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CITY AND COUNTY OF SAN FRANCISCO, ET AL.  
11

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF SAN FRANCISCO

14 UNLIMITED JURISDICTION

15 UNITED SF FREEDOM ALLIANCE,  
16 BHANU VIKRAM, CARSON R.  
17 SCHILLING, CHRISTA L. FESTA,  
18 CHRISTIANNE T. CROTTY, DENNIS M.  
CALLAHAN, JR., FAIHING CHEUNG,  
and JESSICA KWOK-BO LINDSEY,

19 Plaintiffs,

20 vs.

21 CITY AND COUNTY OF SAN  
22 FRANCISCO, a municipal corporation and  
administrative division of the State of  
23 California, et al., and Does 1 through 100,  
inclusive,

24 Defendants.  
25  
26  
27  
28

Case No. CGC-22-597428

**EXHIBITS D-I TO REQUEST FOR JUDICIAL  
NOTICE IN SUPPORT OF DEFENDANTS  
CITY AND COUNTY OF SAN FRANCISCO,  
ET AL.'S DEMURRER TO THE SECOND  
AMENDED COMPLAINT FOR VIOLATION  
OF CIVIL RIGHTS AND DECLARATORY  
AND INJUNCTIVE RELIEF**

Hearing Date: June 21, 2022  
Hearing Judge: Judge Richard B. Ulmer  
Time: 9:30 a.m.  
Place: Dept. 302

Date Action Filed: January 4, 2022  
Trial Date: None set

**EXHIBIT D**

**TO**

**REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF DEFENDANTS CITY AND  
COUNTY OF SAN FRANCISCO, ET AL.'S DEMURRER TO SECOND AMENDED  
COMPLAINT FOR VIOLATION OF CIVIL RIGHTS AND DECLARATORY AND  
INJUNCTIVE RELIEF**



## COVID-19

# COVID-19 Vaccines Work

Updated Dec. 23, 2021

All currently approved or authorized COVID-19 vaccines are [safe](#) and [effective](#) and [reduce your risk](#) of severe illness. Vaccination can reduce the spread of disease, which helps protect those who get vaccinated and the people around them.

### CDC Recommends

- Everyone ages 5 years and older should get a COVID-19 vaccine as soon as they can.
- To get the most protection, get all recommended doses of a COVID-19 vaccine. Take all [precautions](#) until you are up to date with your [COVID-19 vaccinations](#).
- Everyone ages 16 years and older can get a [booster shot](#) either 6 months after their initial Pfizer or Moderna series, or 2 months after their initial Johnson & Johnson's Janssen vaccine.

## COVID-19 Vaccines Protect Against COVID-19 Infections and Hospitalizations

Vaccines reduce the risk of COVID-19, including the risk of severe illness and death among people who are fully vaccinated. In addition to data from clinical trials, evidence from real-world vaccine effectiveness studies show that COVID-19 vaccines help protect against COVID-19 infections, with or without symptoms (asymptomatic infections). Vaccine effectiveness against hospitalizations has remained relatively high over time, although it tends to be slightly lower for [older adults](#) and for people with weakened immune systems.

### Most People Need Booster Shots

While COVID-19 vaccines are effective, studies have shown some declines in vaccine effectiveness against infections over time, especially when the Delta variant was circulating widely. Everyone ages 18 and older should get a [booster shot](#) either 6 months after their initial Pfizer or Moderna series, or 2 months after their initial Johnson & Johnson's Janssen vaccine. People ages 16–17 may get a booster dose of Pfizer at least 6 months after their initial series of vaccines.

## Vaccine Breakthrough Infections

COVID-19 vaccines are effective at preventing infection, serious illness, and death. Most people who get COVID-19 are unvaccinated. However, since vaccines are not 100% effective at preventing infection, some people who are [fully vaccinated](#) will still get COVID-19. This is called a [breakthrough infection](#). Even when people who are fully vaccinated develop symptoms of COVID-19, they tend to be less severe than in people who are unvaccinated.

## COVID-19 Vaccines Are Effective Against Most Variants

Viruses are constantly changing and new types of the virus, called [variants](#), occur. New variants of the virus that causes COVID-19 are spreading in the United States and in other parts of the world. COVID-19 vaccines are effective against the Delta variant and other variants with widespread circulation in the United States. **Current vaccines are expected to protect against severe illness, hospitalizations, and deaths due to infection with the [Omicron variant](#).** We don't yet know how effective the

vaccines will be against new variants that might arise. CDC will continue to monitor vaccine effectiveness to see if variants have any impact on how well COVID-19 vaccines work in real-world conditions.

#### For More Information

The latest CDC data on COVID-19 vaccine effectiveness are summarized on the [CDC COVID Data Tracker](#).

Information on [CDC's Monitoring COVID-19 Vaccine Effectiveness](#)

Last Updated Dec. 23, 2021

**EXHIBIT E**

**TO**

**REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF DEFENDANTS CITY AND  
COUNTY OF SAN FRANCISCO, ET AL.'S DEMURRER TO SECOND AMENDED  
COMPLAINT FOR VIOLATION OF CIVIL RIGHTS AND DECLARATORY AND  
INJUNCTIVE RELIEF**

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**Menu****FOR  
ALL****[COVID19.CA.GOV](https://covid19.ca.gov)****[Your actions save lives](#)**

# Tracking COVID-19 in California

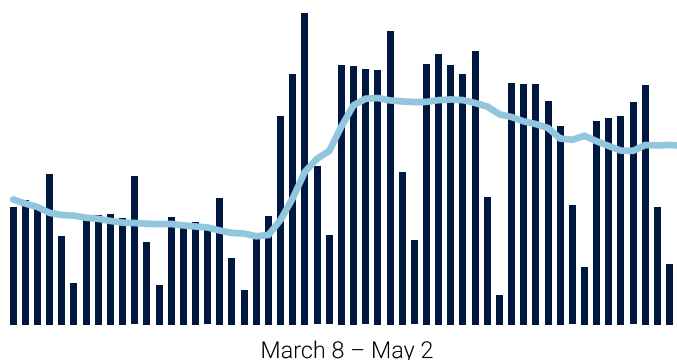
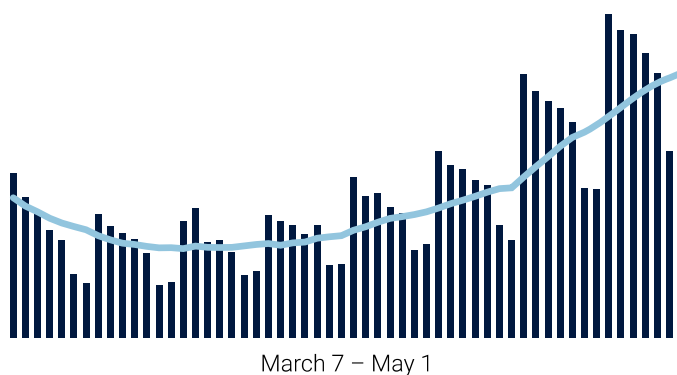
Last updated May 10, 2022 at 10:00 AM

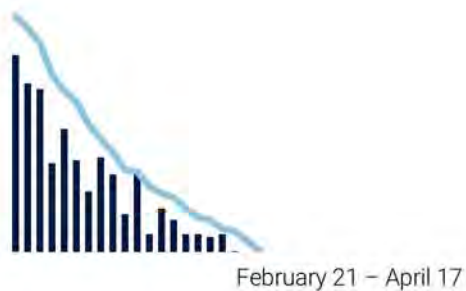
California is tracking data to understand the spread of COVID-19.

## On this page you'll find:

- › [Latest update](#)
- › [Unvaccinated and vaccinated data](#)
- › [County and statewide data](#)
- › [Cases and deaths by ethnicity, gender, and age](#)
- › [Explore more data](#)

## Update for May 10, 2022

**VACCINES ADMINISTERED****75,088,046** total**49,097** daily avg.**83.3%** of population vaccinated  
(5+ with at least one dose)**CASES****8,687,626** total**6,214** daily avg.**16.1** new cases (per 100K)**DEATHS****89,957** total**12** daily avg.**0.03** new deaths (per 100K)





### TESTS

**4.1%** test positivity



Updated May 10, 2022 at 9:36 AM, with data from May 9, 2022. Data is updated on Tuesdays and Fridays.

[Vaccines administered source data](#)  and [cases, deaths, and tests source data](#) 



**Data notes**

## Unvaccinated and vaccinated data

Vaccines prevent serious illness, save lives, and reduce further spread of

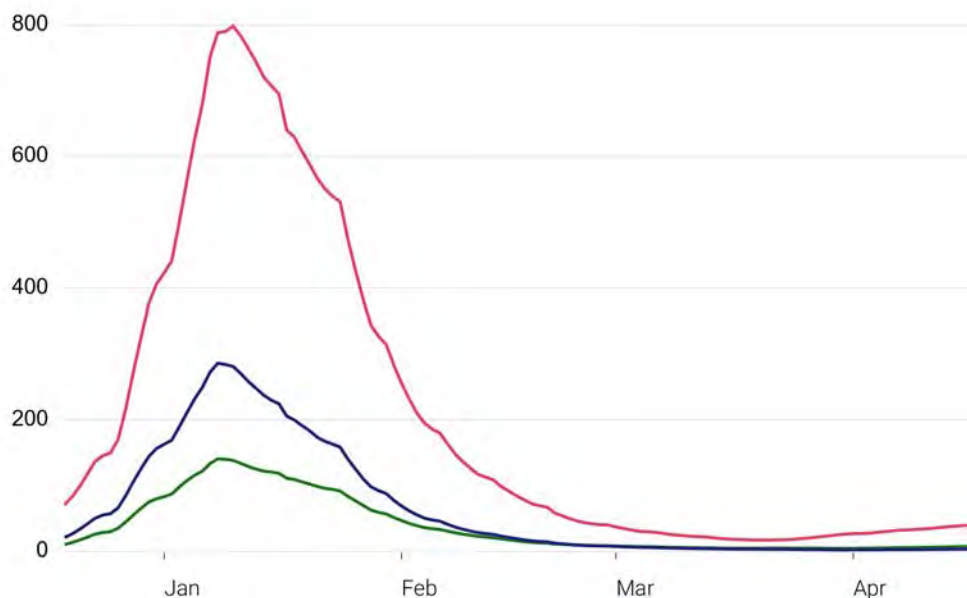
COVID-19. As more people are vaccinated, the virus is less likely to spread, mutate, and potentially become even more dangerous. Vaccines will help put an end to the pandemic.

