

Memo on Vaccinations 8/19/21

“. . . patients have the right to receive care in a safe environment.”
Washington Post 8/5/21

On August 13, 2021, the Philadelphia Board of Health issued a mandate requiring healthcare workers in Philadelphia to be vaccinated by October 15, 2021, unless covered by two exemptions required by the EEOC. Those who receive accommodations for medical or religious reasons must be double-masked (with medical/surgical mask covered by cloth mask), maintain social distancing, and be tested with the PCR test or the antigen rapid test (2X per week for health care).

Some concerns have been raised related to this mandate because the vaccines were operating under an emergency authorization and not full FDA approval. However, the Pfizer COVID -19 vaccine received full approval from the FDA on August 23, 2021. The approval of the Moderna vaccine is expected to follow. In this context, it is critical for us to consider the implications for the well-being of staff and patients. Clearly, the increased rates of infection which are linked to the DELTA variant have triggered concern, especially since there has been an increase in COVID-19 illness among children who are not eligible for the vaccine. Philadelphia FIGHT's patients include children treated by the Pediatric and Dental Clinics.

The City's mandate for healthcare workers was preceded (August 11, 2021), by an announcement by Mayor James Kenney and Acting Health Commissioner Cheryl Bettigole that all City employees would be required to be vaccinated, effective midnight August 11th. Those not vaccinated would be required to double mask. Businesses were to require masks in all indoor environments; those who assure that staff and clients are vaccinated would not be required to mask. In addition, all venues of unseated events of more than 1000 participants were to require masks of attendees and staff.¹ The

¹ YouTube via @billy-penn. August 11, 2021.

healthcare mandate goes further in its requirements, but this mandate was what the City felt it could do for environments related to business.

While these important and forward-looking decisions have been determined, this memorandum attempts to provide local and national information regarding today's pandemic reality, to include guidelines regarding COVID-19 vaccine requirements and how these guidelines are being applied. Philadelphia FIGHT seeks to ensure that staff, patients, and the community understand what is taking place in Philadelphia in particular and the nation, with regard to requiring vaccinations for COVID-19.

The EEOC has established clear guidelines for employers with regard to requiring vaccinations of employees. These guidelines were updated at a hearing held on April 28, 2021² and released on May 13, 2021. Essentially, the EEOC confirmed its prior guidance that “employers may mandate employees be vaccinated for COVID-19, including as a condition to entering the workplace, subject to reasonable accommodation requirements under applicable law.”³

This is certainly not the first time that vaccine requirements have been mandated. When the Continental Army risked smallpox, George Washington mandated that all soldiers be inoculated.⁴ In 1902, with yet another outbreak of smallpox, the local health board of the city of Cambridge, in Massachusetts, ordered residents over the age of 21 to be vaccinated against the disease. The fine was \$5.00 for those who refused to comply. A local pastor was fined after violating the vaccine requirement and he appealed, with the case ultimately reaching the U.S. Supreme Court. In *Jacobson v. Massachusetts*, 1905, his appeal was denied. Then Justice John Marshall Harlan wrote: “*The liberty secured by the Constitution of the United States to every person within its jurisdiction does not impart an absolute right in each person to be, at all times and in all circumstances,*

² EEOC Updates Guidance on COVID-19 Vaccination Policies, Including Mandates, Incentives and Accommodations. National Law Review, August 5, 2021.

³ EEOC Issues Updated COVID-19 Technical Assistance. US EEOC, Press Release, May 28, 2021.

⁴ Jarvis, Jacob. Has the U.S. Military ever mandated vaccines. Newsweek, August 10, 2021.

*wholly freed from restraint. There are manifold restraints to which every person is necessarily subject for the common good.”*⁵

Recently, Justice Neil Gorsuch described *Jacobson v. Massachusetts* as a “modest decision that did not seek to depart from normal legal rules during a pandemic.”⁶

While federal laws may allow a small number of workers to seek an exemption from employers’ decisions to require vaccination,⁷ recent court decisions have ruled in favor of organizations requiring vaccination of their employees.⁸ The EEOC guidelines include the caveat that employees may be entitled to a reasonable accommodation providing this accommodation does not “pose an undue hardship on the operation of the employer’s business.”⁹

Requiring vaccination is not new. For decades the American public has been required to be vaccinated from a variety of dangerous diseases in order to attend school, for work, especially in health care, and to enter the military. Defense Secretary Lloyd Austin has noted that “any large virus outbreak in the military could affect America’s ability to defend itself in a security crisis.”¹⁰ These diseases for which vaccinations are required include Chickenpox, Diphtheria, Hepatitis A & B, Measles, Mumps, Rubella, Whooping Cough, and Polio. Other vaccines protect us from additional serious illnesses: HPV,

⁵ Millhiser, Ian. Yes, COVID-19 vaccine mandates are legal: What the law says about vaccine mandates, explained. VOX, July 30, 2021.

