



FAQS: VACCINE MANDATE EMERGENCY PROCLAMATION

HGEA'S POSITION ON THE EMERGENCY PROCLAMATION

What is HGEA's position with this mandate?

- HGEA strongly encourages COVID-19 vaccinations. We also recognize there are individuals who are unable to receive the vaccination because of medical, religious and/or personal reasons.
- We maintain the position that the employer must bargain and consult over the impact of mandatory COVID-19 vaccinations and testing. However, as discussed below, the Governor's Emergency Proclamation suspended the employer's statutory duty to consult and negotiate to the extent necessary to allow them to implement policies and procedures to mitigate risks posed by COVID-19 and its variants, and impose employee testing and vaccination.
- We will advocate for consistency among the different employer jurisdictions to allow unvaccinated employees the option of regular and frequent COVID-19 testing or alternate work arrangements in lieu of disciplinary action and job loss through termination.

Was HGEA consulted?

- No. However, some jurisdictions such as the Judiciary and HHSC have taken a collective bargaining approach to work with HGEA to consult.

When did you find out about the Emergency Proclamation?

- At the same time the public was notified on August 5, 2021 at 1:00 p.m. during the Governor's press conference.

How will HGEA represent my voice?

- HGEA will continue to strongly support COVID-19 vaccinations for the protection of public employees and the communities they serve and to beat this pandemic. We will also be advocating for fairness and consistency for public employees by allowing unvaccinated employees the option of regular and frequent testing COVID-19 testing in lieu of disciplinary and job loss through termination.

CAN GOVERNOR IGE DO THIS?

Can the Governor just do this or does he have to negotiate?

- The Governor chose to implement this vaccination and testing mandate for all State and county employees via Emergency Proclamation, without negotiating the impact of the mandate on employees' terms and conditions of employment.

The vaccination and testing mandates impact employees' terms and conditions of employment which, absent the Emergency Proclamation, and under normal circumstances are required to be negotiated prior to implementation.

The Emergency Proclamation also suspends specific sections of Chapter 89 – Collective Bargaining (Sections 89-9, 89-10(d) and Section 89-13, HRS) – that under normal circumstances, would:

- (1) require negotiations and consultations; and
- (2) allow for a finding of prohibited practices violations and possible injunctive relief against the employer(s) by the Hawaii Labor Relations Board for refusing to bargain in good faith as required in Section 89-9, HRS, and other violations of Section 89-13, HRS

The Governor has chosen to unilaterally alter employees' terms and conditions of employment by way of this Emergency Proclamation, through emergency powers of HRS 127A-13.

What is HGEA going to do about the Governor's mandate?

- We are sending letters to the employer jurisdictions to demand bargaining and consultation over the impact of mandatory COVID-19 vaccinations and testing as these represent a change in employees' working conditions.

What is going to happen next?

- What happens next will depend on each employer jurisdiction's vaccination and testing policy/program, how each employer responds to our demand to bargain and consult over the impact of the mandate on employees' terms and conditions of employment, etc. This is a very fluid matter and we will continue to update members on new information we receive about the vaccine and testing mandates from the different employer jurisdictions.

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Can the Governor, Mayors and Other State and County Government Employers Impose a COVID-19 Vaccination Mandate for State and County Government Employees?

- Under the current state of the law, with certain limitations, the answer is likely yes.

In *Jacobson v. Massachusetts*, 197 U.S. 11 (1905), the Supreme Court of the United States upheld a state law requiring the smallpox vaccination and determined that the Constitution does not provide a right to opt out of vaccine mandates in the midst of a public health crisis.

The *Jacobson* case was recently cited by a federal appeals court that rejected a challenge brought by students to Indiana University's (IU) COVID vaccine requirement.

