

Himmelfarb Health Sciences Library, The George Washington University

## Health Sciences Research Commons

---

Intelligence Unit Research Briefs

GW Covid-19 Collection

---

5-3-2021

### **GW Covid-19 Intelligence Unit-Brief Report Workplace Covid Vaccination Requirements**

George Washington University

Follow this and additional works at: <https://hsrc.himmelfarb.gwu.edu/intelligenceunitresearchbriefs>

---

## **GW COVID-19 Intelligence Unit – Brief Report Workplace COVID Vaccination Requirements**

### **Efficacy**

Multiple studies have highlighted that vaccine mandates are effective. Starting 100 years ago, smallpox vaccination requirements varied by State. Between 1919-1928, States with more *laissez faire* mandates had 20 times more cases than States with stricter mandates.<sup>1</sup> More contemporaneous investigations have focused on influenza vaccination. Frederick et al (2018) compared 3 academic medical centers which mandated influenza vaccination, with 4 Veteran’s Affairs hospitals who did not. The hospitals with non-mandatory influenza vaccination policies showed lower vaccination rates and increased rates of illness-related absence.<sup>2</sup> Pitts et al likewise found evidence that mandates improve vaccination rates. In 2004, Virginia Mason Hospital in Seattle WA was the first healthcare system to publicly mandate influenza vaccinations. As a result, 98% of their staff were vaccinated.<sup>3</sup>

### **Legality**

In 1905, Jacobson v MA secured the right of States and municipalities to mandate vaccination during public health crises.<sup>4</sup> This was expanded in 1922 to include non-pandemic times, provided the goal is to protect the population.<sup>5</sup> The vulnerability of children to communicable disease, their inability to vote, and the advent of vaccines in the 20<sup>th</sup> century made schools ground zero for vaccine mandates. Multiple measles outbreaks in the 60s and 70s spawned the modern school district vaccine requirements. Every state allows medical exemptions, nearly all states allow religious exemptions, and 19 states allow moral/philosophical exemptions.<sup>6</sup> We also see vaccination requirements for colleges and universities, as dorm life elevates the risk for communicable disease. While state schools must abide by state laws, private schools cannot contravene state or federal law.

The other place we see vaccine requirements is in healthcare settings. While laws vary, every state allows for medical exemptions. California and Massachusetts direct that hospitals ‘shall require’ influenza vaccination, and employees who refuse must do so in writing. New York and Utah require hospitals to document the non-vaccinated staff. Rhode Island requires all unvaccinated healthcare workers to wear a mask during influenza season. In 2008, the Department of Defense also mandated influenza vaccines, while allowing for medical and religious exemptions.<sup>7</sup> After the 2009 influenza outbreak, New York went further, mandating influenza vaccination as a condition of employment for healthcare workers, only medical exemptions were offered, and all non-vaccinated must wear masks. The absence of a religious exemption has tied this law up in court ever since.<sup>8</sup> In short, vaccine mandates are legal (provided medical exemptions). Prohibiting religious exemptions is where the murky water lies.

### **Labor Law**

Private organizations have greater latitude than their public counterparts, but still cannot contravene local or federal regulations. There appears to be no Federal or DC law that prevents DC-based employers from

---

<sup>1</sup> [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(21\)00267-1/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(21)00267-1/fulltext)

<sup>2</sup> <https://pubmed.ncbi.nlm.nih.gov/29514719/>

<sup>3</sup> [https://usatoday30.usatoday.com/news/health/2007-09-16-influenza-doctors\\_N.htm](https://usatoday30.usatoday.com/news/health/2007-09-16-influenza-doctors_N.htm)

<sup>4</sup> <https://fas.org/spp/crs/misc/RS21414.pdf>

<sup>5</sup> [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(21\)00267-1/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(21)00267-1/fulltext)

