

Frequently Asked Questions About the COVID-19 Vaccine Mandate for School District Personnel

Webinar
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Frequently Asked Questions About the COVID-19 Vaccine Mandate for School District Personnel

Presented by Joseph J. Perkoski, Todd K. Hayden and Catherine R. Locallo

August 31, 2021

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Introduction



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Although the information contained herein is considered accurate, it is not, nor should it be construed to be legal advice. If you have an individual problem or incident that involves a topic covered in this document, please seek a legal opinion that is based upon the facts of your particular case.

Introduction

On August 26, 2021, Governor Pritzker announced a vaccine mandate for certain workers and entities.

Rationale for Mandate: Increased COVID-19 cases and hospitalizations and to lower the number of breakthrough cases that require hospital admission, the majority of whom are 65 and over or immunocompromised.

Unions “welcome” a vaccine mandate (IFT and IEA).

Short deadline for compliance.

Emergency rulemaking is expected.

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Introduction

- The wording of the Governor’s Executive Order requires vaccination for all school personnel unless one can opt out for medical or “sincerely held” religious belief reasons.
- However, statements from the Governor’s Office and perhaps ISBE indicate that schools may decide to require weekly testing in lieu of vaccinations for school personnel even if there is no religious or medical opt out reason.
- In other words, schools can decide to require vaccinations for all employees unless there is a medical or religious opt out or they can take a less restrictive approach of requiring weekly testing for anyone who is not vaccinated.

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Sticking Points of the Vaccine Mandate



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Sticking Points of the Vaccine Mandate



Who is subject to the Governor's
vaccine mandate?



How is the term "school personnel"
defined?

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Sticking Points of the Vaccine Mandate

- When does the vaccine mandate take effect?
- Are there any exemptions to the vaccine mandate?

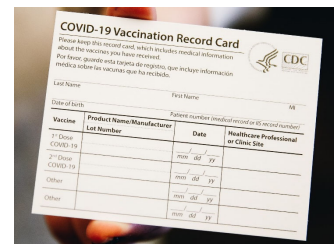


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Sticking Points of the Vaccine Mandate

- Can a school district require proof of COVID-19 vaccination?
 - What type of documentation is acceptable?
 - Where should documentation be maintained?



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Sticking Points of the Vaccine Mandate

- Is there an alternative to vaccination?
- Is anyone else subject to testing?
- How often must routine testing occur?

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Sticking Points of the Vaccine Mandate

- What type of test is acceptable?
- Who should receive test results?
- Where should they be maintained?



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Sticking Points of the Vaccine Mandate

- If an individual is fully vaccinated, does this preclude a school district from also mandating routine testing?

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Sticking Points of the Vaccine Mandate

- Our school district plans to provide testing onsite for staff, are consent forms required?
- What happens if an employee refuses to get vaccinated or tested?



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Sticking Points of the Vaccine Mandate

- How should a school district respond to an employee who refuses to get vaccinated and refuses to test?
- Does the school district have to offer a remote work option?
 - Offer any other alternative?

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Vaccine Mandate Implementation Considerations



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Vaccine
Mandate
Implementation
Considerations

- This is a large undertaking, who within the school district should be responsible for compliance?
- How should a school district approach compliance?

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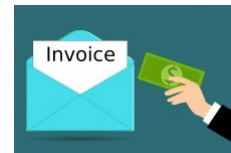
- Can a school district continue to offer an incentive for staff to get vaccinated now that it is required?

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Vaccine Mandate Implementation Considerations

- Is a school district required to pay for the vaccine?
- Provide paid time off to get the vaccine?
- Provide paid time off if someone does not feel well following vaccination or has a reaction to the vaccine?



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Vaccine Mandate Implementation Considerations

- Is a school district required to pay for testing?
- Provide paid time off to get tested?
- What happens if there is a vaccine shortage in our area and staff do not have the ability to get vaccinated by deadlines set by the Governor?

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Vaccine Mandate Implementation Considerations



- Significant increased testing may result in burden being placed on testing facilities again.
- What happens if an employee is unable to get a COVID-19 test?
- What should a school district do if it is taking multiple days for an employee to receive test results?
 - Can the employee still report to work?

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Vaccine Mandate Implementation Considerations

- How should a school district respond if a member of the community, parent or other staff member requests proof of vaccination status for an employee?

