

FAQs Regarding Governor Inslee's Vaccine Mandate

[August 13, 2021](#) [Constitutional](#), [Employment](#)

On Monday, August 9, 2021, Washington Governor Jay Inslee issued a proclamation requiring certain state workers and health care workers to be vaccinated. This blog post is intended to provide an overview of what the Governor's Proclamation says and how it affects certain state workers and certain public and private health care providers. It does not provide any legal advice, which would require analysis of a specific factual situation.

What does the Governor's Vaccine Mandate do?

The Governor's [Emergency Proclamation 21-14 COVID-19 Vaccination Requirements](#) (the *Vaccine Mandate*) requires that all Workers of a State Agency and public and private Health Care Providers be fully vaccinated against COVID-19 (*fully vaccinated*). After October 18, 2021, the Vaccine Mandate *prohibits*:

- Any Worker from engaging in work for a State Agency if the Worker has not been fully vaccinated;
- Any State Agency from permitting any Worker to engage in work for the State Agency if the Worker has not been fully vaccinated and provided proof of vaccination;
- Any Health Care Provider from failing to be fully vaccinated;
- Any individual or entity that operates a Health Care Setting from permitting a Health Care Provider to engage in work for the individual or entity as an employee, contractor, or volunteer if the Health Care Provider has not been fully vaccinated and provided proof of vaccination.

What does it mean to be “fully vaccinated”?

Under the Vaccine Mandate, a person is “*fully vaccinated*” two weeks after the second dose in a two-dose series of a COVID-19 vaccine authorized for emergency use, licensed, or otherwise approved by the FDA (e.g., Pfizer-BioNTech or Moderna) or two weeks after receiving a single-dose COVID-19 vaccine authorized for emergency use, licensed, or otherwise approved by the FDA (e.g., Johnson & Johnson (J&J)/Janssen).

What is a State Agency?

A State Agency includes:

- [Executive Cabinet Agencies](#)

- [Small Cabinet Agencies](#)
- [Agencies under the authority of a board, council, or commission](#) (except for the State Board for Community and Technical Colleges and the governing boards of four-year institutions of higher education)

A State Agency does **not include** those state agencies overseen by a statewide elected official other than the governor (for example, the Secretary of State, State Treasurer, Attorney General, State Auditor, Superintendent of Public Instruction, Insurance Commission, and Commissioner of Public Lands). However, Governor Inslee has encouraged government entities not covered by the Vaccine Mandate to adopt a similar approach.

Who is a Worker?

A **Worker** includes a person engaged to work as an employee, independent contractor, service provider, volunteer, or through any other formal or informal agreement to provide goods or services, whether compensated or uncompensated. A Worker does not include a visitor or patron. A Worker also does **not** include independent contractors or their employees unless the contract with the State Agency includes any provision that requires work to be performed in person and on site, regardless of frequency, whether other workers are present, or any contingent nature of that requirement.

Who is a Health Care Provider?

Health Care Providers include individuals subject to [Healthcare Professional Credentialing requirements](#), including those working in nursing homes, adult family homes, assisted living, and residential-treatment facilities. However, there are a few exceptions, including an exception for providers of personal care in a person's home, such as home care, home, health, or hospice care. See the Vaccine Mandate for other exceptions.

What is a Health Care Setting?

Generally, a **Health Care Setting** is any public or private setting that is primarily used for the delivery of in-person health care services to people (for example, a hospital, or the pharmacy located in a grocery store, or a nurse's office located within a school). Health Care Settings include acute care facilities, including hospitals; long-term acute care facilities; inpatient rehabilitation facilities; residential long-term care facilities; etc. See the Vaccine Mandate for exceptions.

What happens to those Workers of State Agencies who are not fully vaccinated by October 18, 2021?

Workers for State Agencies who are not fully vaccinated or who refuse to provide verification of their vaccination by October 18 will be subject to "non disciplinary dismissal" for failing to meet the qualifications for their job. Those employees granted a reasonable accommodation for disability or religious reasons may not be subject to non-disciplinary dismissal. There may be continued or additional safety requirements for employees who are granted accommodations.

Under the Vaccine Mandate, employers are required to verify the vaccination status of their employees. Workers at State Agencies and Health Care Providers may not self-attest to their vaccination status.

What happens to those Health Care Providers who are not fully vaccinated by October 18, 2021, or fail to verify their vaccination status?

The Health Care Provider's employer may not permit them to work for the employer without violating the Vaccine Mandate.

What happens if a Health Care Provider or Health Care Setting violates the Vaccine Mandate?

Violations of the Vaccine Mandate are subject to criminal penalties under RCW 43.06.220(5). Anyone willfully violating any provision of the Vaccine Mandate is guilty of a gross misdemeanor.

Does the Vaccine Mandate apply to local government or schools?

