San Francisco Clarifies Vaccination Mandate for High-Risk Jobs

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Local public health officials also urge everyone to wear masks indoors

As the COVID-19 Delta variant continues to spread, the San Francisco Department of Public Health (SFDPH) revised a pandemic-related order to provide clarity about a vaccination mandate for workers in high-risk settings. The order also urges everyone—regardless of vaccination status—to wear masks when indoors in public settings.

Safer Return Together Health Order, which was most recently revised on July 20, lifted most pandemic-related protocols, such as business capacity limits and physical distancing requirements, but the order still mandates some safety requirements in specific circumstances.

Significantly, the order requires workers in certain high-risk settings to get vaccinated by Sept. 15 unless they qualify for a religious or medical exemption.

"The San Francisco mandate applies to all government entities and private businesses, including for-profit and nonprofit corporations," noted attorney Jason Geller and law clerk Sinclaire Parer with Fisher Phillips in San Francisco.

Robert Hudock, managing attorney at Hudock Employment Law Group in Los Angeles, explained that the vaccination mandate covers public and private employers in specific health care settings and living spaces where:

- Many people live together.
- Vulnerable populations reside out of necessity.
- The risk of COVID-19 transmission and severe illness or death is high.

High-risk settings include acute-care hospitals, skilled nursing facilities, residential care facilities for the elderly, homeless shelters and jails.

The SFDPH clarified that the health order "does not prohibit any other businesses or government entities from requiring their employees to get vaccinated or provide verification of their vaccination status."

Tips for Employers in High-Risk Settings

"Employers should first determine if their work takes place in a high-risk setting. If so, they must require vaccinations for all nonexempt personnel," Geller and Parer said.

Under the order, "personnel" can include employees, staff, contractors, vendors and volunteers. Covered employers must take the following steps by Sept. 15:

- Find out the vaccination status of all personnel.
- Require vaccination for all personnel (with some exemptions).
- Require unvaccinated, exempt personnel to wear a well-fitted mask at all times.
- Require unvaccinated, exempt personnel to be tested for COVID-19 at least once a week.

"Make sure everything is documented," said Marcus Dong, an attorney with Kaufman Dolowich & Voluck in San Francisco. Keep track of every relevant worker's name, date of birth, and date and type of vaccine received, he suggested.

Personnel who fit into the limited exemptions of religious belief or qualified medical restrictions must provide the employer with a declination form. Geller and Parer recommended that employers train supervisors on the scope of permissible inquiries and responses regarding a covered employee's refusal to get vaccinated.

A crucial step for employers in high-risk settings is to maintain legally compliant records of which workers are vaccinated or exempt, they noted.

Well-maintained records will allow employers to keep track of workers who are exempt from the vaccination mandate. "They can still work in high-risk settings," they added. "However, they must wear a well-fitting mask and get tested for COVID-19 at least once a week."

The employer also should determine if it is covered by the California Consumer Privacy Act and provide requisite notice and maintain confidential files for the medical information.

All employers in San Francisco should develop a COVID-19 health screening and testing procedure; ensure that they have updated signage; and monitor their federal, state and local guidance. The COVID-19 website website contains links to updated flyers, posters and facts sheets, which employers can download in multiple languages for free.

"Reviewing the forms from the city is probably a smart place to start," Dong said.

Mask Requirements and Recommendations

Employers in the Golden State must follow the California Division of Occupational Safety and Health's (Cal/OSHA's) COVID-19 safety standards, including mask rules.

"Although Cal/OSHA allows fully vaccinated employees to forgo face coverings in the workplace upon providing proof or attesting that they are fully vaccinated, Cal/OSHA allows local health jurisdictions to require more protective mandates," explained Benjamin Tulis, an attorney with Jackson Lewis in Los Angeles.

Fully vaccinated employees in San Francisco are not required to wear facial coverings at work

unless an exception applies, according to the SFDPH. For instance, businesses are allowed to require that their employees and customers continue to wear face coverings. The SFDPH advises such businesses to clearly post the rules onsite and online and to consistently apply them.

"Everyone should be respectful of an individual's decision to wear a mask even in settings where they are not required, even if a person is fully vaccinated," the SFDPH said. "No business or person should take an adverse action against individuals who choose to wear a mask to protect their health."

In response to a surge in COVID-19 cases fueled by the Delta variant, many local governments beyond San Francisco are recommending that all people wear masks indoors.

Tulis noted that Los Angeles County recently updated its order to require masks in more situations. Specifically, the Los Angeles County Department of Public Health is requiring everyone in the county to wear a mask in the following settings:

- All public settings, venues, gatherings and businesses.
- On all forms of public transport, including ride-shares.
- In transportation hubs, such as airports, bus terminals, train stations and marinas.
- Health care settings, including long-term-care facilities.
- State and local jails.
- Shelters.
- Indoor schools, camps and day care facilities.
- Outdoor businesses and venues that have a mask policy.

Businesses in Los Angeles County must require all patrons to wear masks indoors (even if they are fully vaccinated) and to post notices about the rules.

Geller and Parer said employers should continue to watch for changes to local legislation sparked by the COVID-19 Delta variant.