Cases
Hospitalizations
Deaths

From April 11, 2022 to April 17, 2022, unvaccinated people were **5.4 times more likely** to get COVID-19 than people who received their booster dose.

Cases per 100K (7-day running average)

Unvaccinated  
Vaccinated but not boosted  
Vaccinated and boosted



[Unvaccinated and vaccinated cases, hospitalizations, and death source data](#)

[Data is updated on Fridays.](#)



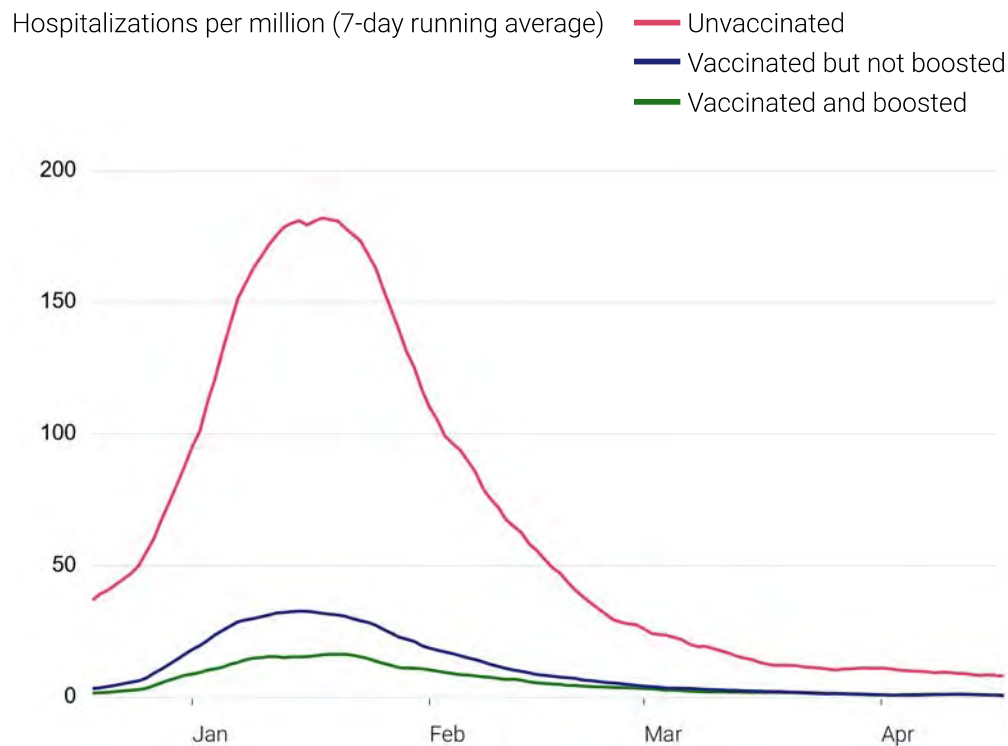
Chart information

## Vaccines administered data

COVID-19. As more people are vaccinated, the virus is less likely to spread, mutate, and potentially become even more dangerous. Vaccines will help put an end to the pandemic.

Cases
Hospitalizations
Deaths

From April 11, 2022 to April 17, 2022, unvaccinated people were **9.3 times more likely** to be hospitalized with COVID-19 than people who received their booster dose.



[Unvaccinated and vaccinated cases, hospitalizations, and death source data](#)  
Data is updated on Fridays.



Chart information

## Vaccines administered data

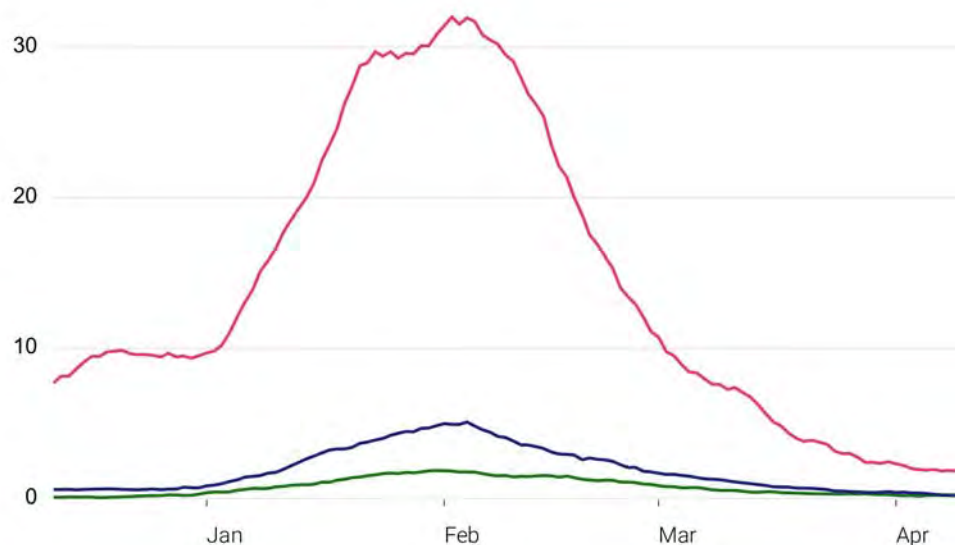
COVID-19. As more people are vaccinated, the virus is less likely to spread, mutate, and potentially become even more dangerous. Vaccines will help put an end to the pandemic.



From April 4, 2022 to April 10, 2022, unvaccinated people were **8.8 times more likely** to die from COVID-19 than people who received their booster dose.

Deaths per million (7-day running average)

— Unvaccinated  
— Vaccinated but not boosted  
— Vaccinated and boosted



[Unvaccinated and vaccinated cases, hospitalizations, and death source data](#)

[Data is updated on Fridays.](#)



Chart information

[↑ Top](#)

## Vaccines administered data

We're tracking the progress of vaccinating Californians across the state.

**VIEW VACCINATION DATA**



## County and statewide data

Get county data

### Cases and deaths

California has 8,687,626 confirmed cases of COVID-19, resulting in 89,957 deaths.

Confirmed cases in California

Episode date

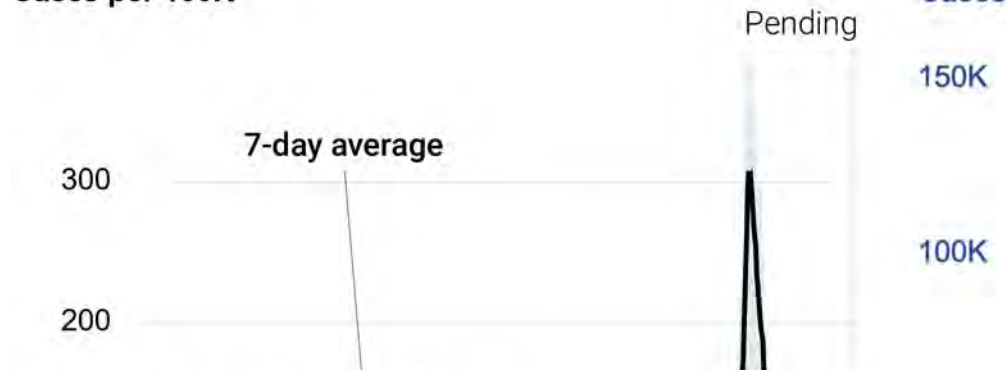
All time

**8,687,626** total confirmed cases

**33,206** new cases (**0.4%** increase)

**16.1** cases per 100K (7-day average)

## Cases per 100K



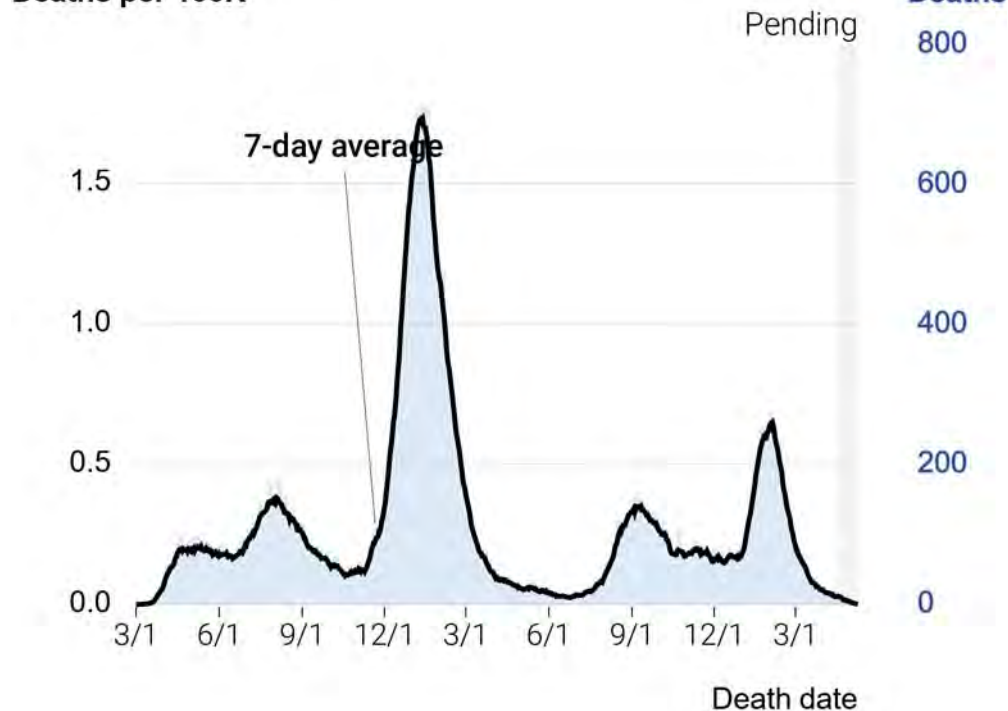
## Confirmed deaths in California

[Death date](#)[All time](#)**89,957** total confirmed deaths

106 new deaths (0.1% increase)

0.03 deaths per 100K (7-day average)

## Deaths per 100K



[Confirmed cases and deaths source data](#). Data is updated on Tuesdays and Fridays.

