



VIRTUAL LUNCH

October 6, 2021

Thanks for joining us a few minutes early.

We will start promptly at Noon!

COVID-19 VACCINE & EMPLOYER RIGHTS!

... a conversation with

Danielle Maya, Partner at Galvanize Law



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Agenda

- **Noon** | Start Program and Webinar Housekeeping Items
Debbie Hathorne, CRA Executive Director
- **12:02** | CRA Announcements & Speaker Intro
Debbie Hathorne, CRA Executive Director
- **12:05** | Covid-19 Vaccine & Employer Rights
Danielle Maya, Speaker
- **12:55** | Q & A


Webinar Courtesies:

- ★ Thank you for being on-time. Today's webinar is scheduled to last 1 hour including Q&A
- ★ You are all muted to enable speaker to present without interruption.
- ★ Use the Q&A window to ask questions along the way. Some can be answered right away, others at the end. *We will also monitor the chat box for questions as well.*
- ★ Presentation slides are available at:
<https://www.coloradoroofing.org/member/education>
- ★ A survey will be sent after the seminar, please take the time to respond. Your feedback helps us plan future webinars and seminars.
- ★ Final note, in order to earn CIU credit, you will be required to answer a final question at the end of today's presentation.

A blurred background of a laboratory setting with various test tubes and vials in racks. The colors are soft and out of focus, creating a professional and scientific atmosphere. A blue speech bubble graphic is overlaid on the center of the image, containing the text.

COVID-19 & Employer's Rights

Galvanize Law



Can an employer require
an employee to get
vaccinated?

1. Yes.
2. No.
3. Yes, if they are over 50.

Employers can require COVID-19 Vaccination

Employers can legally require COVID-19 vaccination for employees who physically enter the workplace.

Employers cannot apply a vaccination requirement in a way that treats employees differently based on race, national origin, religion, sex, sexual orientation, general identity, pregnancy, disability, age, or genetic information.

Companies are required to provide reasonable accommodations for employees who are exempt from mandatory immunizations based on federal laws (ADA, Title VII, etc.).



Companies should work to find alternative arrangements for employees who are unable to get vaccinated for medical, disability, or other reasons.

Employers can require employees to bring in documentation or other confirmation of vaccination. This information, like all medical information, must be kept confidential.

How is Colorado doing with vaccination rate?

1. 80% vaccinated?
2. 55% vaccinated?
3. 60% vaccinated?

US & Colorado Statistics

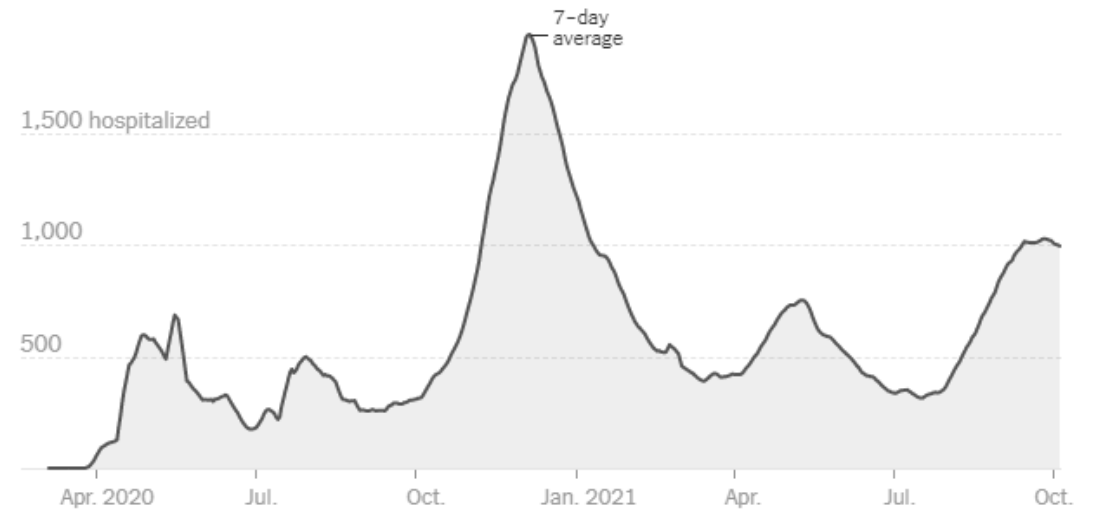
	CASES DAILY AVG.	PER 100,000	14-DAY CHANGE	HOSPITALIZED DAILY AVG.	PER 100,000	14-DAY CHANGE	DEATHS DAILY AVG.	PER 100,000	FULLY VACCINATED
United States	103,785	31	-24% 	74,486	22	-20%	1,829.0	0.55	56%
Colorado ›	1,897	33	-3% 	994	17	-1%	17.4	0.30	60%

