

Insights, News & Events

# PHILADELPHIA POLICE VACCINE MANDATE LATEST TO BE UPHELD DESPITE LEGAL CHALLENGE

Insights  
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A three-member arbitration panel just upheld the City of Philadelphia's vaccination mandate for police officers, a major win for the City of Philadelphia in its persistent efforts to combat the spread of COVID-19. As a result of the February 1 ruling, all Philadelphia police officers must have at least one dose of the vaccine by February 11 or submit a request for a medical or religious exemption by then. "The safe and effective COVID-19 vaccines remain the best way to protect Philadelphians and save lives in the ongoing struggle to fight this pandemic," said Mayor Jim Kenney, who said he believes public servants, "bear a responsibility to mitigate the harm that would result from inadvertent transmission of COVID-19 to our colleagues and the public and to set an example for other organizations and companies." This is just the latest example of a workplace vaccine being upheld by a court or arbitration panel, further demonstrating that employers have wide latitude to enforce mandates among their workforce.

## Details of Decision

While the mandate was originally announced in November, enforcement remained stalled as the matter was referred to arbitration. But this week's decision clears the path for the mandate to take effect in short

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order. As a sweetener, officers who receive a first dose by February 11 and provide proof that they are fully vaccinated by March 15 will receive a cash bonus of \$500 on April 1. Officers who receive their first dose after February 11 but before February 18 and provide proof that they are fully vaccinated by March 22 will receive a \$300 cash bonus. And officers who receive a first dose after February 18 but on or before February 28 and provide proof of full vaccination by March 29 will receive \$100.

Here are some of the other key takeaways of the decision:

- Officers who receive a first dose of the COVID-19 vaccine by February 11 will be required to complete their vaccination series according to the schedule prescribed for the vaccine they receive and will be required to double mask or wear an appropriate N95 or equivalent face mask. Any officer that does not complete their vaccination series within 14 days of the prescribed schedule is considered out of compliance with the mandate.
- Officers who have a pending request for medical or religious exemptions but are ultimately denied must begin the vaccination process within 14 days of the denial of the request.
- Officers who fail to receive a first vaccine dose and who have not requested an exemption by February 11 will be required to double-mask, or wear an appropriate N95 or equivalent face mask, and comply with the City testing requirements.
- By close of business on February 18, the City is required to provide the Arbitration Panel with an updated accounting of vaccinated and unvaccinated police officers (without providing names or payroll or badge numbers).
- Beginning March 1, any officer who has not requested an exemption or provided proof that they have taken their first vaccine dose by noon on

February 28 will be placed on unvaccinated leave (U-Vax leave).

- Officers on U-Vax Leave who receive the first vaccine dose can report back to work, but are required to double mask or wear an appropriate N95 or equivalent mask, and comply with the City vaccination testing requirements. If the officer does not comply with completing the vaccine in accordance with the vaccine schedule, they may be separated from employment.
- Officers on U-Vax Leave will not experience a break in seniority, or pension service, if they have sufficient paid leave available to cover the period of U-Vax Leave.
- If the employee does not have sufficient accumulated paid leave available, any unpaid period of U-Vax Leave beyond 15 calendar days will be considered a break in service.

### **What Should Employers Take from This Decision?**

Some employees may be confused about the state of workplace vaccine mandates after hearing about the Supreme Court's decision last month blocking OSHA's shot-or-test ETS. However, in most states, it is still permissible to impose your own vaccine mandate in most locations, regardless of SCOTUS's decision. The Supreme Court simply ruled that OSHA can't *require* you to implement a vaccine policy – but the Court did not say you couldn't implement a policy on your own, if you believe it is right for your workplace.

If you want to go down this path, you should first coordinate with your workplace law counsel to determine if state law permits you to proceed or requires you to allow a broader set of exemptions than provided under federal law. And you'll need to sort out questions related to requirements for paying your employees for the time they spend getting vaccinated and any time they miss with side effects. The bigger

question, of course, is how would such a policy impact your workforce – will morale issues and workforce shortages override your concerns about worker safety? Make sure you are in touch with your current business environment before moving forward.

## Conclusion

We will monitor these developments and provide updates as events warrant. Make sure you are subscribed to [Fisher Phillips' Insight system](#) to get the most up-to-date information. If you have questions about how to ensure that your vaccine policies comply with workplace and other applicable laws, 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](#).

For further information about COVID-19-related litigation being filed across the country, and to run your own analyses of our litigation data, you can also visit Fisher Phillips' [COVID-19 Employment Litigation Tracker](#).