**Chart information**

## Testing for COVID-19

The number of COVID-19 diagnostic test results in California reached a total of 163,751,380, an increase of 895,351 tests from the prior day total. The rate of positive tests over the last 7 days is 4.1%.

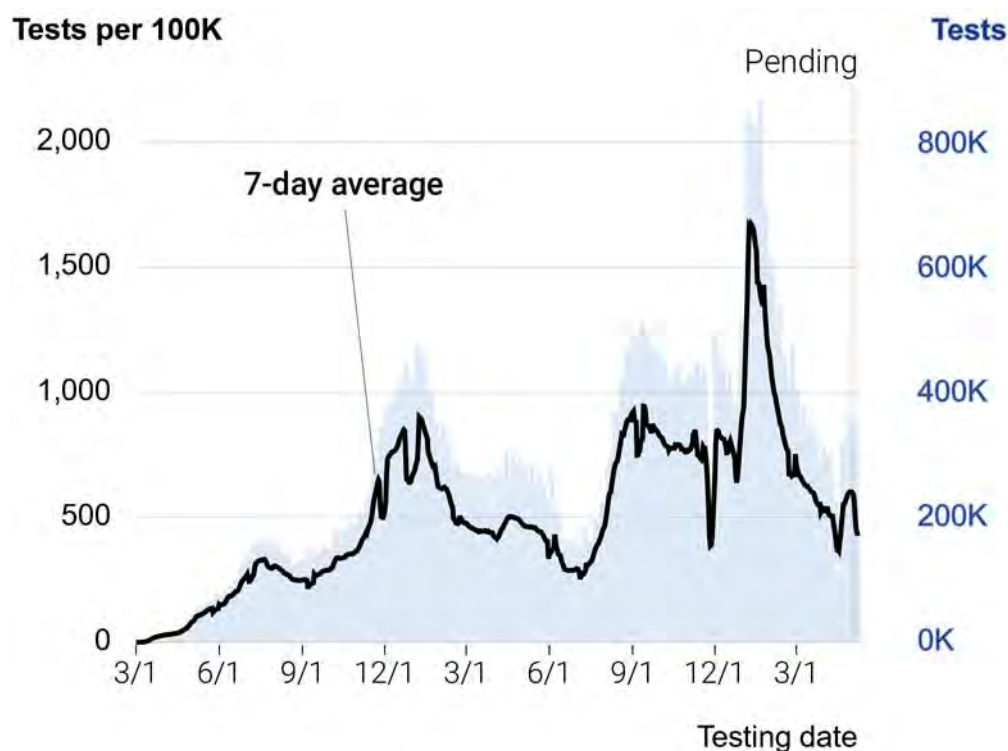
### Total tests in California

---

[Testing date](#)[All time](#)

**163,751,380** total tests performed

**895,351** new tests reported (**0.5%** increase)



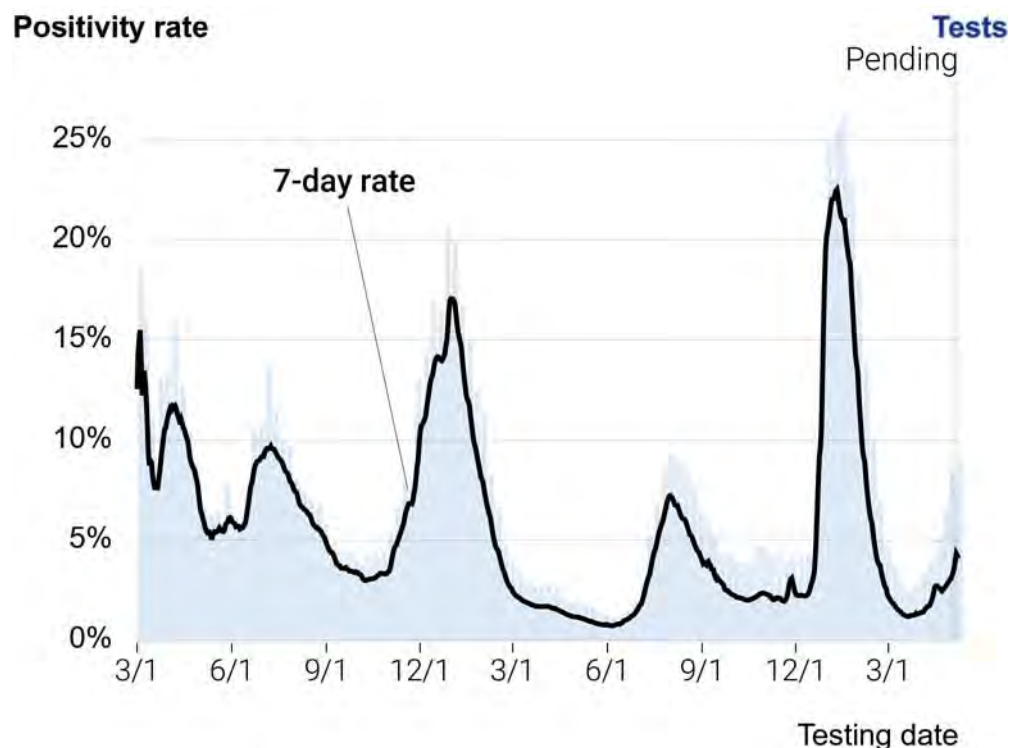
### Positivity rate in California

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[All time](#)

**4.1%** test positivity (7-day rate)

**1.0%** increase from 7-days prior



[Total tests and positivity rate source data](#) . Data is updated on Tuesdays and Fridays.



#### Chart information

## Hospitalizations

The number of hospitalizations due to confirmed COVID-19 cases in California reached a total of 1,203, an increase of 13 from the prior day total. The number of ICU patients due to confirmed COVID-19 cases in California reached a total of 153, a decrease of 20 from the prior day total.

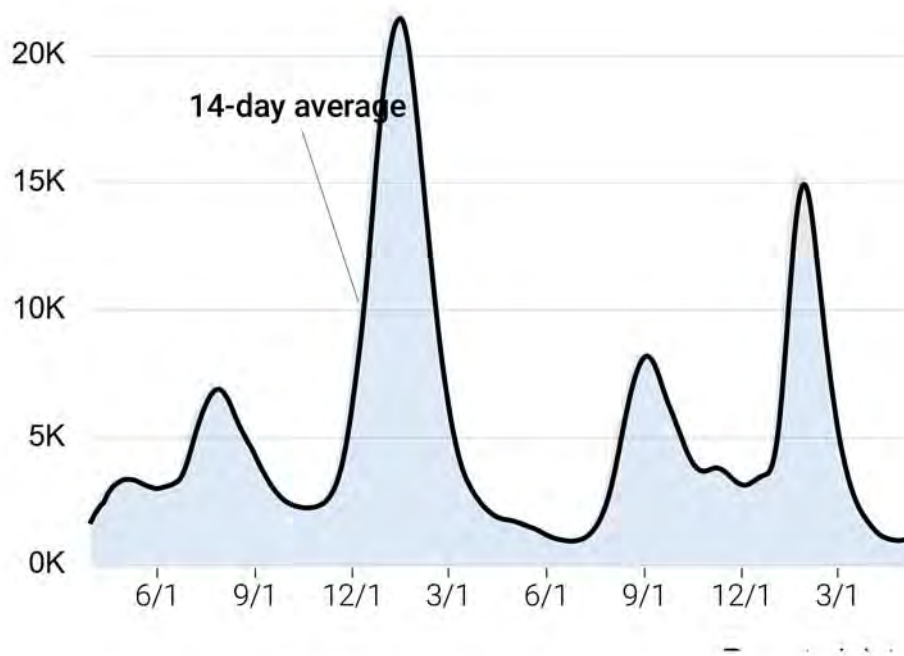
### COVID-19 hospitalized patients in California

**Hospitalized**

**All time**

**1,203 COVID-19 hospitalized patients**

**13** more patients hospitalized from prior day total (1.1% increase)

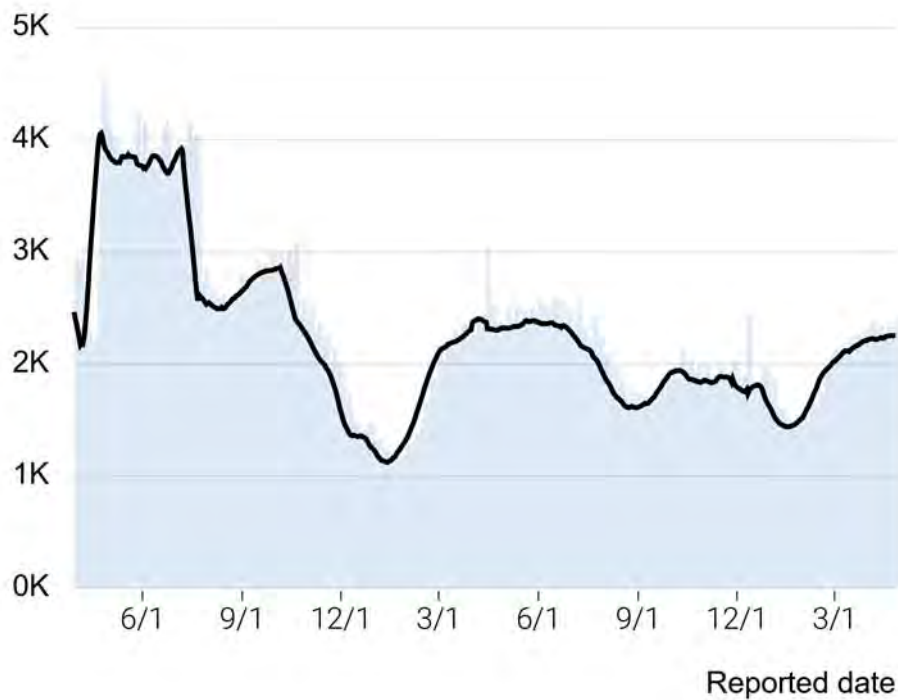



## ICU beds in California

[All time](#)

**2,391 ICU beds available**

**29** more ICU beds available from prior day total (1.2% increase)




[COVID-19 hospitalized patients and ICU source data](#) . Data is updated on Tuesdays and Fridays.