In *Ryan Klaassen, et al. v. Trustees of Indiana University*, 2021 U.S. Dist. LEXIS 13300 (N.D. Ind. 2021), eight students at Indiana University filed a lawsuit challenging the mandate that all students, faculty and staff receive a COVID vaccine by August 15, 2021, before they return to campus for the Fall 2021 semester. The IU vaccine mandate allowed for exemptions based on medical reasons and religious beliefs. The plaintiffs filed for an injunction in an attempt to prevent IU from enforcing its vaccine mandate. The court denied the request for an injunction noting that the due process clause of the 14th Amendment allows IU to require vaccinations "in the legitimate interest of public health for its students, faculty, and staff." The plaintiffs appealed the denial of their request for an injunction to the Seventh Circuit Court of Appeals. On August 2, 2021, the Seventh Circuit Court of Appeals affirmed the lower court's holding that the IU vaccination mandate is lawful.

VACCINATION STATUS, TESTING AND EXEMPTIONS

Note: If you have questions about the new vaccination and testing programs/requirements of the different employer jurisdictions please contact your respective HR office. We have not received anything in writing about the State's Vaccination and Testing program, and since the Governor's Emergency Proclamation allows the mayors of the respective counties to issue their own directives related to vaccinations and testing that are applicable only to that county's permanent and temporary employees, vaccination and testing requirements could vary, from county to county, and amongst the different employer jurisdictions (e.g., DOE, University of Hawaii, the Judiciary, etc.).

VACCINATION STATUS, TESTING AND EXEMPTIONS (CONTINUED)

How do I know I am fully vaccinated?

- You are considered fully vaccinated two weeks after you have completed the second dose of a two-dose series (e.g. Pfizer or Moderna) or two weeks after you've completed an approved one dose series (e.g. Johnson & Johnson).

What requirements will I have to complete if I don't get the vaccination?

We haven't received any specific information from the state or any county, but according to the Governor's Emergency Proclamation:

- **TESTING:** If you do not provide proof that you are fully vaccinated by August 16, 2021 (or after August 16, 2021 if you become fully vaccinated after August 16, 2021), you will be subject to regular COVID-19 testing – once or twice a week, at the discretion of the State or County office, or agency.
 - State and county employees who provide proof that they are fully vaccinated after August 16, 2021 will no longer be subject to regular COVID-19 testing.
- **FREQUENCY:** Once or twice a week, at the discretion of the State or County office, or agency.
- **COST:** According to the EP, the location of free testing sites can be found on the COVID-19 State of Hawaii Portal (<https://hawaiiicovid19.com>). State and county employees not tested at a free testing site shall be responsible for any testing costs

Will I lose my job if I don't get the vaccination before August 16, 2021?

- According to the Governor's Emergency Proclamation, the requirements set forth in the EP shall be enforceable through disciplinary action, up to and including termination.

The Governor's requirements on vaccination and testing include: (1) proof of being fully vaccinated for COVID-19 by August 16, 2021 or (2) be subject to regular COVID-19 testing – once or twice a week, at the discretion of the State or County office, or agency.

What if there are no available testing appointments. Will I lose my job?

- We don't know until more information is provided. (See note at the top of this section). We will continue to be proactive and demand bargaining so that we can advocate for our members and address these issues with the employer.

Will there be any other exceptions other than religious and medical?

- We don't know until more information is provided. (See note at the top of this section). We will continue to be proactive and demand bargaining so that we can advocate for our members and address these issues with the employer.

WORKPLACE PRIVACY OR CONFIDENTIALITY

The employer wants me to let them know when I put in for sick leave to check if I exhibit any of the COVID symptoms so they can protect everyone. Can they do that?

- Yes, the employer can request sick leave requests to confirm whether you may be experiencing symptoms similar to COVID as long as they are not asking your medical history.

Can the employer tell me where a COVID positive case is?

- The employer does not have to provide specific information on where a COVID positive case was located since that information could expose the identities of the positive case(s). They are obligated to ensure the work space is safe for employees to return.

Is telework an option instead of getting the vaccine?

- We don't know until more information is provided. (See note at the top of the Vaccination status, testing and exemptions section). We will continue to be proactive and demand bargaining so that we can advocate for our members and address these issues with the employer.

ADDITIONAL INFORMATION

More information about the FDA approval process of vaccines can be found at:

<https://www.fda.gov/emergency-preparedness-and-response/coronavirus-disease-2019-covid-19/covid-19-frequently-asked-questions>

Based on the fluidity of this situation, updates to this document may occur rapidly as new information comes in. Please check www.hgea.org for the most current FAQs.

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