



## **Governor Imposes Vaccine Mandates**

August 31, 2021

**Purpose:** The purpose of this memorandum is to inform IRMA Fire Departments and Districts that the Governor has issued a vaccine mandate for healthcare workers, provide guidance, and identify potential issues.

**Background/Discussion:** On August 26, 2021, Governor Pritzker issued [Executive Order 2021-20](#) [hereinafter Mandate Order], which mandates vaccines for healthcare workers. The Executive Order defines “health care worker” which includes any person who is “employed by an entity that is contracted to provide services to a Health Care Facility.” At this time, there are many conflicting interpretations of this Order and much confusion. The Order is unclear as to whether IRMA member paramedics are “health care workers”; it is unclear who should enforce the mandate or how it is to be enforced; it is unclear whether employees who are unvaccinated can simply get weekly COVID-19 tests, or if only those employees who receive an “exemption” can continue to work with weekly COVID-19 tests. However, it appears that the testing alternative is only available while the employee is between the two shots, waiting to achieve “fully vaccinated” status, or if the employee is eligible for an exemption. The Mandate Order does not provide any penalties or consequences for non-compliance. We know that some EMS Directors and Hospital Executives are indicating that they are waiting for IDPH to issue rules and protocols.

Regardless of all this confusion, however, the message is clear. Vaccine mandates for employees involved in patient care (among others) are coming, if not already here. Historically, healthcare systems and schools are on the front lines of requiring vaccinations. This Mandate Order applies to both. As such, aside from the technical questions about this order, we encourage IRMA members to plan for the future, which is likely to include vaccination mandates. We believe the Governor may have consciously issued this Mandate Order in a vague manner, leaving some discretion to EMS Directors. If there is not an increase in vaccinations, the Governor and/or State could provide more clarity, with enforcement mechanisms. We will keep the membership apprised as additional information becomes available.

The Mandate Order contains some very clear information. The order is written in the affirmative, using words such as “must” and “shall.” This is clear: health care workers must receive their first shot within 10 days of the Mandate Order, which is September 5. Those health care workers must get their second shot within 30 days thereafter. In addition, it is also clear that “Health Care Facilities shall exclude Health Care Workers who are not fully vaccinated against COVID-19 from the premises unless they comply with the testing requirements” – which is a minimum of weekly testing.

Aside from the potential legal maneuvering, it is clear that firefighter/paramedics and EMS personnel provide service to health care facilities. It is also clear that the Governor wants hospitals and schools to have vaccinated employees. We expect that IRMA Fire Departments will receive information and direction from their EMS Directors. We encourage IRMA Fire Departments to communicate with your hospital systems to determine whether they are going to require vaccinations of EMS personnel.

In the meantime, we recommend IRMA members do the following:

### Share the Executive Order with the Workforce

We recommend that each IRMA Fire Department, or District, forward the Governor's Executive Order to all personnel explaining that the Governor has ordered that every health care worker receive the vaccine. The order specifically requires that all workers must have their first dose of a two-dose vaccine, or a single dose, within 10 days of the Order, which is September 5. Those getting the two dose vaccines must be full vaccinated within 30 days after their first dose. If this is a mandate that applies to EMS personnel, it is a condition of employment. It is important that your EMS personnel are aware of this very real probability and impact to their working conditions. Providing the Mandate Order to your employees gives them notice of this anticipated change to their continued employment.

### Require Employees to Submit Proof of Vaccination or Request an Exemption

We [previously recommended](#) that IRMA members require employees to submit proof of vaccination. For those who have not yet done so, it is important to compile vaccination information now. The [law](#) is clear that employers can require this information from employees. In addition, the law is also clear that employers can mandate vaccines as long as employees have the right to request two (2) specific exemptions. First, an exemption for those who provide evidence that the vaccination is medically contraindicated. The [medical exemption form](#) can be provided to employees who request such an exemption. The employee's submission should include a letter from a doctor supporting the request for an exemption. Each such exemption request should be considered and analyzed on a case-by-case basis. If an exemption is granted, the IRMA member should consider accommodations, such as testing, masking, social distancing and potentially reassignment. If there is no reasonable accommodation available, then it is appropriate and lawful to terminate employment. The second exemption is for employees who have a sincerely held religious belief that prohibits the vaccine. Similar to the medical exemption, a [religious exemption request](#) should include a letter from the religious entity explaining the belief and that the employee is a member of the religious entity. Employers have a legal obligation to engage in an interactive process with employees requesting either of the two exemptions. In assessing requests for accommodations, it should be noted that employers do not need to grant accommodations that would pose an undue burden or a direct threat to the health and safety of the employee or others. The Governor's order requires a minimum of weekly testing for those who are exempt from the vaccine mandate.

### Require Unvaccinated Employees to Submit Negative Tests

We recommend that IRMA members require unvaccinated employees to submit negative COVID-19 tests at least weekly as set forth in the Mandate Order. We recommend that IRMA members adopt the attached model policy and provide notice to all unvaccinated employees that they are required to submit tests at least once a week.

### Meet with Your Union

There are no reported decisions on whether a COVID-19 vaccine mandate is a mandatory subject of bargaining. A vaccine mandate is for the benefit of the public generally, which is arguably not a mandatory subject of bargaining, but is rather a managerial prerogative. There are some collective bargaining agreements that contemplate a vaccine and provide for employer "impact" obligations such as paying for the vaccine and time off for any subsequent symptoms. IRMA members should carefully review their collective bargaining agreements to identify provisions that might be considered a waiver of the union's bargaining rights. It is likely that a vaccine mandate would require "impact" bargaining to address issues such as the penalty for employees who refuse the vaccine a period of paid or unpaid leave, reassigning and possible termination. It is important to meet with the union now to start these discussions. Consult with your labor attorney in this regard and start the conversations.

## Plan for the Future

This is not going away. We have already seen widespread vaccine mandates issued by employers across the country. We continue to recommend that IRMA members require employees to submit proof of vaccination; require all employees to wear masks, appropriate PPE and social distance. We continue to recommend that IRMA members require all employees who are not vaccinated to submit negative tests, at least weekly, if not more frequently. We recommend that IRMA members immediately impose a vaccine requirement for all new employees. In addition, once all vaccination proof is compiled, staffing considerations are important; those members with very few unvaccinated employees are in a better position than those with large numbers of unvaccinated employees, who need to start thinking about staffing issues.

## Keep in Touch

We ask that IRMA members forward communications to us from your EMS Directors so that we can monitor the different approaches being taken by different health care facilities.