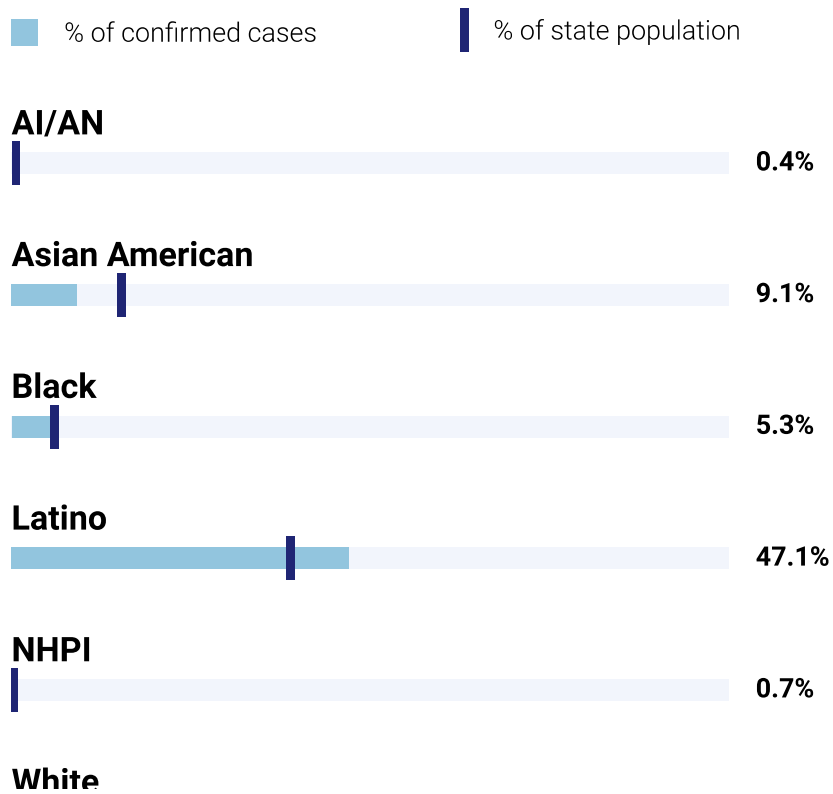
#### Chart information

## Cases and deaths by ethnicity, gender, and age

Race and Ethnicity
Gender
Age

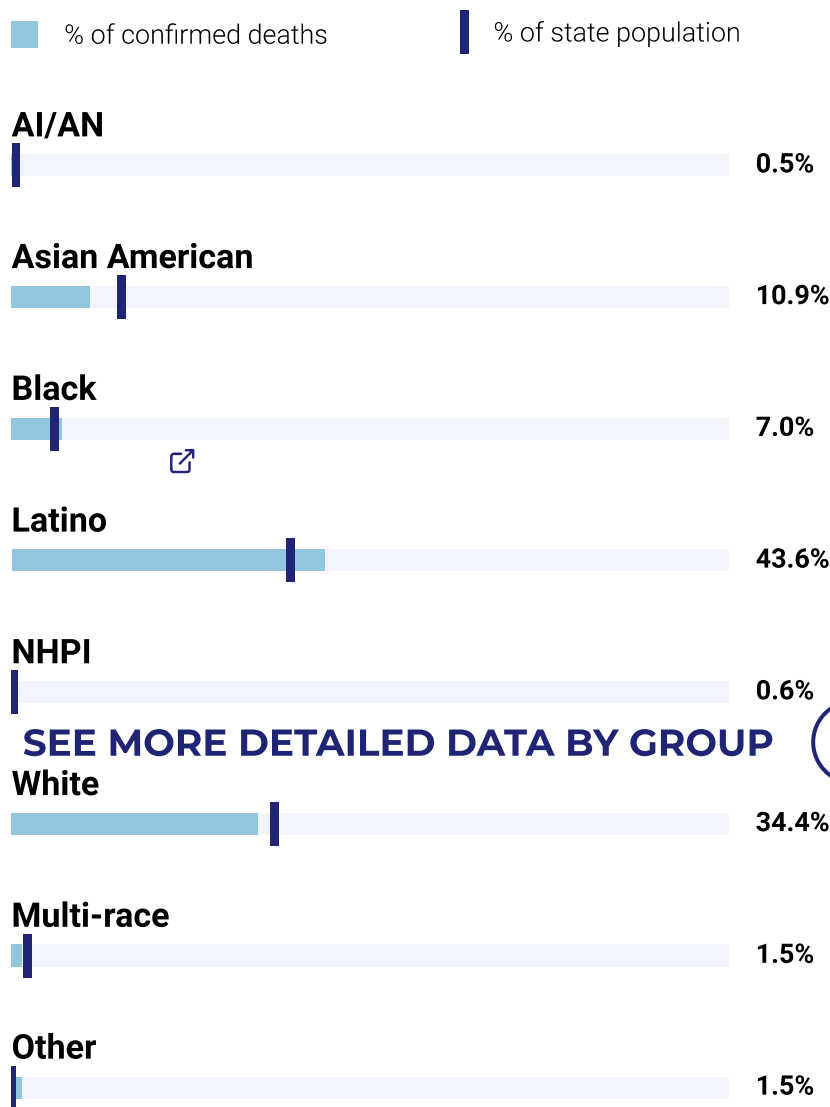
The distribution of confirmed COVID-19 cases reveals significant disparities within California's overall racial and ethnic demographics, with Latino and Native Hawaiian / Pacific Islander groups having a disproportionate number of cases relative to their population in the state. Additional [COVID-19 race and ethnicity data](#)  is available.

Confirmed cases by race and ethnicity in California



Confirmed deaths by race and ethnicity in California

---



[SEE MORE DETAILED DATA BY GROUP](#)



## Vaccination data

State and county data about vaccination, including by race and ethnicity and age

## Variants

Data about which variants are in California, including Delta and Omicron

## [Health equity data](#)

How COVID-19 has affected different communities across the state

## [Data and tools](#)

In-depth models, dashboards, databases, and information about California's COVID-19 data reporting

Yes

No

FOR  
ALL

[Hotlines and local info](#)

[Social media sharing](#)

[Safe Schools For All](#)

[Vaccinate All 58](#)

[Safer At Work](#)

[CA Notify](#)

[My Turn](#)

**COVID-19 hotline**  
**1-833-422-4255**

M-F 8AM-8PM, Sa-Su 8AM-5PM

[CA.gov](#)

[Department of Public Health](#)

[Governor's Newsroom](#)

[Accessibility](#)

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**EXHIBIT F**

**TO**

**REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF DEFENDANTS CITY AND  
COUNTY OF SAN FRANCISCO, ET AL.'S DEMURRER TO SECOND AMENDED  
COMPLAINT FOR VIOLATION OF CIVIL RIGHTS AND DECLARATORY AND  
INJUNCTIVE RELIEF**



## COVID-19 Vaccination Policy

Issued: 6/23/2021

Amended 8/6/2021

Amended 9/8/2021

Amended 10/27/2021

**Amended 01/04/2022**

***01/04/2022 Revision:** This revision updates the vaccination policy for city employees who work in high-risk settings.*

*Pursuant to state and local health order, city employees who work in high-risk settings are required to receive a COVID-19 booster vaccine by Tuesday, February 1, 2022. If an employee is not yet eligible for a booster vaccine, they must receive the booster within 15 days after becoming eligible.*

### PURPOSE STATEMENT

The City and County of San Francisco (City) must provide a safe and healthy workplace, consistent with COVID-19 public health guidance and legal requirements, to protect its employees and the public as it reopens services and returns more employees to workplaces.

According to the federal Centers for Disease Control (CDC), the California Department of Public Health (CDPH), and the San Francisco County Health Officer, COVID-19 continues to pose a risk, especially to individuals who are not fully vaccinated, and certain safety measures remain necessary to protect against COVID-19 cases and deaths. Vaccination is the most effective way to prevent transmission and limit COVID-19 hospitalizations and deaths. Unvaccinated employees, interns, fellows, and volunteers are at greater risk of contracting and spreading COVID-19 within the workplace and City facilities, and to the public that depends on City services.

To best protect its employees and others in City facilities, and fulfill its obligations to the public, all employees must, as a condition of employment: (1) report their vaccination status to the City; and (2) be fully vaccinated and report that vaccination status to the City no later than either the applicable deadline under the San Francisco Health Order, if it applies, or 10 weeks after the Federal Food & Drug Administration (FDA) giving final approval to at least one COVID-19 vaccine (November 1, 2021).

### LEGAL REQUIREMENTS

On June 17, 2021, Governor Newsom issued Executive Order No. N-09-21, which implements new California Division of Occupational Safety and Health (Cal/OSHA) rules, effective June 17, 2021. These rules require employers to take specific measures to protect employees from COVID-19, including enforcing masking and quarantine requirements, and offering COVID-19 testing and time off, for employees who are unvaccinated or for whom the employer does not have documentation verifying they are fully vaccinated. The Cal/OSHA rules require employers to verify and document that an employee is fully vaccinated before allowing that employee to discontinue masking indoors. For unvaccinated employees or employees for whom the City does not have documentation verifying fully vaccinated status, the City must enforce masking, provide COVID-19 testing following a close contact in the workplace or anytime they have COVID-19 symptoms, and exclude these employees

from the workplace for 10 days after a close contact. Upon request, the City also must provide non-vaccinated employees with respirators (N95 masks) and provide education about using that type of mask.

On July 26, 2021 CDPH issued an Order ([CDPH Vaccination Status Order](#)) that workers in high-risk and other healthcare settings must report their vaccination status no later than **August 23, 2021**. The CDPH Vaccination Status Order also requires routine testing and more rigorous masking for unvaccinated or only partially vaccinated personnel working in these settings.

On August 24, 2021, the San Francisco Health Officer updated the [San Francisco Health Order](#) requiring all employers to determine the vaccination status of employees who routinely work onsite in high-risk settings by no later than **September 30, 2021** and precluding unvaccinated employees from entering those facilities after that date, and precluding unvaccinated employees who may occasionally or intermittently enter those settings from entering those facilities after October 13, 2021. This order further requires employees (among others) to remain masked in the workplace, effectively superseding the Cal/OSHA COVID-19 Temporary Emergency Standard which allows vaccinated employees who had documented that status to remove their masks.