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Setting the Table for Bargaining



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Setting the Table for Bargaining

- If the IFT and IEA unions fully support the Governor's mandate, do we have to bargain with our unionized staff over the Governor's mandate? If so, why?
- Does a school district have to bargain the decision to mandate the COVID-19 vaccine or just the impact of enforcing the Governor's vaccine mandate?
- Do negotiations have to be completed before a school district implements the vaccine mandate?

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Setting the Table for Bargaining

- What types of proposals might a school district expect to receive from the union?



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Setting the Table for Bargaining

- What types of proposals or considerations *may* a school district wish to consider in bargaining?

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Questions?



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Thank you!



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As managing partner, Joseph Perkoski represents educational institutions and public sector employers with a focus on board and executive leadership. Joseph also represents his clients on a broad range of labor and employment issues including collective bargaining, grievance arbitration and contract interpretation. Joseph has defended employers in unfair labor practice charges before the Illinois Education Labor Relations Board, the Illinois State and Local Labor Relations Boards and the National Labor Relations Board. In addition, Joseph has litigated on behalf of management claims involving civil rights, discrimination, wrongful discharge, and harassment issues.

AWARDS

Illinois Super Lawyers, 2008-2020

RECENT PUBLICATIONS

Contributing author, "Labor Issues in the Transactional Side of the Project," *Construction Law: Transactional Considerations*, IICLE (2017)

Contribution author, "Labor Relations: Contract Administration Including Unfair Labor Practices," *Illinois School Law: Personnel and Student Issues*, IICLE (2010, 2012, and 2015)

"Finding a New Way: Subcontracting Revisited," *UPDATE Magazine*, Illinois ASBO (2011)

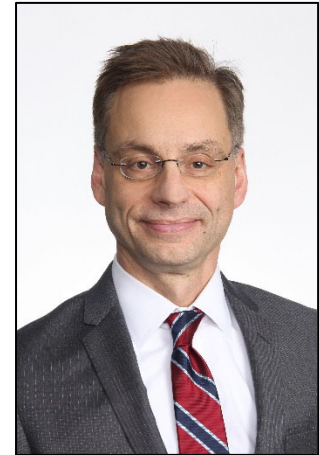
Contributing author, "Labor Issues in the Transactional Side of the Project," *Construction Law – Transaction Practice*, IICLE (2010)

RECENT PRESENTATIONS

Legislative Update: A Review of New Laws Affecting Illinois Community Colleges, Illinois Council of Community College Presidents Retreat (September 2019)

Court Cases and Other Legal Updates for the Higher Education Workplace, Illinois CUPA-HR Spring Conference (May 2019)

Legal Update, ICCCFQ Spring Conference (April 2019)



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Education Law
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EDUCATION

J.D., The Ohio State University, The Mortiz College of Law

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U.S. Court of Appeals for the Seventh Circuit

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U.S. District Court for the Eastern District of Wisconsin

U.S. District Court for the Western District of Wisconsin

Supreme Court of Illinois

Supreme Court of
Wisconsin

Superior Court for the
District of Columbia

ORGANIZATIONS

American Bar Association

Associated Colleges of
Illinois, Trustee

Council of School
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Federal Bar Association

Illinois Association of
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Illinois Bar Association

National School Boards
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Todd Hayden practices in the areas of school and municipal law. He provides governmental employers with guidance and counseling regarding labor and employment, including employee discipline and termination, board governance, collective bargaining, contract, public finance and transactional matters.

Todd has represented employers in various employer-employee disputes including federal and state litigation, EEOC/Department of Human Rights charges, State Labor Board Proceedings and grievance and arbitration proceedings. Todd has extensive experience in collective bargaining, including unit formation proceedings, negotiations, mediation and interest arbitration. He has performed construction contract reviews, served as local bond counsel and worked on school boundary changes.

Todd is approved by the Illinois State Board of Education to provide school board member training.

AWARDS

Illinois Leading Lawyer, Employment Law: Management, Labor Law: Management, School Law and Governmental, Municipal, Lobbying & Administrative Law, 2015

RECENT PUBLICATIONS

Contributing author, "Civil Rights Litigation," *Illinois School Law*, IICLE (2017)

RECENT PRESENTATIONS

Collective Bargaining for School Board Members and Administrators, IASB/IASA/Illinois ASBO Joint Annual Conference (November 2018)

Employee Free Speech and the Public Employer, HR Source Employment Law Conference at Northern Illinois University (September 2018)

Practical Advice for Maintaining a Harassment Free Workplace, IASA (February 2018)



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Catherine is approved by the Illinois State Board of Education to provide school board member training.

