



SANTA CLARA COUNTY ISSUES NEW COVID-19 PUBLIC HEALTH ORDER

The following Q & A are provided as general information, based on current laws and guidance, and are not intended to be legal advice or to cover all situations.

What does the new health order require employers to do?

It requires businesses to ascertain the vaccination status of all “personnel” who are currently or will be working at a facility or worksite in the County. This includes employees, independent contractors, interns, and volunteers who are currently or will be working at any worksite in the County. Businesses are not required to obtain the status of personnel working remotely, although it is strongly encouraged. Finally, the Order continues to impose the face covering and case reporting requirements.

The new mandate also eliminates the following prior Santa Clara County COVID-19 requirements:

- Implementation and posting requirements for Santa Clara County’s Social Distancing Protocol
- Santa Clara County’s Mandatory Directive on Capacity Limitations.

Is this mandate legal? Will it get challenged in court?

Various legal groups appear to be poised to challenge the law. Nevertheless, contractors are advised by counsel to comply until the time of a successful legal challenge, if that ever were to occur.

When does this law take effect?

The deadline to comply with the initial vaccination status assessment requirement is **June 1, 2021**. Employers are not required to provide the records to the County at this time, but will be required to present evidence of compliance with the Order if requested.

Do I just have to ask for my employees’ vaccination status once?

Yes, for those who are fully vaccinated. Businesses have an ongoing obligation to obtain updated vaccination statuses every 14 days from every individual who is not fully vaccinated at the time the initial assessment was completed, until they are fully vaccinated.

What happens if an employee declines to provide their vaccination status?

Employees may choose to decline to provide their vaccination status. However, businesses should treat those who decline to provide their vaccination status as unvaccinated. Accordingly, businesses must continue to obtain updated statuses from those who decline to provide vaccination status.

What should I do if any of my employees or independent contractors refuse to complete the form?

Employers are recommended to complete the form, indicate that the individual refused to complete and sign it, and note that they will be considered to have “declined to answer,” therefore treated as unvaccinated under the Order and subject to reassessment every 14 days.

Do I have to collect all this information from my subcontractors’ employees?

No, but you should confirm with your subcontractors that they are complying with these requirements

What confidentiality rules do employers need to follow when they collect and store information regarding employee vaccination status?

Generally, employers must treat this information the same way they treat other similar private information they receive from their employees, including, for example medical conditions for which they may request time off, etc. See the next two questions for more information.

Does HIPAA apply when an employer asks an employee for their vaccination status?

No. HIPAA (the Health Insurance Portability & Accountability Act of 1996) applies to certain entities, such as healthcare providers and health plans, and what protected health information they can share about their patients or members under what circumstances. HIPAA does not govern what information employers may request from their employees.

What recordkeeping requirements apply under the order?

Businesses must maintain a vaccination status record for each employee. The County's template self-certification form is a good way to gather and track vaccination information. Employers can use that or any other documentation establishing vaccine status, such as a copy of the individual's CDC vaccination card.

All records relating to vaccination status must be maintained confidentially and should be treated the same as any other medical information collected about employees (such as workers' compensation files or drug test results). As mentioned above, businesses will be required to present evidence of compliance with the Order if requested by the County. Please note that if your business is subject to the requirements of the California Consumer Privacy Act (CCPA), collecting vaccination status information triggers a notice of collection.

Are there penalties for non-compliance?

Any business that fails to ask about and record the vaccination status of its workers is subject to enforcement and may be required to pay fines of up to \$5,000 per violation per day. While it is not clear how or when enforcement will begin, companies are advised to get into compliance quickly and keep up with status reassessments.

Can I be penalized if my employees decline to provide info on whether they were vaccinated?

No. As mentioned above, you must collect documentation from them stating that, and you must continue to obtain updated statuses from those who decline to answer.

More FAQ are available from the Santa Clara County Department of Public Health.

Sweeney Mason LLP continues to monitor the rapidly evolving situation pertaining to the COVID-19 virus and resulting legal issues. We are finding that the laws and orders released by the Federal, State, County and Local governments are, in some cases, ambiguous, vague and/or contradictory, resulting in some confusion among a broad cross-section of our clients. Given the fast-paced changes to the applicable orders and mandates, as well as the ambiguities inherent in the orders, there is no "one-size-fits-all" approach to COVID-19-related legal matters. As a result, contracts, employment issues, ongoing lawsuits and other matters impacted by the COVID-19 outbreak should be analyzed on a case-by-case basis.

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