors and all **employers that have at least 1 employee or contractor working in Illinois**.

United Airlines put an exemption policy into play this week, announcing that "employees with religious exemptions will be placed on voluntary unpaid leave and those with medical exemptions will be placed on temporary medical leave. The policies will remain until the carrier figures out how to "reintegrate them into its workforce."

Reintegration will be a challenge. Not all positions can be remote and not all on-site jobs can be socially distanced and avoid direct threat to the employee or others. The latest court ruling under the federal Americans with Disabilities Act requires as a **reasonable accommodation placing the individual in a vacant position for which they are qualified** (if one exists.) Perhaps they will "reintegrate" by placing workers in different positions that can be accommodated.

Illinois Vaccine Mandates for Healthcare Workers and School Employees

Several states have imposed COVID vaccine requirements. On August 26, Illinois Governor Pritzker announced his Executive Order: **Illinois health care workers and K-12 and college educators, support staff and students** must be vaccinated or submit to weekly testing. He also declared a **statewide mandate for masks** to be worn indoors, for everyone age 2 and older, regardless of vaccination status.

First doses of the vaccine were required by **September 5** for workers and they must be fully vaccinated against COVID-19 **within 30 days** following their first dose in a two-dose vaccination series. As of **September 5**, health care facilities **must exclude from the premises any health care worker who does not comply** with testing requirements until they are fully vaccinated.

Those who don't get fully vaccinated will have to undergo **weekly COVID-19 testing**. The test must either have 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. (The Illinois Dept. of Public Health recommends, but does not mandate, a PCR test.)

The rule doesn't cover health care workers at state-owned facilities, nor those who are not in close contact (fewer than six feet) with other persons in the facility for more than 15 minutes at least once a week on a routine basis.

The medical and religious accommodation exceptions apply. A person **exempt** from vaccination must comply with the **weekly testing requirement**. The Order does not indicate whether employers need to pay for the employee testing.

Some critics may be eyeing lawsuits focused on workers' rights. But **all states already had some vaccine requirements** in place before COVID-19 – for mumps, measles, rubella, and more. In Illinois, challengers point to the Illinois Health Care Right of Conscience Act.

This law essentially prevents adverse action based on one's conscious objection to health care. But while the statute includes employment discrimination provisions, the true intent is to protect healthcare workers who refuse to administer certain types of healthcare. Also, the Act has often been interpreted as requiring that it be based on one's religious belief, practice or observance, similar to the religious exemption under the Illinois Human Rights Act, which may preempt the health care law.

Paid Time for Vaccines

When employers were simply encouraging vaccines, rather than mandating, there was no requirement to pay for the related time off. But **employers who require employees** to get vaccinated do have that obligation.

Under the federal Fair Labor Standards Act and many state laws like the Illinois Minimum Wage Law, time the employee spends obtaining the vaccine is compensable, even if it is non-working time. Employers can require employees to use their **accrued paid sick leave and vacation** time to the extent they have any. Otherwise, non-exempt (from overtime) workers should be paid their hourly rate for the actual time spent, and exempt employees must receive their regular full salary without deductions.

Of course, an employer can be more generous and pay for the time off without treating/deducting as paid sick or vacation time. But to avoid actual or perceived discrimination, be prepared to do that for all non-exempt employees.

Quarantines for Domestic Travel and "Close Contact"

Internationally, the U.S. and many other countries have reciprocal travel bans or quarantines. While Illinois does not have a travel quarantine rule, Chicago and Cook County have similar guidelines. As of September 10, 2021, **all 50 U.S. states are subject to the Chicago travel quarantine guidance**. **Unvaccinated** Chicago residents and out-of-state visitors who travel to/from other states are recommended to:

- Obtain a negative COVID-19 test result no more than 72 hours **prior to arrival in Chicago**; or
- **Quarantine** for a 10-day period upon arrival (or the duration of their time in **Chicago**, whichever is shorter).

- Also, once in Chicago, they maintain strict masking and social distancing.

Employers in locations not subject to travel quarantines should follow the federal CDC's travel guidelines:

- Get **tested** 3-5 days after travel **and quarantine** for 7 days after travel; or
- If no test, quarantine for 10 days.
- Avoid being around people who are at increased risk for severe illness for 14 days, whether you get tested or not.

Finally, CDC guidelines recommend **quarantine for those who have “close contact”** with a person infected with COVID. A 7-day quarantine applies if one tests negative and has no symptoms. Without a test, a person should self-quarantine for 10 days, and monitor themselves an additional 4 days for symptoms.

Policies and Forms

With all of the new changes, employers need to be up to date with their policies and forms. Policies should cover vaccine mandates (or encouragement), exemptions, mask mandates, employee screening and other workplace health/safety protocols, travel quarantines, remote work, and time off. Employers should be prepared with accommodation request forms, vaccine status verification forms, and screening forms.

Remote Flexibility is Here to Stay

In light of the continuing pandemic and restrictions, the remote and hybrid workplaces that we have seen over the past 20 months are likely a new normal. While telecommuting was a rare perk in the past, employers who haven't already done so should consider and **create a remote work policy and telecommuter agreements** at least for the near future.

Not only will this help to retain valuable workers, but flexibility and work-life integration will be key to attracting talent in today's “employee's choice job market.” Other benefits include increasing your pool of potential hires geographically, enhancing productivity, improving employee health, and reducing overhead costs.

- ✓ I can help with **updating policies and forms** (COVID-related and others), and please check my website for COVID and general bulletins and updates: [Law Office of Lori A. Goldstein](#)
- ✓ I work with both **employers and employees** (not at the same company!) on workplace matters, compliance, contracts, training, and dispute resolution.
- ✓ **Career Resource Center is celebrating 30 years** of helping individuals find satisfying work. As a proud CRC Board member since 2012, I can't say enough about the wonderful career transition services offered by CRC, a nonprofit celebrating 30 years of success. CRC is now virtual, helping clients nationwide. We are here for employees between successes, recent college graduates, individuals returning to the workforce, those seeking a change of employment or career, and employees who need a boost in their career transition search. To schedule an appointment or to learn about membership, contact [Kelly Clark](#). Try out a workshop, or join for a year. Volunteers and donors always welcome too! [careerresourcecenter.org](#)

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