On August 3, 2021 DHR issued a revised policy Face Coverings at Work Policy that can be found here: <https://sfdhr.org/sites/default/files/documents/COVID-19/Face-Covering-Requirements-at-Work.pdf>

On August 5, 2021, CDPH issued a new Order ([Health Care Worker Vaccine Requirement](#)) mandating all workers who provide services or work in identified health care facilities to receive their final dose of a vaccine regimen *no later than* **September 30, 2021**. The only exemptions to the Health Care Worker Vaccine Requirement are for workers who have a documented and [approved exemption](#) from vaccination on the basis of a sincerely-held religious belief or due to a qualifying medical condition or restriction.

On December 22, 2021 CDPH issued an [updated order](#) requiring all healthcare workers in certain health care facilities receive a booster vaccine by **February 1, 2022**.

On December 29, 2021, The San Francisco Health Officer updated the [Safer Return Together Health Order](#) also requiring all workers in High-Risk Settings receive a booster vaccine by **February 1, 2022**. Employees who are not currently eligible for a booster vaccine, are required to receive a booster within 15 days after becoming eligible.

## **STATEMENT OF POLICY**

### **Definition of “Employees” Under This Policy**

For purposes of this policy only, the term “employees” includes all full, part-time, and as-needed City employees regardless of appointment type, volunteers, interns, and City fellows (such as San Francisco Fellows, McCarthy Fellows, Fish Fellows, and Willie Brown Fellows).

### **Definition of “High-Risk Settings”**

High-Risk Settings are defined as; general acute care hospitals, skilled nursing facilities, intermediate care facilities, residential care facilities for the elderly, homeless shelters, jails, dental offices, juvenile justice centers, and pharmacies.

## Requirement to Report Vaccination Status

To protect the City's workforce and the public that it serves, all City employees were required to report their vaccination status to the City by July 29, 2021 (with a subsequent extension to August 12, 2021), by providing the following information:

- employee is vaccinated (yes or no)
- For employees who are vaccinated or partly vaccinated:
- The type of vaccine obtained (Moderna, Pfizer, or Johnson & Johnson, or other vaccine received in approved clinical trials)
- Date of first dose vaccine;
- Date of second vaccine for a 2-dose vaccine;
- Declaration under penalty of perjury that they have been fully vaccinated, and
- Upload documentation verifying proof of vaccination status. Proof of vaccination can include a copy of the CDC COVID-19 Vaccination Record Card, documentation of vaccine from the employee's healthcare provider, or documentation issued by the State of California by going to: <https://myvaccinerecord.cdph.ca.gov/>

To be fully vaccinated, 14 days must have passed since an employee received the final dose of a two-shot vaccine or a dose of a one-shot vaccine. All unvaccinated employees must continue to comply with masking, testing, and other safety requirements until they are fully vaccinated and have reported and documented that status to the City consistent with this Policy. Employees who previously reported that they were unvaccinated must update their status once they are fully vaccinated.

All employees working in high-risk settings who are required to receive a booster vaccine must report their booster vaccine in the employee portal no later than February 1, 2022. Employees who are not yet eligible for a booster vaccine on or before February 1, 2022 must report their booster vaccine in the employee portal within five (5) days of receiving the booster.

Failure to comply with the reporting requirement may result in discipline, or non-disciplinary separation from employment with the City for failure to meet the minimum qualifications of the job.

## How to Report Vaccination Status

Volunteers, interns, and City fellows must verify that they are fully vaccinated to the Departmental Personnel Officer or Human Resources professional by showing a copy of their CDC COVID-19 Vaccination Record Card, documentation from the individual's healthcare provider, or documentation issued by the State of California as described above. The department must retain documentation that the individual's vaccination status has been verified **but must not retain copies of the individual's vaccination record.**

All other employees must report their vaccination information and upload documentation verifying that status into the City's People & Pay system using the Employee Portal or by hand using the COVID-19 Vaccination Status Form. Only City employees authorized to access employee personnel information will have access to the medical portion of the file. The City will share information about an employee's vaccination status only on a need-to-know basis, including to the employee's department, managers, and supervisors for the purpose of enforcing masking, quarantining in the event of a close contact, and other safety requirements.

## **Vaccination Requirements for Employees**

1. City policy requires that all City employees routinely assigned to or working onsite in high-risk settings must receive their final dose of a vaccine regimen no later than September 30, 2021, unless they have been approved for an exemption from the vaccination requirement as a reasonable accommodation for a medical condition or restriction or sincerely held religious beliefs. Any employee who is requesting or has an approved exemption must still report their vaccination status to the City by the August 12, 2021 extended deadline.

The vaccination and reporting requirements are conditions of City employment and a minimum qualification for employees who are routinely assigned to or working onsite in high-risk settings. Those employees who fail to meet the vaccination and reporting requirements under this Policy will be unable to enter the facilities and unable to perform an essential function of their job, and therefore will not meet the minimum requirements to perform their job.

2. City policy requires that all City employees who are not otherwise covered by the SF Health Order, but who provide services or work in the health care facilities identified in the state's order, must receive their final dose of a vaccine regimen no later than September 30, 2021, unless they have been approved for an exemption from the vaccination requirement as a reasonable accommodation for a medical condition or restriction or sincerely-held religious-beliefs. Any employee who is requesting or has an approved exemption must still report their vaccination status to the City by the August 12, 2021 extended deadline. The vaccination and reporting requirements are conditions of City employment and a minimum qualification for employees provide services or work in the health care facilities identified in the state's order. Those employees who fail to meet the vaccination and reporting requirements under this Policy will be unable to enter the facilities and unable to perform an essential function of their job, and therefore will not meet the minimum requirements to perform their job.
3. City policy requires that all City employees who in the course of their duties may enter or work in high-risk settings even on an intermittent or occasional basis or for short periods of time must be fully vaccinated — no later than October 13, 2021, unless they have been approved for an exemption from the vaccination requirement as a reasonable accommodation for a medical condition or restriction or sincerely-held religious beliefs. Any employee who is requesting or has an approved exemption must still report their vaccination status to the City by the August 12, 2021 extended deadline. The vaccination and reporting requirements are conditions of City employment and a minimum qualification for employees who in the course of their duties may enter or work in high-risk settings even on an intermittent or occasional basis or for short periods of time. Those employees who fail to meet the vaccination and reporting requirements under this Policy will be unable to enter the facilities and therefore unable to perform an essential function of their job and will not meet the minimum requirements to perform their job.
4. Volunteers, interns, and City fellows must be fully vaccinated – and must have reported that status and providing documentation verifying that status to the Departmental Human Resources personnel – as a condition of serving as a City volunteer, intern or fellow. Those already working and who do not fall under the SF Health Order must be fully vaccinated no later than October 13, 2021. Failure to comply with this policy will result in suspension of the

internship, fellowship, or volunteer opportunity until such time as the individual provides verification that they are fully vaccinated.

5. All other City employees must be fully vaccinated as a condition of employment within ten weeks after the FDA provides final approval to at least one COVID-19 vaccine (November 1, 2021). Employees who are not fully vaccinated by November 1, 2021 may not enter the workplace after that date. To maintain continuity of City operations, limited exceptions may be allowed for employees who demonstrate that they are partially vaccinated.
6. To comply with the updated state health order issued on December 22, 2021 and county Health Order issued December 29, 2021. Employees working in high-risk settings and eligible for the COVID-19 booster are required to receive their booster shot and report their booster vaccine status no later than February 1, 2022.
  - Employees who received their second dose of a two-dose COVID-19 vaccine before July 1, 2021 and work in a High-Risk Setting are required to receive a booster by February 1, 2022.
  - Employees who received one dose of a single dose COVID-19 vaccine prior to November 1, 2021 and work in a High-Risk Setting are required to receive a booster by February 1, 2022.

Employees working in high-risk settings who are not yet eligible for the COVID-19 booster are required to receive a booster within 15 days after becoming eligible. These employees must report their booster vaccine status within five (5) days of receiving the booster.

Employees with an approved exemption from the vaccination requirement are not required to receive a booster vaccine.

#### Office Environments

Departments have discretion, but are not required, to allow employees who work in office environments to work remotely provided the employees have received at least one dose of a COVID-19 vaccine regimen by November 1, 2021 and reported and documented that status to the City consistent with this Policy *and* the Department receives approval from the City Human Resources Director.

This is allowable for a maximum of up to three days (or 24 hours) per week. The remaining two days (or 16 hours), which are intended to be spent in person in the workplace, employees may use their accrued vacation or other non-sick leave time to cover those work hours that unvaccinated or partially vaccinated employees are restricted from the workplace due to not being fully vaccinated as required by City Policy. Employees who are partially vaccinated and have received written approval to work remotely after November 1, 2021 must report and document that they are fully vaccinated no later than **December 6, 2021**.

#### Non-office Environments

Departments have discretion, but are not required, to allow employees to enter the workplace after November 1 provided the employees are required for continuity of operations within the departments, the employees have received at least one dose of a COVID-19 vaccine regimen by November 1, 2021, and the employees have reported and documented that status to the City consistent with this Policy. Employees who are permitted at the worksite after November 1, 2021 must report and document that they are fully vaccinated no later than **December 6, 2021**.

Employees who are not fully vaccinated against COVID-19 and who are permitted in the workplace after

November 1, 2021 must continue to wear a well-fitted mask at all times while at the workplace. Departments are strongly encouraged to require employees who are not yet fully vaccinated after November 1, 2021 to test at least once weekly and provide proof of a negative COVID-19 test result until they are fully vaccinated and have reported and documented that status to the City consistent with this Policy.

Failure to comply with this Policy may result in a disciplinary action, or non-disciplinary separation from employment for failure to meet the minimum qualifications of the job.

#### **Requesting an Exemption from the Vaccination Requirement**

Employees with a medical condition or other medical restriction that affects their eligibility for a vaccine, as verified by their medical provider, or those with a sincerely held religious belief that prohibits them from receiving a vaccine, may request a reasonable accommodation to be excused from this vaccination requirement but must still report their status by the August 12, 2021 extended deadline. The City will review requests for accommodation on a case-by-case basis and engage in an interactive process with employees who submit such requests. For some positions where fully vaccinated status is required to enter the facility where the employee works, an accommodation may require transfer to an alternate vacant position, if available, in another classification for which the employee meets the minimum qualifications. Requests for Reasonable Accommodation forms and procedures can be found here: <https://sfdhr.org/new-vaccine-and-face-covering-policy-city-employees>

**COVID-19 VACCINATION COMPLIANCE DEADLINES**  
**ADDENDUM TO VACCINATION POLICY AMENDED AUGUST 5, 2021**

Below are the vaccination status reporting deadlines for City employees.

