



DISCLAIMER:

This set of FAQ is intended to provide information about COVID-19 vaccination, and legal issues relating to it. It should not be relied upon as legal advice. Please consult an attorney if you have legal questions or concerns.

UCON is providing the following FAQ, which has been contributed to and reviewed by legal counsel, to address the most common and critical questions we are hearing from our members regarding vaccination of the work force and considerations. **Please note that this is general information and is not intended to address all situations or provide comprehensive legal guidance.** Every business needs to examine its structure and processes, and if necessary, consult with legal counsel for advice on your specific situation.

The situation is constantly changing – UCON will make every effort to update this information as quickly as possible.

UCON COVID-19 Vaccination FAQ

1. Can we create a company policy that requires our employees to be vaccinated?

It is not recommended to make mandatory vaccination policies at this time.

Union Employees: Vaccination policies are considered to be subject to collective bargaining, similar to substance abuse testing policies. At this time, the only unions that UCON works with who are allowing vaccination policies are:

- **Carpenters (SoCal)** – [MOU](#) permits the establishment of a vaccination policy consistent with local, state, and federal laws.
- **Carpenters (NorCal)** – MOUs for both [Carpenters](#) and [Pile Drivers](#) Master Agreements allow for owner-mandated policies. A separate [letter](#) clarifies that employers can also establish their own vaccination policies by going through the Work Preservation application and approval process.

UCON will keep you updated on any developments with other unions.

Non-Union Employees: So far, the courts have upheld employer vaccine mandates in cases involving healthcare employees and public employees. The recent full FDA approval for the Pfizer vaccine helps to strengthen the argument for employer mandates. However, this is still a legal minefield for employers. [This article](#) may be helpful in determining your approach, and consultation with legal counsel is recommended when developing and implementing vaccination policies. Information and resources are also available at vaccinateconstruction.com.

2. What should we do if a job requires vaccinated workers on the job site (i.e. a project at a hospital or school) and some of our workers aren't vaccinated?

If a project owner requires vaccinated personnel, you will need to notify your employees that the job requires vaccination and you cannot put them on that job unless they provide proof of vaccination. If you have other projects available for unvaccinated employees, they can work on any of those projects. If you have no other work, you may have the option to lay them off.

It is not advisable to terminate an employee due to COVID-19 vaccination status.

3. Am I liable if any of my subcontractors do not comply with owner requirements for vaccination and testing?

Potentially, yes. As with other types of compliance, GCs need to make sure that their subs are notified of any owner mandates and that they are prepared to comply.

4. What about the federal vaccine mandates? Do we have to comply with those?

There are two separate vaccine mandates. All contractors should be aware of both and evaluate when/if one or both apply.

- **Federal Contractor Vaccine Mandate** – Vaccine mandate and other safety protocols were issued for all federal contractors and subcontractors at the end of September. This means companies that have contracts with the federal government. The rules extend to all employees working on or in connection with a federal contract or subcontract, which can be quite broad coverage. **A federal injunction was issued on December 8, 2021, so implementation and enforcement are on hold at this time; the situation is subject to change.**
 - All covered contractor employees must be fully vaccinated **by January 18, 2022** or the first day the requirement is incorporated into the contract if it is after that date. (The original deadline was December 8, 2021 but it was modified after that.)
 - Requirements are to be inserted into contract and subcontract language from November 14, 2021 as well as solicitations after October 15. Contracts entered into prior to October 15 will have those requirements added when/if they are renewed or extended.
 - **For more details and further resources, including the status of legal challenges, see [UCON Guide – Federal Contractor Vaccine Mandate](#).**
- **OSHA Emergency Temporary Standards (ETS)** – Federal OSHA issued a new ETS on November 5, 2021, including a vaccine mandate and weekly testing provisions for companies with 100+ employees. Federal OSHA’s vaccine ETS do **NOT** immediately apply to all 100+ employee companies in California, unless such contractors are working on (1) an exclusively federally funded project and/or (2) the federal agency overseeing the federal project applies that mandate. **A mandatory vaccine ETS will only take effect statewide once Cal/OSHA adopts the current or an amended version of the Federal OSHA ETS.** However, the ETS is currently the subject of Federal court proceedings. **The most recent court decision by the U.S. Supreme Court on January 13, 2022 has blocked implementation and enforcement.** See [UCON’s guide](#) for more details.

5. Do I have to pay for unvaccinated employees to be tested, if my safety policy requires it?

Yes, if your company’s safety policy mandates testing for unvaccinated employees, you must pay the employees for time spent getting tested, including any travel time. Note that in this case the time is considered “time worked,” so you cannot require the employee to use paid leave for that time. Time spent waiting for results after the test is performed is not considered “time worked,” unless otherwise required.

6. What money is owed to an employee who misses work to get vaccinated or due to being sick from the vaccine?

Paid leave specifically for COVID-19 vaccine-related reasons is no longer required to be paid to individuals other than in a few localities. Refer to UCON’s [Paid Sick Leave CBA Waivers Statewide chart](#) to see which leaves are still in effect, and whether your company is required to provide it. For non-union employees, if none of these leaves apply they can use any paid sick leave, PTO or vacation time that they have accrued in accordance with your normal leave policies.

7. Can we require employees to provide proof of vaccination?

Yes. Under [EEOC guidance](#) (see Questions K.4 and K.15), employers are *not* prohibited from asking employees about their vaccination status and requesting proof of vaccination. (*Asking job applicants is a little trickier. See [this article](#) for more information.*) However, let employees know that the documentation should only show the immunization source and the date(s) of vaccination; it should not include any other medical or family history information. You need to follow necessary protocols for keeping this information confidential, and consulting with legal counsel is a good idea. You may also want to [read this article](#) on handling fake vaccine cards.

8. Can we keep copies of vaccine records in an employees' personnel file?

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). It's best to keep that information in a confidential file that is separate from their general personnel file, with access given only to those who have legitimate need for access. 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. [Read this article](#) for more guidance on handling confidentiality and privacy concerns.

9. What exemptions are there for vaccinations and how do we document them?

Religious Exemptions: These exemptions are allowed for a bona fide, practiced and deeply held religious belief. A note to this effect, signed by the employee, can be obtained and kept in the employee's file. For more on this issue, see the [EEOC guidance](#) on COVID-19 and EEO laws, Section L. [Read this article](#) for more analysis for the guidance.

Medical/Disability Exemptions: You can require a note from a healthcare professional confirming that the employee cannot get vaccinated, although the medical reason may not be necessary. For more on this issue, see the [EEOC guidance](#) on COVID-19 and EEO laws, Section K.

In both cases, you should consult with legal counsel on creating your policies for documentation and for responding to requests for accommodation for these reasons, as there may be other laws your company is subject to.

Vaccination Resources:

[UCON Vaccinate Construction](#)

[California Department of Industrial Relations - COVID-19 Testing & Vaccine FAQs](#)

[UCON COVID-19 Resources](#)

[Center for Disease Control and Prevention \(CDC\)](#)

[Fisher Phillips Vaccine Resource Center](#)

[California Department of Public Health \(CDPH\)](#)

[Mayo Clinic COVID-19 Vaccine FAQs](#)

[Cal/OSHA Emergency Temporary Standards FAQ](#)