

Insights, News & Events

CALIFORNIA BOOSTS VACCINATION REQUIREMENT FOR WORKERS IN HEALTHCARE SETTINGS

Insights
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Right before you left the office for the holiday season, California public health officials issued an [order](#) requiring all workers in healthcare and high-risk congregate settings to receive their COVID-19 booster shots by **February 1, 2022**. The Adult Care Facilities and Direct Care Worker Vaccine Requirement issued by the Department of Public Health (CDPH) on December 22 comes on the heels of the rapid spread of the Omicron variant during the holiday surge. What do California employers need to know about this new booster requirement?

Current Vaccination Requirements

The previous CDPH order issued on August 5 required covered workers to receive their first dose of a one-dose vaccine (Johnson & Johnson/Janssen) or their second dose of a two-dose vaccine (Pfizer or Moderna) by September 30. The CDPH defined “workers” as employees and non-employees alike to serve in healthcare or other healthcare settings and who have the potential for direct or indirect exposure to patients or SARS-CoV-2 airborne aerosols in hospitals, skilled nursing facilities, and other healthcare facilities.

Who is Covered?

The booster requirement applies to a broad spectrum of workers in healthcare facilities across the state.

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Workers

“Workers” includes all paid and unpaid individuals (not just employees) who work in indoor settings where (1) care is provided to patients, or (2) patients have access for any purpose. This includes workers directly involved in patient care, but also those who work in ancillary positions who may be exposed to COVID-19, including clerical, security, administrative, and volunteer personnel.

The Order specifically states that “workers” includes, but is not limited to:

- Nurses, nursing assistants, physicians;
- Technicians, therapists, phlebotomists, pharmacists;
- Students and trainees;

- Contractual staff not employed by the healthcare facility; and
- Persons not directly involved in patient care, but who could be exposed to infectious agents that can be transmitted in the health care setting (e.g., clerical, dietary, environmental services, laundry, security, engineering and facilities management, administrative, billing, and volunteer personnel).

What Shots Are Required?

All workers currently eligible for boosters and provide services or work in a healthcare facility described above must be “fully vaccinated and boosted” for COVID-19. Covered workers must receive the recommended doses of the primary vaccination series **and** a vaccine booster in accordance with the table below no later than **February 1, 2022**. The February 1 deadline is extended for workers if their recommended booster date falls after February 1. Those workers must receive the booster within 15 days after their recommended booster date.

COVID-19 Vaccine	Primary vaccination series	When to get the vaccine booster dose
Moderna or Pfizer-BioNTech	1st and 2nd doses	6 months after 2nd dose
Johnson and Johnson / Janssen	1st dose	2 months after 1st dose
World Health Organization (WHO)	All recommended doses	6 months after all recommended doses

emergency use listing COVID-19 vaccine		
A mix and match series composed of any combination of FDA-approved, FDA-authorized, or WHO-EUL COVID-19 vaccines	All recommended doses	6 months after all recommended doses

Limited Exemptions for Religious Beliefs and Qualifying Medical Reasons

Workers may seek an exemption from this requirement by providing a declination form signed by the worker stating that they either decline the vaccination based on religious beliefs, or are excused from receiving the COVID-19 vaccine due to "Qualifying Medical Reasons."

To be eligible for a Qualified Medical Reason exemption, the worker is required to provide a written statement signed by a physician, nurse practitioner, or other licensed medical professional practicing under the license of a physician. That document must state that the worker qualifies for the exemption, as well as the probable duration of the worker's inability to receive the vaccine (or whether duration is unknown or permanent). However, the statement should not describe the worker's underlying medical condition or disability.

Who Needs to Be Tested?

The public health order will also require you to test certain employees for COVID-19 under some specific circumstances. All covered healthcare facilities must have begun testing of all booster-eligible workers who have not yet received their booster as noted below by **December 27, 2021**. Facilities are also encouraged to provide onsite vaccinations, easy access to nearby vaccinations, use of

work time to get vaccinated, and education and outreach on vaccinations.

Exempt Workers Must be Tested Weekly or Biweekly

If a worker is exempt for religious beliefs or a qualifying medical reason, the worker must be tested twice weekly if in acute and long-term care settings, or once a week if in other healthcare settings. Moreover, they must wear a surgical mask or higher-level NIOSH approved respirator such as an N95 at all times while in the facility. Testing must be done with either Polymerase Chain Reaction (PCR) or antigen tests that have an Emergency Use Authorization (EUA) by the FDA.

Workers Who Are Vaccinated and Eligible for The Booster, But Have Not Been Boosted

Workers who are vaccinated and eligible for a booster based on the table above, but have *not* been boosted, are also required to be tested twice weekly if in acute and long-term care settings, or once a week if in other healthcare settings. They are also required to wear a surgical mask or higher-level NIOSH approved respirator such as an N95 at all times while in the facility. Just as with exempt workers, testing must be done with either Polymerase Chain Reaction (PCR) or antigen tests that have an Emergency Use Authorization (EUA) by the FDA

What About Those Not Yet Eligible for the Booster?

For those workers who are vaccinated *but not yet eligible for a booster*, they are not required to test. However, they will be required to test if they become eligible for a booster and remain unboosted.

The [FAQs](#) provide the following example: if a worker received their full series of the Moderna within the last two months, they would not be considered booster-eligible and therefore would not be required to test, but will be required if they remain unboosted 6 months after they complete the second dose of the Moderna vaccine.

Recordkeeping Requirements

Healthcare facilities subject to the order will be required to maintain records of workers' vaccination consistent with [CDPH's Vaccine Records & Guidelines](#) guidance along with the following information: (1) full name and date of birth;

(2) vaccine manufacturer; and (3) date of vaccine administration (for first dose, second dose (if applicable), and booster dose). The operator of the facility is required to maintain records of workers' exempt status, i.e., the signed declination forms (with written healthcare provider statement, if applicable) as well as records of the workers' test results. These records should be treated and maintained as confidential.

Healthcare facilities are also required to provide the records to the local or state Public Health Officer or their designee promptly upon request, and in any event no later than the next business day after receiving the request.

Prior Orders

The December 22 order supersedes and replaced the August 5, 2021 State Health Officer Health Care Worker Vaccine Requirement Order. However, the July 26, 2021 Public Health Order continues to apply.

Dates to Remember

The requirement for booster doses went into effect **December 22, 2021**, and the deadline for booster-eligible covered workers to receive their booster is **February 1, 2022**, or *within 15 days of becoming eligible for a booster if they are not eligible as of February 1, 2022*. All facilities must have begun testing of booster-eligible workers (who have not yet received their booster dose) by **December 27, 2021** and be in full compliance by **January 7, 2022**.

Conclusion

We will continue to monitor this situation and provide updates as warranted. Make sure you are subscribed to [Fisher Phillips' Insight system](#) to get the most up-to-date information. If you have questions, visit our [Vaccine Resource Center for Employers](#) or contact your Fisher Phillips attorney, the authors of this Insight, or any attorney on our [FP Vaccine Subcommittee](#) or [Healthcare Industry Team](#).