

COVID-19: EMPLOYERS CAN'T MISS THE SHOTS EMPLOYEES DON'T TAKE: SANTA CLARA COUNTY REQUIRES EMPLOYERS TO TRACK EMPLOYEES' VACCINATION STATUS

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As the numbers of vaccines distributed and vaccines taken in the United States continue to increase, state and local governments are implementing divergent approaches regarding vaccination guidance. While some states have prohibited businesses or public agencies from inquiring about their employees' vaccination status or requiring vaccine passports, Santa Clara County, California has implemented a vastly different approach: requiring employers to inquire about vaccination status.

On 18 May 2021, the Santa Clara County health officer released an updated [health order](#) mandating for employers in both the public sector and the private sector to determine the vaccination status of all “personnel.” The health order applies broadly, covering governmental agencies, for-profit business, nonprofit organizations, educational entities, and more. Its definition of who constitutes “personnel” is similarly expansive, encompassing not just these employers' employees but also their independent contractors, vendors, volunteers, and more. The health order requires all employers to treat personnel as unvaccinated in three situations: (1) the personnel member is unvaccinated; (2) the personnel member refuses to disclose their vaccination status; and (3) the subject entity has not yet learned the vaccination status of the personnel member. The health order requires employers to complete their initial vaccination status assessment within 14 days of the order and then every 14 days thereafter. The health order also requires employers to maintain records of their efforts to comply with the order's requirements, and the County has provided a [sample form](#) for employers to use. The health order also specifies that to the extent that its guidance is inconsistent with either the guidance from the Centers for Disease Control, the guidance from the California Division of Occupational Safety and Health (Cal/OSHA), or any other guidance issued by federal or state agencies, the stricter provision is controlling in Santa Clara County. Therefore, for example, even though Cal/OSHA expects to update its emergency temporary standards for combatting COVID-19 on 15 June—nearly a month after the issuance of the Santa Clara County health order—the Santa Clara County health order would control to the extent its provisions are stricter.

The health order also includes some updated guidance regarding the activities in which unvaccinated personnel can participate. Although all personnel, vaccinated and unvaccinated, must still abide by the [Health Officer's Mandatory Directive on Use of Face Coverings](#), unvaccinated personnel are also subject to the [Health Officer's Mandatory Directive for Unvaccinated Personnel](#). Under this latter directive, unvaccinated personnel must be excluded from the workplace if they test positive for COVID-19 or are a close contact with an individual who has tested positive and must remain quarantined until the appropriate length of time has elapsed. The health officer

also recommends employers restricting unvaccinated personnel from work-related travel, particularly to distances farther than 150 miles from Santa Clara County, and requiring unvaccinated personnel to take either weekly COVID-19 PCR testing or daily antigen testing with COVID PCR confirmation of any positive results. Employers must also provide their unvaccinated personnel with information on how to become vaccinated. Additionally, none of these three orders lift the previous reporting requirements outlining how and when personnel who test positive for COVID-19 should report their positive test to their employers and how and when employers should report those cases to the County.

For more information on what California and other states have done to combat COVID-19, please see our [COVID-19 resources page](#).

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