<sup>6</sup> <https://fas.org/spp/crs/misc/RS21414.pdf>

<sup>7</sup> <https://fas.org/spp/crs/misc/RS21414.pdf>

<sup>8</sup> <https://fas.org/spp/crs/misc/RS21414.pdf>

May 3, 2021

mandating vaccination to protect the health of other employees and clients.<sup>9</sup> Religious exemptions to mandatory vaccination policies are recommended by CDC.<sup>10</sup> Personal beliefs, such as veganism, do not count as religious exemptions, and have been thrown out in court.<sup>11</sup>

The Americans with Disabilities Act allows employees to opt out of mandatory vaccinations, if they believe vaccination will cause a serious adverse reaction. However, employees must prove (usually with a doctor's note) that there is cause for concern.<sup>12</sup> Employers, in turn, are required to provide reasonable accommodations, such as PPE. Employers are not required to provide burdensome or unreasonable accommodations, and are within their right to exclude the employee without pay, if needed. Finally, if dealing with a unionized labor force, vaccine requirements usually fall under clauses pertaining to 'working conditions' and require bargaining.<sup>13</sup>

OSHA currently has no position on vaccinations. It is possible that the agency may issue an emergency standard in the next few weeks, which may allow employers to avoid implementing certain precautions if all or most employees are vaccinated.

### **Emergency Use Authorization vs FDA Approved Products**

While vaccine mandates have been around for a century, they are usually for FDA approved vaccinations. Some health systems and Universities have already moved forward in requiring COVID-19 vaccination (see below). As expected, lawsuits have been filed citing that the vaccines only have EUA, and are thus not FDA approved. This is by no means settled, and Moderna and Pfizer plan on applying for full FDA approval soon.<sup>14</sup>

### **COVID-19 Vaccination Requirements**

The New York Times confirmed that over 100 colleges and universities are requiring vaccination before returning to campus this Fall. Some bigger names include the University of Maryland, UPenn and Stanford. The entire UC system plans on requiring it as soon as the FDA grants full approval.<sup>15</sup>

Some large health systems are mandating Covid vaccination with exemption policies in place. Houston Methodist Hospital and the Benefits Health System (Montana) have publicly gone on record as mandating vaccinations. Other systems cite the EUA status of the currently available vaccines as a rationale for delay of decision-making. While mandatory vaccination policies may be most effective, incentives have been used as well. St John's Healthcare (Wyoming) approved \$600 cash payouts to vaccinated employees.<sup>16</sup>

DC law allows healthcare organizations to mandate vaccination,<sup>17</sup> as long as there are medical and religious exemptions.<sup>18</sup> Note 22 DCMR § B2017.10, requiring that, "immunization against communicable disease shall be required of all employees and all other persons who routinely come into contact with patients or patient

---

<sup>9</sup> <https://ajph.aphapublications.org/doi/abs/10.2105/AJPH.2020.306166>, Echazabal v Chevron USA, Inc., 536 US 73 (2002)

<sup>10</sup> [https://www.cdc.gov/coronavirus/2019-ncov/vaccines/recommendations/essentialworker/workplace-vaccination-program.html#anchor\\_1615585395585](https://www.cdc.gov/coronavirus/2019-ncov/vaccines/recommendations/essentialworker/workplace-vaccination-program.html#anchor_1615585395585)

<sup>11</sup> Friedman v Southern California Permanente Medical Group, 125 Cal. Rptr.2d 663 (Cal. Ct. App. 2002)

<sup>12</sup> <https://ajph.aphapublications.org/doi/abs/10.2105/AJPH.2020.306166>

<sup>13</sup> <https://ajph.aphapublications.org/doi/abs/10.2105/AJPH.2020.306166>

<sup>14</sup> <https://www.healthline.com/health-news/hospitals-and-colleges-are-now-requiring-covid-19-vaccinations-heres-why#Legal-questions>

<sup>15</sup> <https://www.nytimes.com/2021/04/29/us/colleges-vaccinations-enrollment.html>