Colorado Reported Cases & Hospitalizations

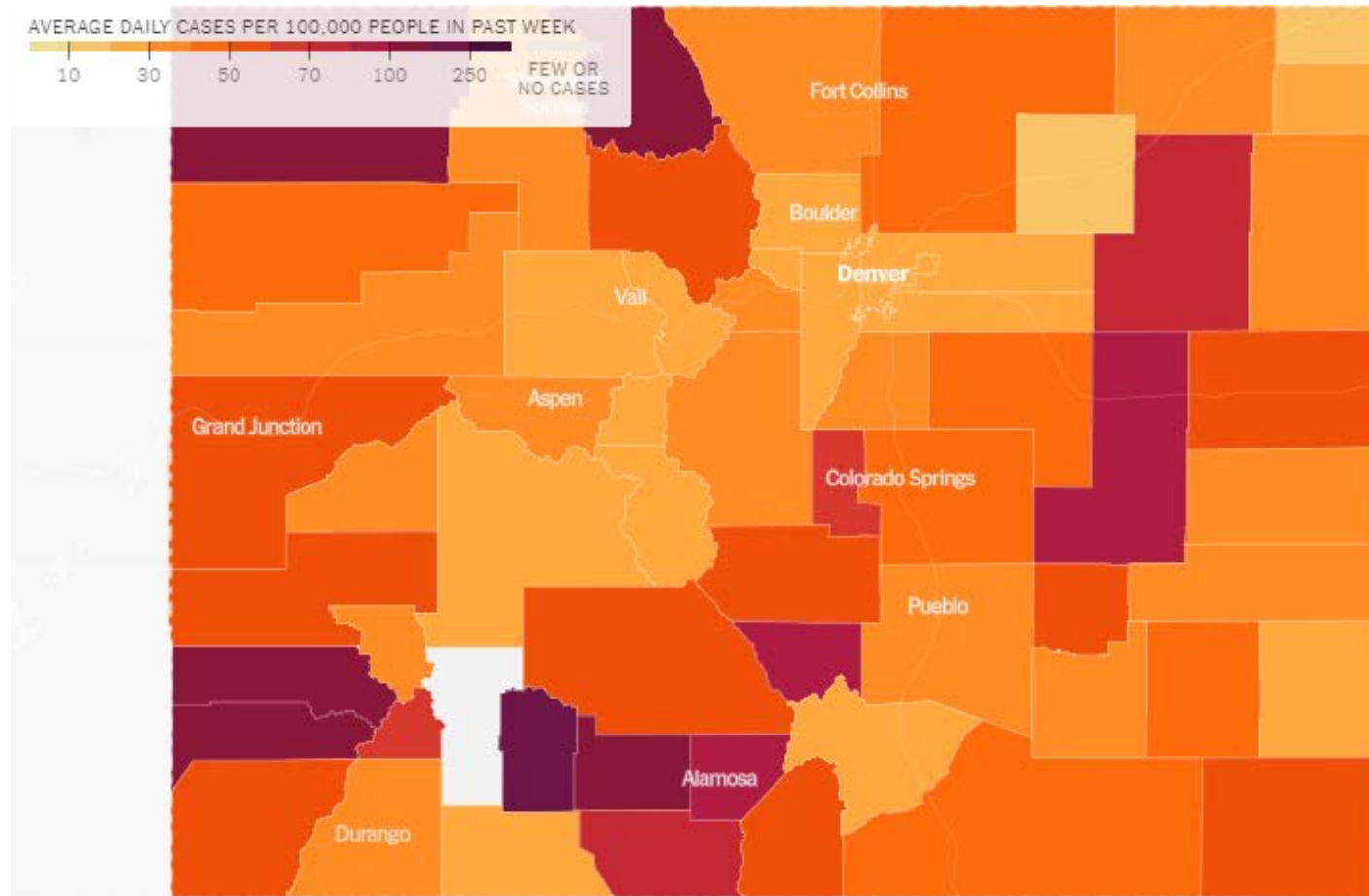
New reported cases by day



Hospitalizations



Colorado Hot Spots



Vaccination Accommodations

Title I of the Americans with Disabilities Act (ADA) requires employers to provide reasonable accommodation to qualified applicants and employees with a disability, unless the employer can demonstrate that doing so creates an undue hardship to the employer or poses a direct threat to the safety of the employee or others in the workplace.

Under Title VII of the Civil Rights Act, employers have an obligation to accommodate an employee's sincerely held religious belief, unless the accommodation creates an undue hardship. A sincerely held religious belief can include an employee's religious-based objection to vaccinations.

Steps to handle a current employee's accommodation request to be exempt from a vaccination requirement

Step 1: Determine whether the employer is covered by the ADA and Title VII

- All employers, including state and local government employers, with 15 or more employees are covered under the ADA and Title VI.

Step 2: Ensure that a policy and procedure exist for handling accommodation requests

- Employers should implement and review policies and procedures for handling requests for medical and religious accommodations.
- Existing job descriptions should be reviewed to confirm they include all aspects of the job and include any requirements for mandatory vaccinations.

Step 3: Review requests for exemption from the vaccine requirement

- Employee requests for exemption from the vaccination requirement should be reviewed to determine if the request falls under the ADA or Title VII obligations for employer to consider accommodation. A request for exemption due to personal preference not to receive a vaccine is not protected by law, and the employer should reiterate the company policy and the consequences for not complying with the vaccination mandate.

Steps to handle a current employee's accommodation request continued

