

Governor Lamont Orders Mandatory COVID-19 Vaccinations For Most School Employees and Contractors

Education Law Notes

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In the next installment of what appears to be the ever-moving target of mandatory vaccinations for Connecticut school employees, the Governor issued Executive Order 13D (the “Order”) delineating the state’s requirements for the vaccinations of school staff and contractors. The FDA also has finally issued a full approval of the Pfizer COVID-19 vaccination for those age 16 and older. So, with school starting just around the corner, what are the current requirements for mandatory vaccinations of school employees?

The Order applies to all public and private Pre-Kindergarten through 12th grade schools. Workers covered under the Order include all full and part-time employees, contractors, providers, assistants, substitutes and any other individual working in a public or non-public Pre-K through 12th Grade school. Excluded from this are contractors of employees of an outside vendor who visit schools only to provide one-time or limited-duration repairs, services or construction.

At first blush, the vaccination requirements in the Order seem very clear. On or before September 27, 2021, prior to extending an offer of employment, or entering into a contract of in-person services, the school board (which is defined to include both public and private Pre-K-12 school operators) MUST require that any covered worker is (1) fully vaccinated against COVID-19, (2) has received the first dose and has an appointment for the second dose of a two-dose vaccine or has received all doses but is within the 14-day post-vaccinations period, or (3) is exempt from the requirement.

After September 27, 2021, the school board SHALL NOT EMPLOY, or maintain a contract for the provision of in-person services of any covered worker, unless the worker is (1) fully vaccinated against COVID-19, (2) has received the first dose and has an appointment for the second dose of a two-dose vaccine or has received all doses but is within the 14-day post-vaccinations period, or (3) is exempt from the requirement. Similarly, the school board shall not employ a covered worker who has received the first dose of a two-dose series

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vaccination but fails to receive the second dose on an appropriate date as recommended by the CDC, or at a scheduled appointment, without good cause.

The Order as written contains two limited exemptions: medical and religious/spiritual. In order to be eligible for a medical exemption from the vaccination requirement, a physician, physician's assistant or advanced practice registered nurse must determine that administration of the COVID-19 vaccine is likely to be detrimental to the covered worker's health. The religious/spiritual exemption applies if the covered worker objects to the vaccination on the basis of a sincerely held religious or spiritual belief. For each of the exemptions, they only apply in situations where the covered worker is able to perform their essential job functions with a reasonable accommodation that is not an undue burden on the school board. And, the employee wanting such an exemption must request an exemption and provide appropriate supporting documentation. Each such request for an exemption must be considered on a case-by-case basis.

The Order puts the onus on the school board to authenticate, or where applicable to require that the contractor authenticate the vaccination status of the covered workers. Acceptable proof includes: (1) CDC vaccination record Card, (2) documentation from a health care provider or electronic health care record, or (3) state immunization information record. The school board CANNOT take the employee's word for it. The school board must receive the proper records and must maintain a copy of the vaccination card or exemption. Such information would be considered confidential medical information and must be kept confidentially and apart from the employee's personnel file as required of any other confidential medical information.

The Order includes a testing option for those covered workers who fall under one of the exemptions or are not yet fully vaccinated. Such a covered worker must submit to COVID-19 testing one time per week and provide adequate proof of the test results on a weekly basis to the school board.

The penalty for failing to comply with this Order, including permitting a covered worker who fails to comply with the Order to be in a public or private Pre-K through 12th grade school and/or failing to maintain the required documents, is a fine of "not less than one thousand dollars and not more than ten thousand dollars."

There is some confusion over what the Governor meant to convey with the Order and whether there was intended to be a broader testing option available to employees who are not covered under one of the exemptions. We have heard that there may be an amended order or other information being released shortly. As of now, however, the Order itself is clear and school boards should be developing a policy to set out how they will comply with the requirements.

The Order leaves many questions unanswered. For example, who will pay for the required testing for those employees who are exempt? How does the Order's directive that the school board "shall not employ" a worker who is unvaccinated and does not have an exemption on file mesh with the due process requirements of public school teacher terminations under C.G.S. §10-151 and collective bargaining agreement (and other

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contract) provisions on termination of employment? What is the applicable definition of a sincerely held religious and/or spiritual belief and what documentation is sufficient to support the belief?

We have rescheduled our webinar on return to school and COVID-19 related issues in light of potential power outages from Tropical Storm Henri. The webinar will now be held on Friday, August 27, 2021, at 10:00 AM and will address such issues as the mandatory vaccination requirements as well as mask mandates, basic school operational issues, and labor/employment related issues. You can register via this link. For questions on mandatory vaccinations feel free to reach out to any of our School Law attorneys.

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