

Comparison of California and Federal Vaccine Mandates

Information/Questions	California Public Health Officer Order	CMS Interim Final Rule Amending Conditions of Participation	OSHA Emergency Temporary Standard on Vaccination	Federal Contractors - President's Executive Order 14042
Important dates	Facilities must be in compliance, and staff must have single dose (J&J or other single-dose vaccine) or second dose, by 9/30/21. By 2/1/22, all staff must have been booster dose. For staff eligible for booster dose after 2/1/22, the dose must be administered within 15 days of eligibility.	Policies and procedures must be implemented, and first/single doses given, by 1/27/22. Second doses must be given by 2/28/22. Lawsuits have been brought challenging this mandate, and an injunction blocking enforcement is in place for certain states (not California). CMS has stated that it will enforce this rule in California and other states where no injunction is in effect. The U.S. Supreme Court will hear arguments about its legality on Jan. 7, 2022.	The standard states that policies and procedures must be implemented by 12/6/21; starting 1/4/22, employees must be fully vaccinated (two weeks past single/second dose) or tested weekly. Lawsuits were brought challenging this mandate, but a federal court ruled on 12/17/21 that the standard is lawful. Because of the delay resulting from the litigation, OSHA has provided extra time for employers to come into compliance - policies and procedures must be implemented by 1/10/22, and testing/vaccination by 2/9/22. The U.S. Supreme Court will hear arguments about its legality on Jan. 7, 2022.	Important dates depend on when a new federal contract is entered into; an existing contract is extended or renewed; or an option is exercised on an existing contract. In general, employees must be fully vaccinated by 1/18/22 (2 weeks past single/second dose) unless otherwise specified in the contract. However, a federal court has stopped this order from taking effect until further notice.
Which entities must comply?	Health care facilities, including hospitals, skilled nursing facilities, ambulatory surgery centers, clinics, physician offices, dialysis centers, hospices, and others.	Providers/suppliers certified to participate in Medicare/Medicaid, including hospitals, critical access hospitals, ambulatory surgical centers, long term care facilities, hospices, home health agencies, rural health clinics, federally qualified health centers, and others (but not physician offices).	Employers with 100 or more employees in the U.S. (including part-time employees, but not independent contractors). However, hospitals in California do not need to comply with the federal OSHA emergency temporary standard (ETS) because they are instead subject to state standards that are equally as effective as this requirement (see Cal/OSHA ETS (8 CCR § 3205), currently being revised), the Cal/OSHA Aerosol Transmissible Disease standard (8 CCR § 5199), and the state public health officer order). The federal OSHA rule also does not apply to workplaces covered by the federal contractor vaccination requirement.	Entities that enter into a new contract or contract-like instrument, or extend, renew, or exercise an option in an existing contract or contract-like instrument with a federal government agency will have a new clause amended into their contract requiring them to comply with the Safer Federal Workforce Task Force COVID-19 Workplace Safety: Guidance for Federal Contractors and Subcontractors. Subcontractors of these entities will also be subject to this requirement. The Executive Order does not require federal agencies or contractors to amend contracts/subcontracts under \$250,000, but federal agencies are encouraged to do so. Grants are exempted from the order. Participation in the Medicare or Medicaid (Medi-Cal) program is not sufficient to make a hospital a federal contractor — another federal contract must exist to make the hospital a federal contractor subject to this requirement.
Who must be vaccinated?	All paid and unpaid individuals who work in indoor settings where patients have access for any purpose, including employees, physicians, students, trainees, volunteers, contractual staff not employed by the facility, and persons not directly involved in patient care but who could be exposed to infectious agents (clerical, dietary, environmental services, laundry, security, engineering, etc.).	All staff (employees, medical staff, other licensed practitioners, students, trainees, volunteers, individuals who provide services under contract or other arrangements) -- except those who provide telehealth or support services, work exclusively outside the facility, and do not have any direct contact with patients or other staff. Excluded staff must be working 100 percent remotely (that is, 100 percent of their time is remote from sites of patient care, and remote from staff who do work at sites of care).	All employees except those who work from their homes, in workplaces where no other people are present, or who work exclusively outdoors (but see testing/masking alternative below).	All employees who do not have an approved medical or religious exemption, except employees who work outside the United States. Even employees who perform all work in their home must be vaccinated or have an approved exemption.
When must staff be vaccinated?	Staff must receive second dose by 9/30/21. Boosters are required by 2/1/22, or within 15 days of eligibility (whichever is later).	Staff must receive first/single dose by 1/27/22, and second dose by 2/28/22 (although this rule is currently not being enforced as noted in the first row above). Boosters are not required by the Conditions of Participation, although hospitals may choose to require them.	Fully vaccinated (two weeks past second dose) by 1/4/22. However, OSHA has announced enforcement discretion and it will not cite employers for noncompliance with this requirement before 2/9/22.	Depends on when the federal contract is entered into, extended, renewed, or an option is exercised. In general, employees must be fully vaccinated by Jan. 18, 2022 (two weeks past single/second dose) unless otherwise specified in the contract.