Step 4: Initiate the Interactive Process

- Upon learning of the possible need for a reasonable accommodation, employers should engage in a process in which the employee, his or her health care provider or religious leader, and the employer share information about the nature of the disability or religious belief and the limitations on receiving an employer-require vaccination.
- Process if referred to as the interactive process and involves a good-faith effort by the employer and employee to discuss the employee's specific circumstances.
- The purpose is to determine what (if any) accommodations may be needed.
- Neither the ADA nor Title VII requires the request to be put in writing; however, having documentation of the request is a good practice.
- For ADA accommodations, the employee should be asked to provide appropriate documentation from their health care provider regarding the nature of any impairment(s), the duration of the need of the accommodation, and the extent to which the impairment(s) conflict with the employer's vaccination requirement.
 - If the employer needs to consult the employee's health care provider, the employer **MUST** obtain a written medical release or permission from the employee.
- For religious accommodations, the employee should be asked to provide an explanation of their sincerely held religious beliefs, and, if necessary, appropriate documentation from their religious leader regarding the religious belief that conflicts with the employer's vaccination requirement.

Steps to handle a current employee's accommodation request continued

Step 5: Determine whether the employee has a disability under the ADA

- Organizations should use the definition of a “disability” and a “qualified individual with a disability” under provisions of the ADA, along with information obtained during the interactive process.
- The ADA defines disability as an impairment that substantially limits a major life activity.
- The ADA also includes a list of medical conditions that would automatically be considered disability.