COVID-19 VACCINATION STATUS REPORTING DEADLINES	
<b>July 29, 2021</b>	Reporting Deadline
<b>August 12, 2021</b>	Grace Period - Final day to report vaccination status

Below are the vaccination deadlines for City employees. City employees working in high-risk settings are subject to non-disciplinary release if not vaccinated by the deadlines referenced below for failure to meet the minimum qualifications of their jobs

COVID-19 VACCINATION DEADLINES BY EMPLOYEE TYPE	
<b>Employees who are assigned to or routinely work onsite in High-Risk Settings or other Health Care Facilities</b>	<p>Must receive their final dose of a vaccine regimen no later than <b>September 30, 2021</b> and receive and report booster vaccination, <i>if eligible</i>, by <b>February 1, 2022</b>.</p> <ul style="list-style-type: none"> <li>• Moderna: First shot no later than September 2, 2021; Second shot no later than September 30, 2021. <i>Eligible to receive booster vaccine if primary vaccine series was completed before July 1, 2021</i></li> <li>• Pfizer: First shot no later than September 9, 2021; Second shot no later than September 30, 2021. <i>Eligible to receive booster vaccine if primary vaccine series was completed before July 1, 2021</i></li> <li>• Johnson &amp; Johnson: First shot no later than September 30, 2021. <i>Eligible to receive booster vaccine if primary vaccine was completed before November 1, 2021</i></li> </ul>
<b>Employees intermittently or occasionally working in "High-Risk Settings"</b>	<p>Must be fully vaccinated <i>no later than</i> <b>October 13, 2021</b> and receive and report booster vaccination, <i>if eligible</i>, by <b>February 1, 2022</b>.</p> <ul style="list-style-type: none"> <li>• Moderna: First Shot no later than September 1, 2021; Second Shot no later than September 29, 2021 <i>Eligible to receive booster vaccine if primary vaccine series was completed before July 1, 2021</i></li> <li>• Pfizer: First Shot no later than September 8, 2021; Second Shot no later than September 29, 2021 <i>Eligible to receive booster vaccine if primary vaccine series was completed before July 1, 2021</i></li> <li>• Johnson &amp; Johnson: First Shot no later than September 29, 2021 <i>Eligible to receive booster vaccine if primary vaccine was completed before November 1, 2021</i></li> </ul>
<b>All other employees not working in "High-Risk" or other health care settings</b>	<p>Must be fully vaccinated <i>no later than</i> <b>November 1, 2021</b>.</p> <ul style="list-style-type: none"> <li>• <b>Moderna:</b> First shot <i>no later than</i> September 20, 2021; Second shot <i>no later than</i> October 18, 2021.</li> <li>• <b>Pfizer:</b> First shot <i>no later than</i> September 27, 2021; Second shot <i>no later than</i> October 18, 2021.</li> <li><b>Johnson &amp; Johnson:</b> First shot <i>no later than</i> October 18, 2021.</li> </ul> <p>For continuity of City operations limited exceptions may be made for partially</p>



**EXHIBIT G**

**TO**

**REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF DEFENDANTS CITY AND  
COUNTY OF SAN FRANCISCO, ET AL.'S DEMURRER TO SECOND AMENDED  
COMPLAINT FOR VIOLATION OF CIVIL RIGHTS AND DECLARATORY AND  
INJUNCTIVE RELIEF**

## DEPARTMENT OF HUMAN RESOURCES



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HOME / RESOURCES / COVID-19 / VACCINATION AND BOOSTER POLICY FOR CITY EMPLOYEES

## Vaccination and Booster Policy for City Employees

According to the federal Centers for Disease Control (CDC), the California Department of Public Health, and the San Francisco County Health Officer, COVID-19 continues to pose a risk, especially to individuals who are not fully vaccinated, and certain safety measures remain necessary to protect against COVID-19 cases and deaths. Vaccinations and boosters are the most effective way to prevent transmission and limit COVID-19 hospitalizations and deaths.

All City employees are required to be fully vaccinated and report their vaccination status as a condition of employment.


To comply with the San Francisco Health Order and ensure delivery of City services, the City Vaccination policy now requires that City employees who are routinely assigned or occasionally enter High-Risk Settings, must receive a COVID-19 booster vaccine by **March 1, 2022**, if eligible.

Booster requirements for employees working in high-risk settings are:

1. Eligible employees must receive and report their booster in the Employee Portal by March 1, 2022.
2. Employees not yet eligible to receive a booster are required to get a booster within 15 days after becoming eligible.

Contact your department's HR representative for additional questions.

### COVID-19 Vaccination Policy:



- [COVID-19 Vaccination Policy](#)
- [COVID-19 Health Orders](#) 
- [Paper Certification of Employee COVID-19 Vaccination Status](#)


(Note: Electronic submissions are preferred. Paper certification is only for new employees without PeopleSoft Access or those encountering technical challenges with electronic uploads.)

## COVID-19 Vaccination and Booster Locations:


Though some sites might take drop-ins, people with appointments have priority. Vaccines and boosters are in high demand.

### Schedule a vaccination or a booster:


- With your primary care or other health provider, for more information on your health plan visit <https://sfhss.org/news/covid-19-vaccine> .
- At a local pharmacy or city administered vaccination site. Visit <https://sf.gov/vaccine-sites>  for a full list of San Francisco vaccination and booster sites.

The following locations in San Francisco where people can drop-in to receive a booster, Monday to Friday while supplies last each day. Please check [sf.gov/getvaccinated](https://sf.gov/getvaccinated)  or call 628-652-2700 should changes to operational hours occur.


- ZSFG (1001 Potrero Ave, Bldg 30)
- Southeast Health Center (2401 Keith Street)
- Chinese Hospital (845 Jackson Street)
- Kaiser Tent (2350 Geary Blvd)

SF periodically has vaccine events in prioritized communities. Visit <https://sf.gov/community-covid-19-vaccine-events>  to find an event near you.







## Rapid Testing Options

The federal government is sending every home in the U.S. four free at-home COVID-19 tests. <https://www.covidtests.gov/> 

Following new federal guidelines, beginning January 15, San Francisco Health Services System (SF HSS) health plans will reimburse members for rapid antigen at-home test kits for COVID-19.

Visit <https://sfhss.org/news/health-plan-reimbursements-covid-home-test-kits>  for additional details.

## Out of County Resources

- Alameda County:  
<https://covid-19.acgov.org/vaccines> 
- Contra Costa County:  
<https://www.coronavirus.cchealth.org/get-vaccinated> 
- Santa Clara County:  
<https://covid19.sccgov.org/covid-19-vaccine-drop-in-calendar> 
- San Mateo County:  
<https://www.smchealth.org/vaccine-clinic-calendar> 
- Solano County :  
[https://www.solanocounty.com/depts/ph/coronavirus\\_links/covid\\_19\\_vaccines.asp](https://www.solanocounty.com/depts/ph/coronavirus_links/covid_19_vaccines.asp) 
- Sonoma County:  
<https://socoemergency.org/emergency/novel-coronavirus/vaccine-information/clinics/> 

## COVID-19 Vaccination Exemption:

- [COVID-19 Vaccination Exemption Request Procedure](#)
- [Determination on COVID-19 Vaccination Exemption Request Form](#)
- [Declaration in Support of Employee Religious Exemption Request](#)
- [Employee Request for Reasonable Accommodation - Medical](#)
- [Employee Request for Religious Accommodation](#)
- [Health Care Provider Certification Form](#)

**EXHIBIT H**

**TO**

**REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF DEFENDANTS CITY AND  
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Visit San Francisco's new website, [SF.gov](https://sf.gov)

## Office of the Mayor

# News Releases

The latest news and announcements from Mayor London N. Breed

### San Francisco City Employee Vaccination Rate at Nearly 98%

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**Posted Date:** Friday, October 29, 2021

#### **Fewer than 1,000 of the City's 35,000 employees remain unvaccinated as November 1 deadline approaches**

**San Francisco, CA** — Mayor London N. Breed today announced that the City employee vaccination rate is nearly 98% with fewer than 1,000 of the City's nearly 35,000 employees remaining unvaccinated.

In July, 2021, when San Francisco established a November 1st deadline for all employees to be vaccinated, the rate of employee vaccination was 66%. In the months since the mandate was first announced, City representatives have partnered with labor leaders on outreach and education efforts in order to vaccinate as many employees as possible.

"I want to thank and recognize all the workers who have stepped up to get vaccinated and protect public health," said Mayor Breed. "This mandate is all about protecting the health of the public and of our workforce, and it is working. We will continue to work with our labor partners to get the last remaining people vaccinated, but we are confident a fully vaccinated workforce is in the best interest of the public, our workers, and the recovery of our City."

Currently, 836 employees out of our workforce of 35,000 have reported that they are not vaccinated. 134 have not yet informed the City of their vaccination status. Taken together, these numbers represent 2.8% of the City's workforce. Employees who are out of compliance with City policy include approximately 200 SFMTA staff, including 100 transit operators, 80 Police Department staff, including 60 police officers, 15 total Fire Department staff, and 20 Deputy Sheriffs. 196 exempt (non-civil service) employees will be separated from City service on Monday if they remain unvaccinated. The remaining 750 employees who remain out of compliance after the deadline will be placed on paid administrative leave until their due process hearing takes place. Following due process deliberations, subsequent hearings to determine whether unvaccinated employees will be separated from city employment will take place.

"The hardworking employees of San Francisco have worked tirelessly to keep the business of San Francisco going during the pandemic. Health care professionals, transportation workers, laborers, law enforcement, janitors and thousands of others have kept us safe and healthy", said Carol Isen, Human Resources Director. "I am happy to see that over 97% of our workforce including these individuals are keeping their promise to the families and communities of San Francisco by getting vaccinated."

In August, 2021, the City announced that all new hires for the City and County of San Francisco must be vaccinated. The Mayor also issued two Mayoral Executive Orders that waive certain civil service provisions for expedited hiring, which will allow the City

to more quickly fill the gaps for any workers who choose not to get vaccinated.

The City will continue to do everything it can to support all employees in understanding the benefits of vaccination and to protect the health and safety of our workforce and the public.