⁶ Ibid.

⁷ The Americans with Disabilities Act may allow people with medical conditions that prevent them from being vaccinated to gain such an exemption. The Civil Rights Act of 1964 permits people with religious objections to vaccination to seek an accommodation from their employer.

⁸ Romero, Dennis. Judge dismisses lawsuit by Houston hospital employees over Covid-19 vaccinations. NBC News, June 13, 2021.

⁹ EEOC Updates Guidance on COVID-19 Vaccination Policies, Including Mandates, Incentives and Accommodations. National Law Review, August 5, 2021.

¹⁰ Baldor, Lolita. Covid Vaccines to be required for Military Under New U.S. Plan. U.S. News, August 9, 2021.

Meningitis, Pneumonia, Tetanus, the Flu.¹¹ Requiring testing is not new either. Before TB guidelines changed, healthcare environments required annual testing of employees with treatment plans to follow if newly positive cases were found. At FIGHT and elsewhere, employees who can not produce a vaccination record for various diseases are required to demonstrate blood levels indicating immunity, or to get vaccinated. In the United States both testing and vaccination for COVID-19 is provided free of charge to the individual. The President, Joseph Biden has recently announced that a third shot of Pfizer or Moderna COVID-19 vaccine is recommended to those who are immunocompromised and this third shot will be available to all those vaccinated with the Pfizer or Moderna vaccine, eight months after the second shot, after approval by the FDA and CDC.¹² Interestingly, Germany has just announced that the government will no longer provide free testing for those who refuse vaccination.¹³

The pressure for full vaccinations is primarily directed at those in all forms of health care and those who serve children. On August 8, 2021, on Meet the Press, Dr. Anthony Fauci minced no words: "...if you want to work in health care you need to get vaccinated."¹⁴ NIH Director, Dr. Francis Collins, has called for more mandates for vaccination against COVID-19 for health care workers. Both Fauci and Collins are anxious for the formal approval of the COVID-19 vaccines by the FDA, because they believe this will encourage more people to agree to be vaccinated and enable more employers to require vaccination. Concerned over the health care of children and the potential spread of COVID-19 through schools, Randi Weingarten, President of the American Federation of Teachers, is urging the union to endorse requiring COVID-19 vaccination. In Philadelphia, the Philadelphia Federation of Teachers (the local branch)

¹¹ Diseases and the Vaccines that Prevent Them. The Center for Disease Control.

¹² McCarthy, Erin and McCrystal, Laura. Booster shots to start in fall. The Philadelphia Inquirer, August 29, 2021.

¹³ Schuetze, Christopher, Casey, Nicholas, Sullivan, Eileen, Alba, Davey, Gutierrez, Jason, Meheut, Constant, Wipulasena, Aanya and Hasnat, Saif. Germany will stop paying for virus tests for people choosing to remain unvaccinated. New York Times, August 11, 2021.

¹⁴ Karanth, Sanjana. Fauci calls for mandating vaccination for health workers. HEALTH, August 8, 2021.

has indicated that they will support a mandate if it is negotiated as part of their collective bargaining agreement.¹⁵ The NEA has now joined the AFT in supporting vaccination mandates for teachers and staff, totaling more than 5 million people.¹⁶ Dr. Anthony Fauci has stated recently that the COVID-19 vaccines should be required for all teachers.¹⁷

More than 56 health care associations/organizations have called for vaccination requirements. These include the American Medical Association, the American Nurses Association, American Pediatrics, Association of American Medical Colleges, and the National Association for Home Care and Hospice.¹⁸ These organizations have signed a joint statement in support of COVID-19 Vaccine Mandates for all workers in health and long-term care.¹⁹ The current list is available in Addendum 1.

Requiring vaccinations for COVID-19 is getting substantial local support. The Philadelphia Catholic Archdiocese has advised priests to refrain from supporting religious exemptions from vaccine mandates; while there is controversy among religious groups regarding vaccine mandates, increasing and diverse religious communities are urging vaccination.²⁰ The leadership of Philadelphia's largest municipal workers union, AFSCME, stated that the union would not oppose a vaccine mandate for their members.²¹ Philadelphia City Council will require themselves and their staff to be

¹⁵ McCrystal, Laura & Steele, Allison. Philly's teachers' union supports a vaccine mandate .The Philadelphia Inquirer, August 9, 2021.