<sup>16</sup> <https://www.beckershospitalreview.com/hospital-management-administration/how-health-systems-are-deciding-whether-to-mandate-covid-19-vaccinations.html>

<sup>17</sup> <https://www2a.cdc.gov/vaccines/statevaccsApp/AdministrationbyVaccine.asp?Vaccinetmp=Influenza#63>

<sup>18</sup> <https://jamanetwork.com/journals/jama/fullarticle/2774712>

May 3, 2021

areas.” This regulation only applies to those institutions meeting the definition of “hospital” set forth in 22 DCMR § 2099; How this applies to MFA will need to be evaluated by Counsel.

## Considerations

The lawsuits currently fighting COVID vaccination mandates are based on the notion that the vaccine only has EUA, and is not FDA approved.<sup>19</sup> IDSA and ACP have come out publicly, in support of mandates, citing the ethical (and often legal) requirement for healthcare workers to prevent the spread of disease, and maintain safe working environments.<sup>20</sup> While individuals maintain the right to control what happens to their body, they do not have the right to endanger their colleagues or patients. Hence, (regarding influenza prevention) many institutions require masking for the un-vaccinated.<sup>21</sup>

A Kaiser Family Foundation poll found that only 58% of healthcare workers support a mandated vaccine for patient-facing roles, while 42% oppose.<sup>22</sup> On a personal note, social media message boards are full of stories from healthcare workers who were mistreated, under-protected, or even fired by their healthcare systems for advocating safety.

Should the GW MFA mandate vaccination, it should take the steps to orient itself in a manner to best avoid preventable critique. A vaccine mandate should center on the ethical mandate to do no harm, prevent communicable disease, and maintain a safe working environment. Accordingly, sufficient PPE and accommodations (including bonus pay, non-docked sick-leave for vaccination-related events) should be in place.<sup>23</sup> Significant organizational and inter-personal targeted outreach should be implemented to overcome vaccine hesitancy.<sup>24</sup> While religious exemptions must be observed, it may be prudent to honor personal belief exemptions as well, in order to minimize employer-employee divisions. Exemptions should be met with the requirement for masking. Financial incentives may be effective, but some feel inappropriately monetizes an ethical, scientific and fiduciary obligation. Non-monetary incentives such as paid time off or meal delivery services could be a viable replacement.

---

This Report was produced by Dr. Luis Dominguez with support from the Himmelfarb Librarian team (Stacy Brody, Paul Levett) and the entire GW Intelligence Unit.

We appreciate the input of Dr. David Michaels, GW School of Public Health.

Feedback and any special requests should go to: [ldeyton@gwu.edu](mailto:ldeyton@gwu.edu).

Stay safe and informed. For past editions of the GW Intelligence Report visit the [Himmelfarb library site](#).

---

<sup>19</sup> <https://www.healthline.com/health-news/hospitals-and-colleges-are-now-requiring-covid-19-vaccinations-heres-why#Legal-questions>

<sup>20</sup> <https://www.immunize.org/honor-roll/>

<sup>21</sup> <https://ajph.aphapublications.org/doi/pdf/10.2105/AJPH.2020.306166>

<sup>22</sup> [https://www.washingtonpost.com/context/washington-post-kff-frontline-health-care-workers-survey-feb-11-march-7-2021/ba15a233-9495-47a9-9cdd-e7fa1578b1ca/?itid=lk\\_inline\\_manual\\_11](https://www.washingtonpost.com/context/washington-post-kff-frontline-health-care-workers-survey-feb-11-march-7-2021/ba15a233-9495-47a9-9cdd-e7fa1578b1ca/?itid=lk_inline_manual_11)

<sup>23</sup> <https://gh.bmj.com/content/6/2/e004877>

<sup>24</sup> [https://www.mayoclinicproceedings.org/article/S0025-6196\(20\)31487-7/fulltext](https://www.mayoclinicproceedings.org/article/S0025-6196(20)31487-7/fulltext)