Step 6: Determine whether the employee has a sincerely held religious belief

- Title VII requires employers to accommodate only those religious beliefs that are “sincerely held.”
- Because the definition of religion is broad and protects beliefs and practices with which the employer may be unfamiliar, employers should ordinarily assume that an employee's request for religious accommodation is based on a sincerely held religious belief.
- If the employer has an objective basis for questioning either the religious nature or the sincerity of a particular belief or practice, the employer would be justified in seeking additional supporting information.

Steps to handle a current employee's accommodation request continued

Step 7: Determine if the accommodation poses a direct threat or creates an “undue hardship”

- The ADA requires employers to grant an accommodation request, unless the accommodation would result in undue hardship on the employer or poses a direct threat to the health and safety of others.
- When evaluating the existence of a direct threat, the Equal Employment Opportunity Commission (EEOC) provides the following guidance:
 - "The ADA regulation requires an employer to consider the duration of the risk, the nature and severity of the potential harm, the likelihood that the potential harm will occur, and the imminence of the potential harm. Analysis of these factors will likely include considerations based on the severity of the pandemic in a particular area and the employee's own health (for example, is the employee's disability well-controlled), and his particular job duties. A determination of direct threat also would include the likelihood that an individual will be exposed to the virus at the worksite. Measures that an employer may be taking in general to protect all workers, such as mandatory social distancing, also would be relevant."
- Employers should be careful when using the undue hardship defense as a rationale to not provide an accommodation. Under the ADA, undue hardship must be based on an individualized assessment of current circumstances that show that a specific reasonable accommodation would cause significant difficulty or expense.
- Under Title VII, the undue hardship defense to providing religious accommodation requires a showing that the proposed accommodation in a particular case poses “more than de minimis” cost or burden.
- Employers should also seek input from the employee's supervisor, who has knowledge about the duties of the position and the worksite, to help determine the feasibility of what may be a “reasonable” accommodation, including alternative accommodations to the one requested by the employee.

Steps to handle a current employee's accommodation request continued

Step 8: Notify the employee

- Next step is for the employer, or HR, to notify the employee *in writing* that their requested accommodation has been approved or denied. If the request is denied, the employer should communicate and document any available alternative accommodations.
- HR must maintain all copies of accommodation requests, supporting information and documentation, including denials, in a file separate from the employee personnel file, consistent with the confidentiality requirements of the ADA and to protect sensitive religious preference information.
- Managers and supervisors **must** understand that it is unlawful to disclose that an employee is receiving a reasonable accommodation or to retaliate against an employee for requesting an accommodation.

Step 9: Review and modify

- The accommodation process is not set in stone and may need to be reviewed, especially if an employee's circumstances change or if the needs of the business change.

Alternate Arrangements

Employees who do not get vaccinated due to disability, religious belief, or other reasons may be entitled to a reasonable accommodation. This could mean requiring a face mask, physical distancing, modified shifts, telework arrangements, or work reassignments.

Companies can also provide employees with information about COVID-19 vaccines to educate them, raise awareness about the benefits of the vaccine, address common questions, and provide incentives.

Employers can also share information about vaccine sites, low-cost transportation, and community resources about vaccination.

Employers can also offer time off for vaccinations. Businesses with fewer than 500 employees may be eligible for tax credits under the American Rescue Plan if they provide paid time off for employees who decide to receive the vaccine.

What Notable Companies Have Mandated Vaccines?

- United Airlines
- Tyson Foods
- Amtrack
- Google
- McDonalds

U.S. Equal Employment Opportunity Commission (EEOC) & Vaccine Incentives

It is permissible for employers to offer workers incentives to get vaccinated against COVID-19.

Employers may legally offer an incentive to employees to voluntarily provide documents or other confirmation that they received a vaccination on their own from a third party, including a pharmacy, public health department, or other health care provider in the community.