###

**EXHIBIT I**

**TO**

**REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF DEFENDANTS CITY AND  
COUNTY OF SAN FRANCISCO, ET AL.'S DEMURRER TO SECOND AMENDED  
COMPLAINT FOR VIOLATION OF CIVIL RIGHTS AND DECLARATORY AND  
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# DFEH Employment Information on COVID-19



## FAQ

**A pandemic of respiratory illness caused by a new coronavirus (COVID-19) currently exists in California and beyond. Governor Newsom declared a state of emergency in California on March 4, 2020.**

Workers and employers should adhere to the latest government guidance on how to reduce transmission of COVID-19 in the workplace, including guidance from the [Centers for Disease Control and Prevention](#) (CDC), the [California Department of Public Health](#), and the [California Division of Occupational Safety and Health](#) (Cal/OSHA).

At the same time, employers must adhere to state and federal civil rights laws, including the Fair Employment and Housing Act (FEHA). For employers with 5 or more employees, the FEHA prohibits [employment discrimination and harassment](#) on the basis of race, national origin, disability, age (over 40), and other characteristics. The FEHA also requires employers to reasonably accommodate employees with a disability, unless an employer shows undue hardship after engaging in the interactive process.

DFEH is providing this guidance to assist employers and employees with frequently asked questions about how to keep workplaces safe during the COVID-19 pandemic while also upholding civil rights. This guidance is based on current public health information and may be updated from time to time, and replaces previous guidance issued on March 20, 2020 and July 24, 2020. This guidance is for informational purposes only and does not create any rights or obligations separate from those imposed by the FEHA and other laws.

# ■ DFEH Employment Information on COVID-19

## GENERAL INFORMATION

### ■ Are civil rights laws in effect during a pandemic?

Yes. The FEHA prohibits employers from discriminating against or harassing employees because of race, color, ancestry, national origin, religion, age (over 40), disability (mental and physical), sex, gender (including pregnancy), sexual orientation, gender identity, gender expression, genetic information, marital status, military or veteran status, and other characteristics. National origin includes geographic places of origin, ethnic groups, and tribal affiliations.

For example, it is unlawful for an employer to refuse to hire, segregate, or send employees home because of their actual or perceived race or national origin, or because of their association (including marriage or co-habitation) with someone based on race or national origin. Employers must take reasonable steps to prevent and promptly correct discriminatory and harassing conduct in the workplace.

### ■ Does the FEHA prohibit employment discrimination and harassment because of someone's "medical condition"?

Yes, but the FEHA defines "medical condition" to mean "any health impairment related to or associated with a diagnosis of cancer or a record or history of cancer" or "genetic characteristics." "Genetic characteristics" is [further defined](#) by FEHA.

## COVID-19 INQUIRIES AND PROTECTIVE EQUIPMENT

### ■ May an employer ask all employees entering the workplace if they have COVID-19 symptoms?

Yes. Employers may ask employees if they are experiencing COVID-19 symptoms, such as fever, chills, coughing, or a sore throat. Employers must keep confidential any employee health information obtained, including keeping employee medical files separate from the employee's personnel file. See FAQ below for further information about what an employer may disclose if an employee tests positive for COVID-19 or is quarantining because of possible infection.

### ■ May an employer take all employees' temperatures before allowing them to enter the workplace?

Yes. Generally, measuring an employee's body temperature is a medical examination that may only be performed under limited circumstances. Based on public health guidance, employers may measure an employees' body temperature for the limited purpose of evaluating the risk that employee's presence poses to others in the workplace as a result of COVID-19 infection.

## ■ DFEH Employment Information on COVID-19

### ■ **May an employer require employees to submit to a medical test to detect the presence of the COVID-19 virus or antibodies to the virus before permitting employees to enter the workplace?**

Under the FEHA, an employer may mandate a medical examination when it is “job-related and consistent with business necessity.” Applying this standard in light of present guidance from the CDC, and consistent with [guidance](#) from the Equal Employment Opportunity Commission, employers may require employees to submit to [viral testing](#) but not [antibody testing](#) before permitting employees to enter the workplace, as explained below.

***Viral Testing.*** Employers may require that employees submit to viral testing in order to determine whether an employee has COVID-19 infection, before allowing an employee to enter the workplace. That is because an employee with COVID-19 is unable to perform the employee’s essential duties in a manner that would not endanger the health or safety of others in the workplace even with reasonable accommodation there. Employers should ensure that the testing used is accurate and reliable, and that any viral testing is part of a [comprehensive plan](#) for reducing transmission of COVID-19 in the workplace. Employers should be aware that viral tests can have false-negative results and that a negative viral test does not mean that an employee will not acquire COVID-19 in the future.

***Antibody Testing.*** The CDC’s current [guidance](#) states that “[antibody] test results should not be used to make decisions about returning persons to the workplace.” Whereas viral testing directly tests for the presence of COVID-19, antibody testing indirectly detects past or waning COVID-19 infection by testing for immune response. Antibody testing is less accurate and reliable than viral testing for detecting COVID-19 infection. In light of the CDC’s current guidance, antibody testing does not currently meet the FEHA’s requirement that a medical examination be “job-related and consistent with business necessity.”

### ■ **May an employer ask employees why they have been absent from work if the employer suspects it is for a medical reason?**

Yes. Asking why an individual did not report to work is not a disability-related inquiry. An employer is entitled to ask why an employee has not reported for work. If an employee discloses an illness or medically-related reason for absence, employers must maintain that information as a confidential medical record.

### ■ **May an employer require its employees to wear personal protective equipment (e.g., face masks, gloves, or gowns) designed to reduce the transmission of COVID-19?**

Yes. An employer may require employees to wear personal protective equipment during the COVID-19 pandemic. However, where an employee with a disability needs a related reasonable accommodation (e.g., non-latex gloves or gowns designed for individuals who use wheelchairs), the employer should provide these, absent undue hardship.

## ■ DFEH Employment Information on COVID-19

### EMPLOYEES WITH COVID-19 SYMPTOMS OR INFECTION

#### ■ **How much information may an employer request from employees who report feeling ill at work?**

Employers may ask employees if they are experiencing COVID-19 symptoms, such as fever, chills, coughing, or a sore throat. That is because, consistent with guidance from the EEOC, an employee with COVID-19 is unable to perform the employee's essential duties in a manner that would not endanger the health or safety of others in the workplace even with reasonable accommodation there. Employers must keep confidential any employee health information obtained, including keeping employee medical files separate from the employee's personnel file. See FAQ below for further information about what an employer may disclose if an employee tests positive for COVID-19 or is quarantining because of possible infection.

#### ■ **May an employer send employees home if they display COVID-19 symptoms?**

Yes. The CDC states that employees who become ill with symptoms of COVID-19 at work should leave the workplace. Employers may send employees who exhibit COVID-19 symptoms home for the reasons stated in the previous FAQ. Employers must provide paid sick leave and compensate the employee under paid sick leave laws. If sick leave is exhausted, employees may be entitled to other paid leave (including vacation or paid time off) or job-protected unpaid leave.

#### ■ **May an employer send employees home if they test positive for COVID-19?**

Yes. According to the CDC, "[p]ositive test results using a viral test indicate that the employee has COVID-19 and should not come to work and should isolate at home. Decisions to discontinue home isolation for workers with COVID-19 and allow them to return to work may follow either a symptom-based, time based, or a test-based strategy." Employers must maintain all test results as a confidential medical record.

#### ■ **What information may an employer reveal if an employee is quarantined, tests positive for COVID-19, or has come in contact with someone who has the virus?**

Employers should not identify any such employees by name in the workplace to ensure compliance with privacy laws. If an employee tests positive for or is suspected to have COVID-19, the employer will need to follow the most current local, state, or federal public health orders and guidance. Employers should take further steps at the direction of public health authorities that may include closing the worksite, deep cleaning, and permitting or requiring telework.

Employers may notify affected employees in a way that does not reveal the personal health-related information of an employee. For example, the employer could speak with employees or send an email or other written communication stating : "[Employer] has learned that an employee at [office location] tested positive for the COVID-19 virus. The employee received positive results of this test on [date]. This email is to notify you that you have potentially been exposed to COVID-19 and you should contact your local public health department for guidance and any possible actions to take based on individual circumstances."

Employers may not confirm the health status of employees or communicate about employees' health.

## ■ DFEH Employment Information on COVID-19

### JOB-PROTECTED LEAVE

- **Are employees entitled to job-protected unpaid leave under the California Family Rights Act (CFRA) if they cannot work because they are ill because of COVID-19 or must care for a family member who is ill?**

Employees may be entitled to up to 12 weeks of job-protected leave under the California Family Rights Act for their own serious health condition, or to care for certain types of family members (such as a child, parent, or spouse).

COVID-19 will qualify as a serious health condition if it results in inpatient care or continuing treatment or supervision by a health care provider. It may also qualify as a serious health condition if it leads to conditions such as pneumonia.

For more information about CFRA leave, visit: [www.dfeh.ca.gov/family-medical-pregnancy-leave/](http://www.dfeh.ca.gov/family-medical-pregnancy-leave/).

- **If an employee requests leave under the California Family Rights Act because of COVID-19, what kind of certification from a health care professional is appropriate in a pandemic?**

Generally, employees are expected to give employers notice as soon as practicable when they request CFRA leave because of their or a family members' serious health condition. Employers may require a medical certification of the serious health condition from a health care provider within 15 days of the employee's request, unless it is not practicable for the employee to do so.

In the context of a pandemic, it is not typically practicable for employees to provide advance notice of the need for leave (when that need is related to the pandemic), or for employees to obtain certifications when health care providers are working to address urgent patient needs. In a pandemic, employers must use their judgment and recommendations from public health officials to waive certification requirements when considering and granting leave requests.

### REASONABLE ACCOMMODATIONS FOR EMPLOYEES WITH A DISABILITY / VULNERABLE POPULATIONS

- **If an employee cannot come to work because of illness related to COVID-19, are they entitled to a reasonable accommodation for a disability?**

Maybe. All employers of five or more employees have an affirmative duty to make [reasonable accommodation](#) for the disability of an employee if the employer knows of the disability, unless the employer can demonstrate, after engaging in the interactive process, that the accommodation would impose an undue hardship, the employee is unable to perform the employee's essential duties even with reasonable accommodations, or the employee cannot perform those duties in a manner that would not endanger the employee's health or safety or the health or safety of others even with reasonable accommodations. When needed to identify or implement an effective, reasonable accommodation for an employee with a disability, the FEHA requires a timely, good faith, interactive process between the employer and employee.