¹⁶ NIH COVID-19 update. MSNBC, August 12, 2021.

¹⁷ Jacobs, Jennifer. Fauci: Vaccinations should be required for teachers. The Philadelphia Inquirer, August 11, 2021.

¹⁸ Emanuel, Ezekial. The Annals of Internal Medicine, July 29, 2021.

¹⁹ Emanuel, Ezekial and Skorton, David. Major Health Care Professional Organizations Call for COVID-19 Vaccine Mandates for All Health Workers. AAMC, July 26, 2021.

²⁰ Roebuck, Jeremy. Philly's archdiocese advised priests not to help Catholics seeking exemptions from vaccine mandates. The Philadelphia Inquirer, August 18, 2021.

²¹ McDaniel, Justine, McCrystal, Laura, Walsh, Sean Collins and McCarthy, Erin. As cases rise in region, so do new rules. The Philadelphia Inquirer, August 11, 2021.

vaccinated. PA Governor Thomas Wolf issued the Commonwealth's first vaccine mandate, requiring all health care workers at state-run facilities to be vaccinated or to be tested weekly; all new hires must be vaccinated for COVID-19.²² The Federal Government has stepped in to mandate vaccinations for those working in nursing homes, overriding the Governor's plan for nursing care facilities to achieve 80% vaccination rates among staff before October 1, 2021.²³ Numerous organizations in the city are, or soon, will be requiring COVID-19 vaccinations. These include: the University of Pennsylvania Health System, Thomas Jefferson Health System, the Children's Hospital of Philadelphia, Temple University Health System and Virtua Health System (NJ). The healthcare systems in Philadelphia are now covered by the City mandate but had previously announced their own policies. Nationally, large numbers of other groups/organizations are requiring, or soon will require, vaccinations for employees. Pennsylvania-based Genesis Healthcare, with 70,000 employees and 400 nursing homes, announced that all employees are required to have their first shot of COVID-19 vaccine by August 23, 2021, well before the Federal Government mandate. Their Chief Medical Officer, Dr. Richard Feifer, noted that "It was voluntary earlier, but not now. Our tactics in this fight must change."²⁴ And Kaiser Permanente has announced it is requiring vaccination of its 240,000 employees.²⁵ More than 700 colleges and universities in the United States are requiring staff and students to be vaccinated in order to return to the classroom in the fall. A federal judge, and more recently the U.S. Supreme Court, upheld a vaccination mandate by Indiana University, noting that it

²² Ibid.

²³ McDaniel, Justine, McCarthy, Erin, Burling, Stacey. PA wants testing if care staffs not vaccinated. The Philadelphia Inquirer, August 13, 2021.

²⁴ Preidt, Robert and Foster, Robin. Largest Operator of Nursing Homes in the U.S. Issues Vaccine Mandate for his Workers. U.S. News, Health Day News, August 5, 2021.

²⁵ Speakman, Kimberlee. Healthcare Giant Kaiser Permanente Will Require Covid Vaccinations for Staff. FORBES, August 2, 2021.

served a valid public health interest.^{26,27} Clearly, the voice of Benjamin Franklin is being heard. *“In 1736 I lost one of my sons, a fine boy of four years old, by the small-pox, taken in the common way. I have long regretted bitterly, and still regret that I had not given it to him by inoculation. This I mention for the sake of parents who omit that operation, on the supposition that they should never forgive themselves if a child died under it; my example showing that the regret may be the same either way, and that, therefore, the safer should be chosen.”*²⁸

Other businesses are exploring different strategies to encourage vaccinations in Philadelphia. For example, several high-end restaurants in Philadelphia and nearby suburbs have announced that only vaccinated customers will be allowed to dine inside.²⁹ The New York Stock Exchange will not admit the unvaccinated access to the trading floor³⁰, and AMTRAK employees must be vaccinated by November 2021.³¹

National groups/organizations currently, or soon to require COVID-19 vaccinations include:

- The Federal Government - all Federal employees and for those who do not, mask wearing and COVID-19 testing twice a week (4 million)
- The Pentagon - All active-duty individuals in the US Military (1.3 million)
- Anthem Health Care (70,000)

²⁶ Gastin, Lawrence and Ratzan, Scott. Proven ways to boost COVID-19 vaccination: mandates plus nudges. STAT, July 22, 2021.

²⁷ Barnes, Robert. Health Alert: Supreme Court won't block Indiana University coronavirus vaccine mandate as Justice Barrett rejects student plea. Daily Beast, August 12, 2021.

²⁸ Ingraham, Christopher. Ben Franklin lost a son to smallpox. Here's his sobering advice for parents worried about vaccines today. The Washington Post, February 4, 2015.