Employers are **required** to keep such vaccination information confidential. Employers should treat this information like all other confidential medical information.

Guidance differs if the employer itself is sponsoring the vaccination program.

- Employers may offer an incentive to employees for voluntarily receiving a vaccination administered by the employer or its agent “if any incentive is not so substantial as to be coercive.”

Employers are allowed to incentivize employees to submit confirmation of their vaccination status from third parties as vaccination status is not considered genetic information or family medical history.

Guidance differs if the employer offers vaccinations to the employee.

- Unlike third party vaccinations, employer-offered vaccinations require the employer to ask screening questions that elicit medical information.
- Employers may offer incentives for employees to be vaccinated by the employer as long as the employer does not obtain genetic information from the employee.
- The pre-vaccination screenings for the three approved vaccines do not inquire into genetic testing. Therefore, if employers plan to offer vaccines to employees, they should limit pre-screening questions to the [CDC Pre-vaccination Checklist](#).

Occupational Safety and Health Administration (OSHA)

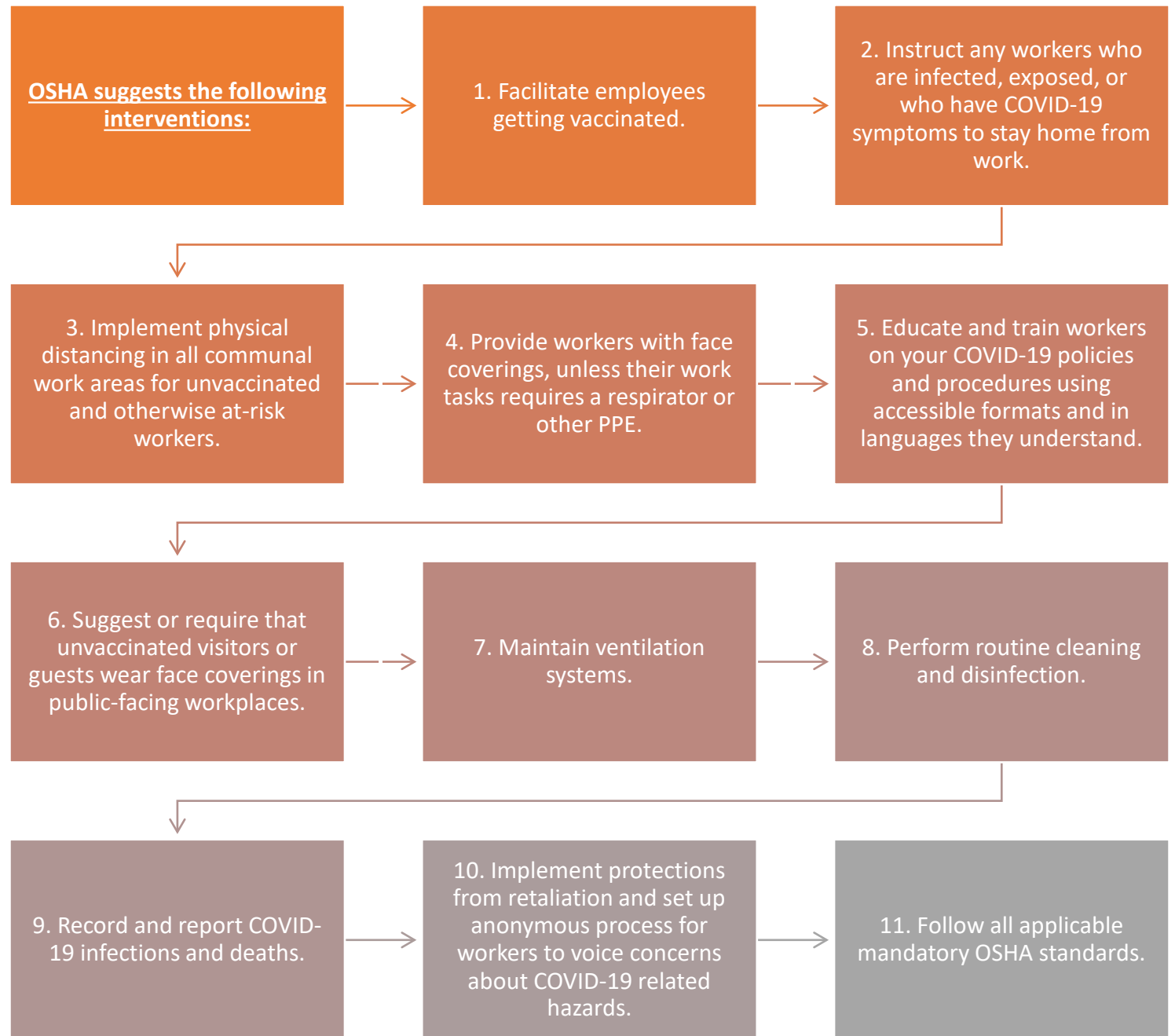
Employers are responsible for providing a safe and healthy workplace free from recognized hazards likely to cause death or serious physical harm.

