

SANTA CLARA COUNTY EMPLOYERS MUST TRACK EMPLOYEE VACCINATIONS: 8 TAKEAWAYS AND A 5-STEP COMPLIANCE PLAN

Insights
May 24, 2021

Businesses in Santa Clara County must get ready to comply with the County's new vaccine tracking mandate by no later than June 1. The County of Santa Clara Emergency Operations Center issued a May 18 [Order of The Health Officer Of the County of Santa Clara Establishing Focused Safety Measures To Protect The Community from COVID-19](#) requiring businesses to obtain the vaccination status of all "personnel" who are currently or will be working at a facility or worksite in the County. What do Santa Clara County businesses need to know about this impending requirement? Here are the eight key takeaways and a five-step compliance plan.

[Editor's Note: The Santa Clara County Health Officer issued a new order phasing out this vaccine-tracking mandate for employers, relieving you of the administrative burden imposed by this groundbreaking requirement. However, there remains a caveat or two, and the county provided a list of recommendations that you should consider adopting as best practices. [Read here for more information.](#)]

The Order in a Nutshell

The intent of the Order appears to be a further effort to increase vaccination rates to reduce the transmission of COVID-19. Due to the changes in the COVID-19 landscape with the increase of vaccinated individuals, the Order removed previous requirements placed on businesses such as the requirements to (1) maximize telework and (2) complete and submit a Revised Social Distancing protocol.

Related People



Benjamin M. Ebbink

Partner

[916.210.0400](#)



Alyssa Graf

Associate

[818.230.4263](#)

The Order maintains the requirement for employers to report COVID-19 cases and adds a requirement for all employers within the county to ascertain and maintain records of the vaccination status of its personnel.

8 Key Takeaways for Employers

Here are the eight most significant takeaways for Santa Clara County employers about the new [Order](#):

- 1. Scope of Order:** The Order applies to all individuals, businesses, and governmental entities in Santa Clara County. Individuals who do not reside in the County must comply with all applicable requirements when they are in the County. The definition of “business” includes any “for-profit, non-profit, or educational entity whether a corporate entity, organization, partnership, or sole proprietorship, and regardless of the nature of the service, the function it performs, or its corporate or entity structure,” including those that provide “services or functions under contract with a governmental agency.”
- 2. Ascertaining Vaccine Status of All “Personnel”:** Businesses and governmental entities must ascertain the vaccination status of all “personnel” which includes all employees, independent contractors, and volunteers who are currently or will be working at a facility or worksite in the county. The [FAQs](#) make clear that, although not required, businesses are strongly encouraged to ascertain this information for personnel who work remotely. Though the Order does not expressly mandate a certain form of “proof” of vaccination status, the FAQs suggest that review of an individual’s vaccine card or self-certification suffice. The County has published a template [Certification of Vaccination Status](#) form to help you track this information. However, as noted below – and as [we have discussed previously](#) – there are important privacy and confidentiality considerations to keep in mind when tracking and maintaining such records.
- 3. Vaccination Status:** Until an individual’s vaccination status is ascertained, they must be treated as not fully vaccinated. Businesses are instructed to assume that those who decline to provide their vaccination status are to be treated as not fully vaccinated. For purposes of the Order, a person is “fully vaccinated” two weeks after completion of the entire recommended series of vaccination (usually one or two doses) with a vaccine



Anthony Isola

Partner

[415.490.9018](tel:415.490.9018)



Hannah Sweiss

Partner

[818.230.4255](tel:818.230.4255)

Service Focus

[Workplace Safety](#)

Related Offices

[Irvine](#)

[Los Angeles](#)

[Sacramento](#)

[San Diego](#)

[San Francisco](#)

[Woodland Hills](#)

authorized to prevent COVID-19 by the federal Food and Drug Administration, including by way of an emergency use authorization.

- 4. Deadline to Comply and Ongoing Requirement to Collect Information:** The initial ascertainment of vaccination status for all personnel must be complete by no later than June 1. Thereafter, a business has a continuing obligation to obtain updated vaccination status every 14 days from those who decline to provide their vaccination status or indicate they are not fully vaccinated.
- 5. Record Keeping:** In order to maintain compliance with the Order, businesses must maintain a record of (1) the request for vaccine status and (2) who is fully vaccinated and who is not fully vaccinated until the provision of the Order requiring ascertainment of vaccination status is no longer effective. The FAQs note that the record may document a business' or governmental entity's review of documentation establishing vaccination status (e.g., the employee's vaccine card), or the employee's completed Self-Certification of Vaccination Status. This suggests that businesses will not be required to keep copies of vaccination cards or other such medical documentation, but must maintain a record of compliance.
- 6. Confidentiality and Storage of Information:** Whether the business maintains a confidential list of its tracking efforts or the actual "proof" of vaccination status (e.g., copy of vaccine card or Self-Certification form), all vaccine-related information and documentation must be maintained confidentiality. You must treat these records in the same manner you treat other private information (e.g. medical conditions) received from employees. Employers do not have to provide the records to the County but are required to present evidence of the employer's request for information to demonstrate compliance with the Order.
- 7. Enforcement:** Violation of any provision of the Order is considered a "menace to public health, constitutes a public nuisance" and may be punishable with a fine or imprisonment. Any business that fails to ask about and record the vaccination status of its workers is subject to enforcement and may be required to pay fines of up to \$5,000 per violation per day.

8. Additional Directives for Unvaccinated Individuals:

Though California has not yet changed its face-covering mandate, the Order requires all personnel who are not fully vaccinated to (1) comply with all applicable provisions of the Mandatory Directive on Use of Face Coverings, and (2) comply with all applicable provisions of the Health Officer's [Mandatory Directive on Unvaccinated Personnel](#). For personnel not fully vaccinated, employers must ensure these individuals wear face coverings. Additionally, employees who are not fully vaccinated and are a "close contact" to a confirmed COVID-19 case or who have COVID-19 must be excluded from the workplace during the applicable quarantine period.

What Should You Do? A 5-Step Action Plan for Employers

Given that the effective date of this new requirement is quickly approaching, employers should immediately take steps to prepare for their compliance obligations. Here is a recommended five-step action plan for employers.

1. Consider establishing a system to affirmatively follow up with those who indicate they are not fully vaccinated or decline to provide their vaccination status.
2. Consider including an area on the certification form for the date(s) of the vaccination dose(s).
3. Consider including language in the certification form to remind employees that the purpose of the form is to collect vaccination status, with express instructions not to share private medical information, family history information, or reason why they are or are not fully vaccinated on the certification form.
4. If your business is subject to the CCPA, notice of collection is triggered when gathering vaccination status. A sample CCPA Notice form may be found [here](#).
5. There should be clear communication about who will collect this information and a policy in place identifying the record request and maintenance procedure.

Conclusion

Santa Clara is the first county in California to require employers to ascertain the vaccine status of its employees – but is likely not the last. As California prepares to emerge

from the COVID-19 pandemic, employers can be certain of one thing: more change is coming.

We will continue to monitor the rapidly developing COVID-19 situation and provide updates as appropriate. Make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information. For further information, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in [our California offices](#).