²⁹ Klein, Michael. Philadelphia-area restaurants ask for proof of vaccinations. The Philadelphia Inquirer, August 2, 2021.

³⁰ Li, Yun and Pisani, Bob. NYSE: Vaccinations for anyone on trading floor. CNBC, August 11, 2021.

³¹ Levin, Alan and Leonard, Jenny. All AMTRAK employees must be fully vaccinated against COVID-19 by November 1st. Bloomberg News, August 11, 2021.

- The U.S. Office of Veteran Affairs – all health care personnel working in VA settings (350,000 employees)
- New York City – All city and health care workers and for those who do not, mask wearing and COVID-19 testing once a week
- California State - All State and health care workers and teachers and staff at schools, and for those who do not, mask wearing and COVID-19 testing once a week
- U.S. Office of Health and Human Services – All employees must be vaccinated (25,000)
- Washington, DC – All city workers must be vaccinated or tested weekly
- Washington State – All city workers must be vaccinated or tested weekly
- The City of Seattle – All city workers must be vaccinated or tested weekly
- The Federal Government – all employees of long-term care and nursing homes, treating recipients of Medicare or Medicaid, must be vaccinated or the institution will risk federal funding (1.3 million)
- See Addendum for additional organizations/businesses

Clearly, Philadelphia FIGHT must address the situation that confronts all health care entities – how to respect the concerns of employees AND the right and expectation of patients to receive care in a safe environment. While Philadelphia FIGHT has encouraged vaccination for COVID-19, employees have been able to select vaccination. However, as the COVID-19 surge continues, and the City of Philadelphia enacts new guidelines, FIGHT will make adjustments to serve our patients and staff in the safest possible manner.

Philadelphia FIGHT will take steps to comply with these new City guidelines.

ADDENDUM 1

- Academy of Managed Care Pharmacy
- American Academy of Ambulatory Care Nursing
- American Academy of Child and Adolescent Psychiatry
- American Academy of Family Physicians (AAFP)

- American Academy of Nursing
- American Academy of Ophthalmology
- American Academy of PAs (AAPA)
- American Academy of Pediatrics (AAP)
- American Association of Allergy, Asthma & Immunology
- American Association of Colleges of Pharmacy
- American Association of Clinical Endocrinology
- American Association of Neuroscience Nurses
- American College of Clinical Pharmacy (ACCP)
- American College of Physicians (ACP)
- American College of Preventive Medicine
- American College of Surgeons (ACS)
- American Epilepsy Society
- American Medical Association (AMA)
- American Nursing Association (ANA)
- American Pharmacist Association (APhA)
- American Psychiatric Association (APA)
- American Public Health Association (APHA)
- American Society for Clinical Pathology
- American Society for Hematology (ASH)
- American Society for Radiation Oncology (ASTRO)
- American Society of Health-System Pharmacists (ASHP)
- American Society of Nephrology
- American Thoracic Society
- Association for Clinical Oncology (ASCO)
- Association of American Medical Colleges (AAMC)
- Association of Rehabilitation Nurses
- Council of Medical Specialty Societies (CMSS)
- HIV Medicine Association
- Infectious Diseases Society of America (IDSA)
- LeadingAge
- National Association for Home Care & Hospice
- National Association of Indian Nurses of America
- National Association of Pediatric Nurse Practitioners
- National Council of State Boards of Nursing (NCSBN)
- National Hispanic Medical Association (NHMA)
- National League for Nursing
- National Medical Association
- National Pharmaceutical Association (NPhA)
- Nurses Who Vaccinate
- Organization for Associate Degree Nursing (OADN)
- Pediatric Infectious Diseases Society (PIDS)
- Philippine Nurses Association of America, Inc (PNAA)
- Society of Gynecologic Oncology
- Society for Healthcare Epidemiology of America (SHEA)
- Society of Hospital Medicine

- Society of Interventional Radiology
- Texas Nurses Association
- The John A. Hartford Foundation
- Transcultural Nursing Society
- Virgin Islands State Nurses Association
- Wound, Ostomy, and Continence Nurses Society

ADDENDUM 2

Some more diverse organizations requiring or soon to Require Vaccinations of Employees:

- The New York Times
- The Washington Post
- Cisco
- Walt Disney
- Equinox
- Black Rock
- Facebook
- Goldman Sacks
- Google
- Microsoft (all employees, vendors, guests)
- Morgan Stanley
- Netflix
- CNN
- Saks
- Twitter
- Tyson Foods
- Union Square Hospitality
- NBC/Universal
- McDonald's