## ■ DFEH Employment Information on COVID-19

Whether illness related to COVID-19 rises to the level of a disability (as opposed to a typical seasonal illness such as the flu) is a fact-based determination. Employers should consider telework and leave as reasonable accommodations for employees with a disability related to COVID-19 unless doing so imposes an undue hardship. Factors considered when deciding whether providing leave is an undue hardship include: the number of employees, the size of the employer's budget, and the nature of the business or operation. Because an employer and employee are required to work together to try to identify reasonable accommodation for the employee's particular circumstances, employers may not impose an across-the-board accommodation on employees with a disability related to COVID-19.

### ■ **If an employee has a medical condition that increases their risk for severe illness from COVID-19, is the employee entitled to a reasonable accommodation?**

According to the [CDC](#), people of any age with the following underlying medical conditions **are at** increased risk for severe illness from COVID-19: cancer; chronic kidney disease; COPD; down syndrome; pregnancy; smoking; immunosuppressed state from solid organ transplant; obesity; serious heart conditions; sickle cell disease; and Type-2 diabetes. Individuals with the following conditions **may be** at increased risk for severe illness from COVID-19: moderate to severe asthma; cerebrovascular disease; cystic fibrosis; hypertension or high blood pressure; immunocompromised state from blood or bone marrow transplant, immune deficiencies, HIV, use of corticosteroids, or use of other immune weakening medicines; neurologic conditions such as dementia; liver disease; pulmonary fibrosis (having damaged or scarred lung tissues); thalassemia (a type of blood disorder); and Type-1 diabetes.

If the underlying medical condition qualifies as a [disability](#), then the employer must reasonably accommodate the employee, absent undue hardship to the employer. See previous FAQ for more information. If the underlying medical condition does not rise to the level of a disability, employers are not required to reasonably accommodate the employee, though DFEH suggests that employers endeavor to accommodate workers who are or may be at increased risk of severe illness from COVID-19 as a general strategy to keep their workers safe and healthy.

### ■ **If an employee is vulnerable to severe illness from COVID-19 due to their age, is the employee entitled to a reasonable accommodation?**

According to the CDC, "among adults, the risk for severe illness from COVID-19 increases with age, with older adults at highest risk." However, because age is not a disability, employers are not required to reasonably accommodate employees based on their age alone. Nor may employers discriminate against older employees. For example, an employer may not return only employees under age 65, even if the employer is doing so to protect its older employees from COVID-19 risks.

## ■ DFEH Employment Information on COVID-19

### ■ **What medical documentation should employees provide to support a request for reasonable accommodation to work remotely or take leave because they are disabled by COVID-19?**

Generally, when an employee requests a reasonable accommodation in the form of a change in schedule, telework, or leave, employers may request reasonable medical documentation confirming the existence of the disability and the need for reasonable accommodation.

During the current pandemic, it may be impracticable for employees to obtain medical documentation of a COVID-19-related disability from their medical provider. To the extent employers require medical documentation in order to grant reasonable accommodations, DFEH recommends waiving such requirements until such time as the employee can reasonably obtain documentation.

### ■ **During a pandemic, must an employer continue to provide reasonable accommodations for employees with disabilities that are unrelated to the pandemic, barring undue hardship?**

Yes. An employer's responsibilities to individuals with disabilities continue during a pandemic. If the employee, because of a physical or mental disability, is unable to perform the employee's essential duties even with reasonable accommodations, or cannot perform those duties in a manner that would not endanger the employee's health or safety or the health or safety of others even with reasonable accommodation, an employer can lawfully exclude the employee from employment or employment-related activities. Nor is an employer required to provide an accommodation that imposes an undue hardship on the employer.

If an employee with a disability needs the same reasonable accommodation at a telework site as at the workplace, the employer should provide that accommodation, absent undue hardship. In the event of undue hardship, the employer and employee should work together to identify an alternative reasonable accommodation.

## VACCINATION

### ■ **May an employer require its employees to be vaccinated against COVID-19?**

*Short Answer:* Under the FEHA, an employer may require employees to receive an FDA-approved vaccination against COVID-19 infection so long as the employer does not discriminate against or harass employees or job applicants on the basis of a protected characteristic, provides reasonable accommodations related to disability or sincerely-held religious beliefs or practices, and does not retaliate against anyone for engaging in protected activity (such as requesting a reasonable accommodation).

## ■ DFEH Employment Information on COVID-19

*Explanation:* The U.S. Food and Drug Administration (FDA) [authorized and recommended](#) three vaccines against COVID-19 infection, and the FDA may approve other vaccines for use in the United States. As safe and effective vaccines against COVID-19 infection become more widely available, employers may wish to encourage their employees to get vaccinated. Here, DFEH does not provide guidance on whether or to what extent an employer should mandate vaccination within its workforce. Rather, this FAQ and the following FAQs address how an employer complies with the FEHA if it decides to require employees to be vaccinated against COVID-19 infection with an FDA-approved vaccine.

The FEHA prohibits discrimination and harassment on the basis of a protected characteristic; therefore, if an employer mandates or encourages vaccination in its workforce, the employer's vaccination policy or practice must not discriminate against or harass employees or job applicants based on a protected characteristic, such as disability, perceived disability, or religion.

In addition, as explained in the next FAQs, the FEHA requires employers to reasonably accommodate employees with a known disability or sincerely-held religious belief or practice that prevents them from being vaccinated against COVID-19, as well as prohibits employers from retaliating against anyone for engaging in protected activity.

### ■ **If an employer requires vaccination against COVID-19 in its workforce, must the employer reasonably accommodate employees with disabilities?**

Yes. The FEHA requires employers to reasonably accommodate employees' known disabilities. Therefore, if an employer mandates vaccination in its workforce, and an employee objects to vaccination on the basis of disability, the employer must engage in the interactive process with, and reasonably accommodate, the employee with a disability-related reason for not being vaccinated, and the employer may not retaliate against an employee for requesting such an accommodation. However, if the employer shows that the accommodation imposes an [undue hardship](#), the employee is unable to perform the employee's essential duties even with reasonable accommodations, or the employee cannot perform those duties in a manner that would not endanger the employee's health or safety or the health or safety of others even with reasonable accommodations, the employer may exclude the employee from the workplace. Whether a reasonable accommodation exists is a fact-specific determination. Among the accommodations that an employer and employee might consider are whether the employee is able to work from home or whether reasonable procedures and safeguards could be put in place at the worksite that would enable the employee to work without endangering the employee or others.

### ■ **If an employer requires vaccination against COVID-19 in its workforce, must the employer reasonably accommodate employees with a sincerely-held religious belief or practice?**

Yes. The FEHA requires employers to reasonably accommodate employees' known sincerely-held religious beliefs and practices (also known as religious creed). Therefore, if an employer mandates vaccination in its workforce, and an employee objects to vaccination on the basis of a sincerely-held religious belief or practice, the employer must reasonably accommodate the employee, and may not retaliate against an employee for requesting such an accommodation. Employers should engage in an interactive process with the employee similar to the disability context. Generally, a [reasonable accommodation](#) is one that

## ■ DFEH Employment Information on COVID-19

eliminates the conflict between the religious belief or practice and the vaccination requirement and may include, but is not limited to, job restructuring, job reassignment, or modification of work practices. However, unless specifically requested by the employee, an accommodation related to religious creed is not considered reasonable if such accommodation results in the segregation of the individual from customers or the general public. If the employer shows that an accommodation imposes an undue hardship, the employer may exclude the employee from the workplace.

### ■ **If an employer requires its employees to be vaccinated against COVID-19 and an employee objects to receiving a vaccination because they do not “trust that the vaccine is safe,” must the employer reasonably accommodate the employee?**

If an employee does not have a disability reason or sincerely-held religious reason for not being vaccinated with an FDA-approved vaccine, the employer is not legally required by the FEHA to reasonably accommodate the employee.

### ■ **If an employer requires its employees to be vaccinated against COVID-19 and an employee questions the wisdom of or resists the mandate (but does not request a reasonable accommodation related to their disability or religious creed), can the employer discipline the employee?**

Employers are permitted to enforce reasonable disciplinary policies and practices but the FEHA prohibits employers from retaliating against any employee for engaging in protected activity. As detailed in [California Code of Regulations, title 2, section 11021](#), employers may not discipline or otherwise retaliate against an employee because that individual has opposed practices prohibited by the FEHA. For example, an employer may not retaliate against someone who alleges that the employer’s vaccination policy intentionally discriminates on the basis of race, national origin, or another protected characteristic, or has a disparate impact on a protected group.

### ■ **If an employer administers a COVID-19 vaccination program, may the employer ask employees for medical information relevant to vaccination?**

Employers may generally ask their employees to answer questions regarding COVID-19, such as inquiring whether an employee entering a workplace is experiencing COVID-19 symptoms. If an employer itself administers a vaccination program, the employer may seek to have employees answer certain questions that could elicit information about a disability—including questions on a pre-vaccination screening questionnaire—so long as the inquiry is “job-related and consistent with business necessity.” Any retained record of employee or applicant vaccination must be maintained as a confidential medical record.

## ■ DFEH Employment Information on COVID-19

### ■ If an employer requires its employees to receive a vaccination against COVID-19 administered by a third-party, may the employer require an employee or applicant to submit “proof” of vaccination?

Yes. Because the reasons that any given employee or applicant is not vaccinated may or may not be related to disability or religious creed, simply asking employees or applicants for proof of vaccination is not a disability-related inquiry, religious creed-related inquiry, or a medical examination. However, because such documentation could potentially include disability-related medical information, employers may wish to instruct their employees or applicants to omit any medical information from such documentation. Any record of employee or applicant vaccination must be maintained as a confidential medical record.

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**If you think you have been a victim of employment discrimination, please contact DFEH.**

### **TO FILE A COMPLAINT**

#### **Department of Fair Employment and Housing**

dfeh.ca.gov

Toll Free: 800.884.1684

TTY: 800.700.2320

If you have a disability that requires a reasonable accommodation, the DFEH can assist you by scribing your intake by phone or, for individuals who are deaf or hard of hearing or have speech disabilities, through the California Relay Service (711), or you can contact us above.