No, as of August 13, the Vaccine Mandate applies only to Workers of a State Agency and certain Health Care Providers. It does not apply to local government, legislative branch, or K-12 or higher education employees, or the employees of other statewide elected officials. But some of those local governments or public employers may follow suit and impose their own vaccination requirements and deadlines. For example, [King County](#) and the [City of Seattle](#) have already adopted a similar vaccine mandate for their employees. Also, the [Superintendent of Public Instruction sent Governor Inslee a letter strongly encouraging the Governor to issue an executive order requiring all public school employees to be fully vaccinated as a condition of employment.](#)

Are there testing or remote work options as alternatives to vaccination?

No. The [Governor's office has said that opt-out testing policies would result in a financial burden for staff and taxpayers and would be ineffective at protecting the lives of Washingtonians.](#) Further, the Governor's office stated that the Vaccine Mandate applies to all Workers of State Agencies, regardless of their remote work setting because "[all workers need to be prepared to come to a worksite at any time necessary to meet business needs.](#)"

Are exemptions available for employees subject to the Vaccine Mandate?

Yes. The Vaccine Mandate provides for exemptions based on disability or on a sincerely held religious belief. These exemptions may be required under the Americans with Disabilities Act (*ADA*), Title VII of the Civil Rights Act of 1964 (*Title VII*), the Washington Law against Discrimination, or other applicable laws.

What is the basis for a disability-related accommodation from the Vaccine Mandate?

Reasonable accommodation for a disability is required by both state and federal law. Under the ADA, employers are required to provide reasonable accommodations to an employee 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. In the context of disability-related accommodations, an “undue hardship” to the employer means an action requiring significant difficulty or expense when considering a number of factors, including the nature and cost of the accommodation in relation to the size, resources, nature, and structure of the employer’s operations. In general, a larger employer with greater resources would be expected to make accommodations that require greater effort or expense than would a smaller employer with less resources.

Before granting a disability-related accommodation, the Vaccine Mandate requires that Workers of State Agencies and Health Care Providers provide their employer with a request for an accommodation and supporting documentation from an appropriate health care or rehabilitation professional authorized to practice in the State of Washington. This documentation must state that the individual has a disability that necessitates an accommodation and the probable duration of the needed accommodation.

What is the basis for a religious accommodation from the Vaccine Mandate?

Religious accommodation is required because both state and federal law prohibit employment discrimination based on religion. This means that an employer cannot refuse to accommodate an employee’s sincerely held religious beliefs or practices *unless* the accommodation would impose an “undue hardship” to the employer. An “undue hardship” has been interpreted by courts to mean only *more than a minimal burden on the operation of the business*.

Before granting a religious accommodation, the Vaccine Mandate requires that State Agencies and employers of Health Care Providers document that a request for an accommodation has been made and requires that the documentation include a statement describing the way the Vaccine Mandate conflicts with the employee’s religious observance, practice, or belief. The [Governor’s office has instructed employees subject to the Vaccine Mandate to work with their human resources office if they need a reasonable accommodation for religious reasons](#). Private employers subject to the Vaccine Mandate are permitted to develop procedures for reviewing requests for religious accommodations.

What sort of religious beliefs are accommodated?

“Religious beliefs” are understood very broadly. They include traditional, organized religions, but also include religious beliefs that are new, uncommon, not part of a formal church or sect, or held by only a small number of people. A religious practice may be sincerely held by an individual even if newly adopted, not consistently observed, or different from the commonly followed tenets of the individual’s religion. There is generally no reason for an employer to question whether a person’s practice or belief is religious or “sincerely held.” However, if an employer has a bona fide doubt about the basis for the request, the employer may be permitted to make a limited inquiry into the employee’s religious practice or belief and the need for accommodation.

Protected “religious beliefs” do **not** include social, political, or economic philosophies or personal preferences, philosophical objections, or any other concerns that are not rooted in religious belief.

How does an employer determine if a religious accommodation imposes an “undue hardship”?

In the context of religious accommodations, “undue hardships” are understood as hardships that are more than “minimal.” For example, undue hardship has been found (meaning no religious accommodation is required) where a requested accommodation would violate a seniority system, cause a lack of necessary staffing, jeopardize security or health, or cost the employer more than a minimal amount. Employers should make determinations about the hardship of specific accommodations on a case-by-case basis. When making this determination, employers may consider relevant factors such as the type of workplace, the nature of the employee’s duties, the identifiable cost of the accommodation, and the number of employees who will in fact need a particular accommodation. In making these determinations, employers should consider *actual* hardship to business operations and should not rely on speculative hardships.

Where can I find more information?

Covered individuals can seek more information from their supervisors or human resources departments. More information about the Vaccine Mandate can be found at:

- (1) The Governor’s [Medium page](#)
- (2) The Vaccine Mandate [FAQs provided by the Governor’s office](#)
- (3) Equal Employment Opportunity Commission (*EEOC*) guidance addressing [What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEOC Laws](#)
- (4) EEOC’s [Questions and Answers: Religious Discrimination in the Workplace](#)

The lawyers of Ellis, Li & McKinstry PLLC are available to talk to you if you have any questions. If you would like to make an appointment, please contact info@elmlaw.com.

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