AWARDS

Illinois "Rising Star," Employment & Labor Law (2015-2018)

RECENT PUBLICATIONS

"Illinois Committed to Restrictive Covenant Reform Through Passage of Senate Bill 672," *Employment and Labor Law Flashpoints*, IICLE (2021)

"Plaintiff's Cat's Paw Theory of Liability Failed To Scratch Surface," *Employment and Labor Law Flashpoints*, IICLE (2021)

"Walmart Need Not Change Shift Rotation Practice To Accommodate Religious Beliefs" *Employment and Labor Law Flashpoints*, IICLE (2021)

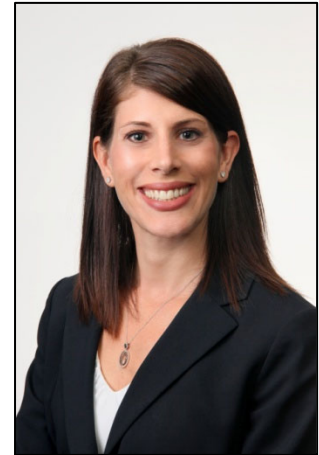
"CBA Provision Clearly Rebutted At-Will Employment Presumption for IT Employee," *Employment and Labor Law Flashpoints*, IICLE (2021)

"Employer's Judgment and Job Description Defeat Failure To Accommodate Claim," *Employment and Labor Law Flashpoints*, IICLE (2021)

"Recent Department of Labor Opinion Letters: Pay for Training and Travel," *Employment and Labor Law Flashpoints*, IICLE (2021)

"Sexual Harassment Prevention Training Compliance Required Before New Year," *Employment and Labor Law Flashpoints*, IICLE (2020)

"Will 'Scabby the Rat' Live To Fight Another Day?" *Employment and Labor Law Flashpoints*, IICLE (2020)



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Education Law
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J.D., *cum laude*, The John
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U.S. Court of Appeals for
the Seventh Circuit

U.S. District Court for the
Central District of Illinois

U.S. District Court for the
Northern District of Illinois

Supreme Court of Illinois

“Superintendent’s Police Report is Protected Speech” *Employment and Labor Law Flashpoints*, IICLE (2020)

“Changing the Landscape: Abusive Conduct Not Protected Under NLRA” *Employment and Labor Law Flashpoints*, IICLE (2020)

“COVID-19 Changes to Claims for Unemployment Benefits in Illinois” *Employment and Labor Law Flashpoints*, IICLE (2020)

“Seventh Circuit: Jury, Not Judges, Must Decide Coach’s Sex Discrimination Claim” *Employment and Labor Law Flashpoints*, IICLE (2020)

“Examining DOL Rule on New Employee Leave Rights” *Employment and Labor Law Flashpoints*, IICLE (2020)

“Better Safe Than Sued – Issuing Timely FMLA Notices” *Employment and Labor Law Flashpoints*, IICLE (2020)

“Unions Strike Back Through Amendments to Illinois Public Labor Acts” *Employment and Labor Law Flashpoints*, IICLE (2020)

“First Amendment Protections Get Broader for Government Employees,” *Chicago Daily Law Bulletin* (2016)

"Regulatory Changes to the Illinois Wage Payment and Collection Act," *Justinian Society Newsletter* (2015)

"New FOIA Amendments to Ease Burden on Public Bodies," *Justinian Society Newsletter* (2015)

“Illinois Supreme Court Determines Arbitration Award Ordering Reinstatement of a Paraprofessional was Binding Because the Award ‘Drew Its Essence’ from the CBA,” *Justinian Society Newsletter* (2014)

“When the Music Stops, Why Not Require Certain Title VII Plaintiffs to Find a Chair on Which to Rest Their Complaint,” *The John Marshall Law Review*, (2009)

RECENT PRESENTATIONS

Is PERA Dead?? Implementation of a Local Appeals Process for Unsatisfactory Ratings, IASPA Annual Conference (January 2020)

A Workshop on Compliance with the Open Meetings Act and Illinois Freedom of Information Act, LUDA Annual Conference (October 2019)

Community College Trustees Training Session, ICCTA (June 2019)

ORGANIZATIONS

Chicago Bar Association

Illinois Council of School Attorneys

Illinois State Bar Association

National Council of School Attorneys

Treasurer, Justinian Society of Lawyers

Co-Chair, Justinian Society of Lawyers Endowment Fund Scholarship Committee

Member, Oakton Community College Paralegal Advisory Committee

Member, Triton College School of Business Advisory Legal Committee

Member, Board of Directors, Glenview Stars Hockey Association

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