



Oregon's Health Care Vaccine Mandate

Presented by
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Today's presenters



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Today's agenda

- The rule:
 - Who is a “healthcare provider and healthcare staff” in a “healthcare setting”?
 - What about the Oregon law saying you can't mandate vaccines for health care employees?
 - OHA enforcement and other liabilities
- The logistics:
 - Strategies for managing the flood of exemption requests
 - What qualifies as a medical and religious exemption?
 - What is a reasonable accommodation?
- The other miscellaneous issues:
 - Considerations for unionized workforces
 - Bullying or other issues related to vaccine status

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Poll

- What % of your workforce is vaccinated?
 - Under 50%
 - 50-60%
 - 60-70%
 - 70-80%
 - 80%+
 - No idea!

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The Rule

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A brief timeline

- 1989 – ORS 433.416 – “[A] [health care] worker shall not be required as a condition of work to be immunized under this section, unless such immunization is otherwise required by federal or state law, rule or regulation.”
- 8/4/21 – Governor Brown announces rule requiring full vaccination or weekly testing for health care employees, effective 9/30/21
- 8/19/21 – Governor Brown announces elimination of weekly testing option and issues rule requiring full vaccination for health care employees, effective 10/18/21

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Key provisions and definitions

- By 10/18/21, all “healthcare providers and healthcare staff” working in a “healthcare setting” must be fully vaccinated or have a documented and approved medical or religious exemption
- “Healthcare providers and healthcare staff” means “individuals, paid and unpaid, working, learning, studying, assisting, observing or volunteering in a healthcare setting providing direct patient or resident care or who have the potential for direct or indirect exposure to patients, residents, or infectious materials, and includes but is not limited to any individual licensed by a health regulatory board as that is defined in ORS 676.160, unlicensed caregivers, and any clerical, dietary, environmental services, laundry, security, engineering and facilities management, administrative, billing, student and volunteer personnel.”

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Key provisions and definitions

- “Healthcare setting” means “any place where health care, including physical or behavioral health care is delivered and includes, but is not limited to any health care facility or agency licensed under ORS chapter 441 or 443, such as hospitals, ambulatory surgical centers, birthing centers, special inpatient care facilities, long-term acute care facilities, inpatient rehabilitation facilities, inpatient hospice facilities, nursing facilities, assisted living facilities, residential facilities, residential behavioral health facilities, adult foster homes, group homes, pharmacies, hospice, vehicles or temporary sites where health care is delivered (for example, mobile clinics, ambulances), and outpatient facilities, such as dialysis centers, health care provider offices, behavioral health care offices, urgent care centers, counseling offices, offices that provide complementary and alternative medicine such as acupuncture, homeopathy, naturopathy, chiropractic and osteopathic medicine, and other specialty centers.” (but NOT a person’s private home if not licensed as a facility or agency)
- “Contractor” means “a person who has healthcare providers or healthcare staff on contract to provide services in healthcare settings in Oregon.”

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OHA enforcement and liability risks

- How will violations come to OHA's attention?
 - Employee or patient complaints
 - COVID outbreak
- What does an OHA investigation look like?
- Penalties – \$500 per violation per day
- Potential licensing violation?
- Potential tort liability

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Other claims

- ORS 659A.199 whistleblower claims
- Discrimination
- Failure to accommodate

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Special considerations

- Nuances of OHA's definitions—who comes within the scope of the mandate?
 - Manufacturing/construction employers
 - Contractors
 - Unlicensed staff
 - Remote employees

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The Logistics

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Exemption requests – nuts and bolts

- Medical exemptions
- Religious exemptions (vs. personal or political)
- Process with employees
 - Have them fill out the OHA forms
 - Acknowledge the request once form is received
 - Ask follow-up questions in writing
 - Engage in the interactive process
 - Review whether/how to accommodate
 - Close the loop with the employee

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The real problem – religious exemptions

- Fetal cells used in vaccine development
- Adam and Eve gave people free will
- My body is a temple
- Rastafarian
- Vaccine is not “from God” and may cause harm in the future
- Divine law says I do not have to defile my body in ways contrary to my Biblical beliefs
- The vaccine is a precursor for the “end of time” prophecy

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Scenario #1

Employee files for a religious exemption and states simply: “My religious belief prohibits me from being vaccinated.” Do you grant the exemption?

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Scenario #2

- Employee submits religious exemption request claiming that the employee is a Christian and was granted free will by God when God cast Adam and Eve out of the Garden of Eden, and the requirement to be vaccinated violates the employee’s free will. Do you grant the exemption?

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Scenario #3

- Same as scenario #1 but after granting the exemption, employer sees employee's social media post telling everyone the employee was able to get out of getting the vaccine due to a "religious" belief. Employee states that they didn't want the vaccine because they believe the government is implanting microchips in their arm to track them.

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Challenging the religious belief

- If you're not going to accommodate, may not make sense
- If you are going to accommodate, particularly in a high-risk setting, consider asking for additional information regarding:
 - Specific tenets of belief that prohibit vaccination
 - Previous vaccines received
 - Duration of religious belief
 - Letter from pastor/other clergy

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If you grant a religious or medical exemption

- Employers “must take reasonable steps to ensure that unvaccinated healthcare providers and healthcare staff are protected from contracting and spreading COVID-19”
 - Not just about what works for you as the employer – you need to make choices that protect everyone
 - Need to have a process in place and documentation to demonstrate that you appropriately considered the request
 - Two-year recordkeeping requirement

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Reasonable accommodation

- Placing on leave
 - Protected or not?
 - Health insurance benefits
- Masking and testing
 - Who pays for testing? Or time spent getting tested?
 - Frequency and type of testing
- Social distancing, temperature checks, remote work and other pre-vaccination measures

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- Are you paying for employees to get tested as an accommodation?
 - Yes
 - No
 - Hoping you would tell me!

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- How are you accommodating exemption requests?
 - Putting everyone on leave
 - Masking
 - Masking and testing
 - Reassigning employee to less high-risk position
 - Combination of the above
 - Something else

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Steps to reduce risk

- Consider in advance what accommodations might work for different settings and jobs and develop system to apply consistently
- Response may depend on
 - Type of health care facility
 - Department(s) of the requesting employee(s)
 - Percentage of staff requesting exemptions
 - Particular job and proximity to patients and other staff

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The Other Miscellaneous Issues

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Considerations for unionized workforces

- The duty to bargain
- Grievances, information requests, and ULPs
- Consider:
 - Stock responses
 - Foregoing step meetings

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Inquiries re: vaccination status

- Rumors or “bullying” re: vaccination status
- Patient requests to know providers’ vaccination status
- Asking vendors/contractors re: vaccination status

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Resources

- OHA rule: <https://secure.sos.state.or.us/oard/viewSingleRule.action?ruleVrsnRsn=280799>
- OHA FAQs: <https://sharedsystems.dhsoha.state.or.us/DHSForms/Served/e3879.pdf>
- Exemption request forms: <https://covidvaccine.oregon.gov/> (scroll down to “forms”)
- BOLI FAQs: <https://www.oregon.gov/boli/workers/Pages/covid-vaccine.aspx>
- EEOC guidance: <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws#K>

Questions?



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