Religious/medical exemptions?	Yes	Yes. However, the CMS rule grants less flexibility to employers to approve exemptions than does the state public health officer order. Under the CMS rule, employers may not grant exemptions unless legally required by federal law (Americans with Disabilities Act, Rehabilitation Act, ACA section 1557, and Title VII of the Civil Rights Act). The medical conditions justifying exemption are few — see CDC's "Summary Document for Interim Clinical Considerations." California hospitals should review their medical exemption documentation to ensure that it complies with the federal requirements.	Yes	Yes
Testing/masking alternative?	Testing/masking is not permitted as an alternative to the vaccine mandate. However, staff with an approved medical or religious exemption must be tested/masked. The frequency of testing is determined by full-time or part-time status; the type of mask/respirator is determined by Cal/OSHA requirements.	Testing/masking is not permitted as an alternative to the vaccine mandate. However, testing/masking may be implemented as a precaution to mitigate the spread of COVID-19.	Yes - employer may allow a weekly testing and face covering alternative.	Testing/masking is not permitted as an alternative to the vaccine mandate. However, the employer must also ensure that all individuals, including employees and visitors, comply with CDC guidance for masking and physical distancing at a covered contractor workplace.
Acceptable vaccines	Pfizer, Moderna, J&J, and any vaccine authorized by the World Health Organization	Not specified	Any vaccine that is approved or authorized for emergency use by the FDA or WHO, or administered as part of a clinical trial at a U.S. site if the individual is documented to have received an active vaccine candidate (not a placebo) for which efficacy has been independently confirmed.	Any vaccine that is approved or authorized for emergency use by the FDA or WHO, or administered as part of a clinical trial at a U.S. site if the individual is documented to have received an active vaccine candidate (not a placebo) for which efficacy has been independently confirmed;
Acceptable proof of vaccination	<ul style="list-style-type: none"> *CDC vaccination card *WHO yellow card *Photo of above (printed or electronic) *Documentation of vaccination from a health care provider *Digital record with QR code that displays name, birthdate, vaccination dates and types *Documentation from other contracted employer that follows CDPH guidelines <p><i>Self-attestation is not permitted.</i></p>	Not specified	<ul style="list-style-type: none"> *Documentation of immunization from a health care provider *Copy of Vaccination Record Card *Copy of medical records documenting vaccination *Copy of immunization records from a public health, state, or tribal immunization information system *Any other official documentation that contains vaccine type, date of administration, and name of professional or clinic administering the vaccine *<i>Self-attestation (requires specific language)</i> 	<ul style="list-style-type: none"> *Documentation of immunization from a health care provider *Copy of Vaccination Record Card *Copy of medical records documenting vaccination *Copy of immunization records from a public health or state immunization information system *Any other official documentation that contains vaccine type, date of administration, and name of professional or clinic administering the vaccine <p><i>Self-attestation is not permitted.</i></p>
Enforcement mechanism	California Department of Public Health or local public health officer may survey.	State survey agencies (in California, this is the California Department of Public Health) will conduct onsite compliance reviews as part of recertification surveys and complaint surveys. CMS has drafted <i>Interpretive Guidelines</i> (https://www.cms.gov/medicareprovider-enrollment-and-certificationsurveycertificationenrollment-policy-and-memos-states-and/guidance-interim-final-rule-medicare-and-medicaid-programs-omnibus-covid-19-health-care-staff-0) to guide surveyors. Accreditation organizations will also assess compliance.		All existing remedies for contract breach
Lawsuit brought?	No	Yes. This rule has been enjoined in some states, but not in California or certain other states. The U.S. Supreme Court will hear arguments about its legality on Jan. 7, 2022.	Yes. An injunction was issued nationwide at one time, but as of 12/17/21, the injunction was dissolved and OSHA may enforce this standard. The U.S. Supreme Court will hear arguments about its legality on Jan. 7, 2022.	Yes. This order has been enjoined nationwide.

<p>Important notes</p>	<p>The state public health officer order states that the medical exemption documentation retained by the hospital should not describe the employee's underlying medical condition or disability. However, the CMS Conditions of Participation requires very specific information on the medical exemption documentation, including which vaccines are clinically contraindicated for the staff member and the recognized clinical reasons for the contraindications (see CDC's "Summary Document for Interim Clinical Considerations" for further information.") Federal law supersedes state law in this regard, so hospitals should collect and retain the documentation specified in the CMS Conditions of Participation.</p>	<p>The CMS rule contains a list of policies and procedures that must be developed and implemented by 1/27/22.</p>	<p>Hospitals in California do not need to comply with the federal OSHA ETS because they are instead subject to state standards that are equally as effective as this requirement (see Cal/OSHA ETS (8 CCR § 3205), currently being revised), the Cal/OSHA Aerosol Transmissible Disease standard (8 CCR § 5199), and the state public health officer order).</p>	<p>Covered federal contractors must also: (1) establish masking and physical distancing policies for employees and visitors, (2) designate a person(s) to coordinate COVID-19 workplace safety efforts, (3) and amend subcontracts over \$250,000 (except those solely for the provision of products) to include the clause requiring compliance with the Safer Federal Workforce Task Force COVID-19 Workplace Safety: Guidance for Federal Contractors and Subcontractors.</p>
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