



GOVERNOR'S EXECUTIVE ORDER MANDATES VACCINATION FOR COVID-19

The governor has issued his second executive order on the issue of COVID-19 vaccinations, E.O. 2021-22 (COVID-19 Executive Order No. 88) issued on September 3, 2021, and has clarified and modified the mandatory vaccination requirements stated in E.O. 2021-20 (COVID-19 Executive Order No. 87) issued on August 26, 2021. Like the first executive order on vaccinations, this one requires face coverings to be worn by all individuals in an indoor public place, and all employers must ensure that employees wear face coverings in indoor workplaces.

Vaccinations and testing requirements are the key feature of both executive orders which cover the following groups of employees: health care workers; school personnel for K-12 schools; higher education; and state-owned or operated congregate facilities operated by the Illinois Department of Veterans' Affairs, Illinois Department of Human Services, the Illinois Department of Corrections, and the Illinois Department of Juvenile Justice. The mandatory vaccination provisions for all of these groups are similar, and they require the following:

1. Employees must have, at a minimum, the first dose of a two-dose COVID-19 vaccine series or a single dose COVID-19 vaccine by September 19, 2021, and the second dose of a two dose COVID-19 vaccine series within 30 days following the first dose of a two-dose vaccination series.
2. To establish that they are fully vaccinated against COVID-19, the employees must provide proof of full vaccination against COVID-19 by providing a record card or photograph of the card, documentation of the vaccination from a health care provider or electronic health record or state immunization records.

Workers who are not fully vaccinated against COVID-19 must be tested weekly for COVID-19, at a minimum. The testing must be done using a test that either has Emergency Use Authorization by the FDA or be operating per the Laboratory Developed Test requirements by the U.S. Centers for Medicare and Medicaid Services. The testing for workers who are not fully vaccinated against COVID-19 must be conducted on site of the employer or the employer must obtain proof or confirmation from the employee of a negative test result obtained elsewhere. The state Department of Public Health recommends using a PCR test if available.

It is the weekly testing requirement that is the clarification for the mandatory vaccination that was required in the first executive order, and in the frequently answered questions also issued on September 3, 2021, on this subject the Illinois Department of Commerce and Economic Opportunity stated: "Individuals covered by the requirement to be vaccinated can choose to be tested on a weekly basis, rather than be vaccinated, regardless of the reason that they choose not to be vaccinated." This statement was not part of the original executive order issued on mandatory vaccinations.

The new order also states that nothing in the Executive Order prohibits an employer from requiring employees to be fully vaccinated without providing the weekly test alternative. We expect that some employers will use this section of the Executive Order to require vaccinations and not allow a weekly testing alternative. In such situations, we recommend that the union demand to bargain over the mandatory vaccination decision and its impact on employees.

Employees who demonstrate that they are exempt from any requirement to be fully vaccinated against COVID-19 based on a medical reason under the accommodation provisions of the Americans with Disabilities Act or who have sincerely held religious beliefs, practices or observances will be required to undergo, at a minimum, weekly testing for COVID-19. The EEOC has developed guidance and regulations on the ADA exemption and the religious exemption, and the State of Illinois law, Illinois Health Care Right of Conscience Act, 745 ILCS 70/1, 70/4 and 70/5, may provide a basis for a request for a religious exemption.

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