This includes assessing the risk of exposure to COVID-19 and developing a plan to protect employees.

With COVID-19 vaccines, this could mean requiring the vaccine, providing personal protective gear, or setting capacity limits in the physical workplace.

Employers should engage with workers and their reps to determine how to implement multi-layered interventions to protect vaccinated, unvaccinated, and otherwise at-risk workers.

OSHA- Protecting Workers Guidance



“Path Out of the Pandemic”

President Biden’s Covid-19 Action Plan

Mandatory Vaccination, no testing option:

Federal employees and contractors that work with the government are required to get vaccinated. Vaccine mandate is effective with contracts pending solicitations or entered into on or after October 15.

“If you want to do business with the federal government, vaccinate your workforce.” President Biden.

Vaccination or weekly testing is mandatory:

100+ employees: Vaccinated OR weekly Covid tests for workers who cite religious or health reasons for not getting vaccinations.

Employers that do not comply can face fines up to about \$14,000.

Awaiting formal rule/implementation from OSHA (Department of Labor).

Safer Federal Workforce Task Force Vaccine Mandate Guidance for Federal Contractors & Subcontractors

Vaccination Requirement: Covered contractor employees must be fully vaccinated by December 8, 2021. No testing alternative. Exceptions available for those legally entitled to accommodations.

COVID Safety Requirements: Requires contractors to designate a person or persons to coordinate COVID-19 safety efforts at covered contractor workplaces.

Proof of Vaccination: Covered contractors must ensure employees are vaccinated by checking authorized vaccination records. Attestations of vaccination are **not** acceptable substitutes.

Covered Contracts: All contracts and contract-like instruments for services, construction, leasehold interest in real property, and contracts in connection with Federal property or land and related to offering services for Federal employees are covered.

- **Flow down Requirement:** All applicable contracts shall include a flow-down clause to incorporate the safety protocol requirements in lower-tier subcontractors.

Remote workers: Even individuals working on a covered contract from their residence must comply with the vaccination requirements.

Non-covered contracts: Strongly encourages federal agencies to apply the vaccine mandate to non-covered contracts. It is possible that contractors that do not have covered contracts will likely see contract clauses imposing similar vaccine mandates.

Colorado Vaccine Laws & Regulations



Not fully vaccinated or unvaccinated employees must wear masks inside State Facilities when they are around others.

By September 20, all Colorado state employees must either be fully vaccinated or participate in twice-weekly testing.

Colorado employers should refer to CDC's page Workplaces and Businesses, as well as OSHA's Protecting Workers Guidance.

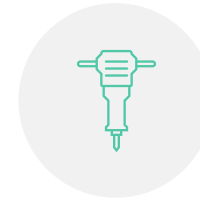
Colorado Vaccine Mandate



The Colorado Department of Public Health & Environment imposed a vaccine mandate on all State Contractors and State Contractor Workers who physically enter a State Facility.



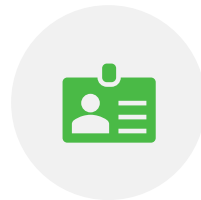
These workers must be able to show proof of their first dose in a two-dose series no later than Sept. 30, 2021. They must be fully vaccinated by October 31 to enter a State Facility.



Unvaccinated workers will not be allowed to enter a State Facility but may provide services remotely.



A State Facility is defined as any building or utility owned, leased, or used by the State including Schools, but excluding highways or public assisted housing projects.



State Contractor is defined as all entities or persons that have entered or accepted a State Contract to transact business with the State.



State Contractor Worker is defined as all State Contractor's employees, agents, and subcontractors and all employees of a State Contractor's agents and subcontractors who will perform work under a State contract.

Seventh Amended CO Public Health Order Covid Restrictions

- require state contractors entering state facilities to provide services to a client, patient, resident or youth living in the facility who have a medical or religious exemption from immunization approved by their employer to be tested for COVID-19 twice weekly, and excluded from the facility and required to isolate if they test positive;
- require all other state contractors entering state facilities who are unvaccinated or not fully vaccinated or who have a medical or religious exemption from immunization approved by their employer to be tested for COVID-19 twice weekly, and excluded from the facility and required to isolate if they test positive; and
- require confirmation from state contractors that all state contract workers who are not fully vaccinated and are required to participate in twice weekly COVID-19 testing are doing so.
- Expires 11/1/2021

City of Denver

ALL CITY EMPLOYEES MUST BE FULLY VACCINATED BY SEPTEMBER 30.

ORDER APPLIES TO ALL VOLUNTEERS, INTERNS AND CONTRACTORS OF THE CITY.

GOAL: COMPLIANCE, NOT ENFORCEMENT.

IF CONTRACTORS ARE MAKING GOOD FAITH EFFORTS TO COMPLY WITH THE VACCINE MANDATE, CITATIONS WILL NOT BE ISSUED.

IF CONTRACTORS ARE NOT MAKING ATTEMPTS TO ACHIEVE COMPLIANCE BY THE END OF SEPTEMBER, THE CITY MAY CHANGE COURSE & TAKE A MORE AGGRESSIVE APPROACH.

Policy Implementation Considerations

- Vaccine availability
- Workforce composition and dynamic, including whether certain groups of employees:
 - have more or less interaction with the general public;
 - are required to work in close contact with one another;
 - can successfully work remotely; or
 - have vocalized support for or objections to COVID-19 vaccines.
- Determine whether to allow exemptions from the policy:
 - reasonable accommodation--religious belief; or medical condition

What to Include in a Mandatory Policy:

- Explain purpose and benefits of vaccine and provide resources about vaccine risks
- Identify the individuals or facilities (or portions of facilities): covered by policy and excluded by policy
- State it is mandatory
- Explain policy on accommodations
- Assure confidentiality
- Explain not a substitute for other infection control measures
- Method to report violations of the policy and raise concerns about other health and safety issues.

What to Include in a Mandatory Policy:

- Restate prohibition of retaliation against individuals who:
 - seek an accommodation or exemption from the policy requirements;
 - report a violation of the policy; or
 - express any other safety complaint or concern in good faith.
- Reinforce anti-discrimination policy
- Distribute policy to employees & acknowledge receipt and obligations.
- Train managers and employees on the importance of compliance.

Questions?

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Final comments:



- ★ Thank you, Danielle!
- ★ A survey will be sent after the seminar, please take the time to respond. Your feedback helps us plan future webinars and seminars.
- ★ Thank you for staying on the webinar the full time.
- ★ **Please answer this final question to earn your CIUs.** Then, you are free to hop off and end your session.

Thank You for attending!