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**Webinar Series
 COVID-19: CALTCM Weekly Rounds**

September 13, 2021

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The CALTCM Annual Meeting curriculum is designed to engage and benefit all members of the interdisciplinary team and administrative leadership.

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2021 Webinar Schedule

September 27
 October 18
 November 8
 December 6

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*Vaccine Mandates
Exemptions & Legal
Implications*



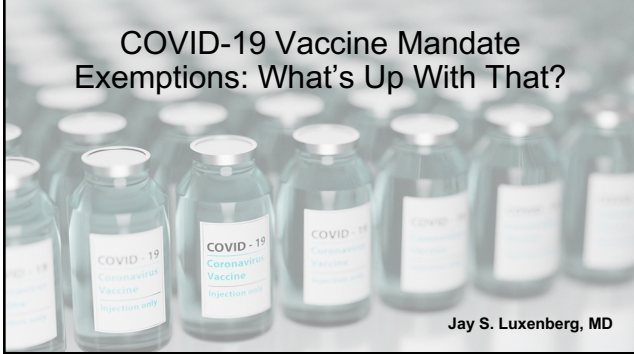
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COVID-19 Vaccine Mandate
 Exemptions: What's Up With That?



Jay S. Luxenberg, MD

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Health Care Worker Vaccine Requirement

- August 5, 2021, State Public Health Officer Order mandates all workers who provide services or work in health care facilities [defined next slide] have their first dose of a one-dose regimen or their second dose of a two-dose regimen by September 30, 2021

CALTCM <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Order-of-the-State-Public-Health-Officer-Health-Care-Worker-Vaccine-Requirement.aspx> September 13, 2021

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Health Care Worker Vaccine Requirement

- Health Care Facilities:
 - i. General Acute Care Hospitals
 - ii. Skilled Nursing Facilities (including Subacute Facilities)
 - iii. Intermediate Care Facilities
 - iv. Acute Psychiatric Hospitals
 - v. Adult Day Health Care Centers
 - vi. Program of All-Inclusive Care for the Elderly (PACE) and PACE Centers
 - vii. Ambulatory Surgery Centers
 - viii. Chemical Dependency Recovery Hospitals
 - ix. Clinics & Doctor Offices (including behavioral health, surgical)
 - x. Congregate Living Health Facilities
 - xi. Dialysis Centers
 - xii. Hospice Facilities
 - xiii. Pediatric Day Health and Respite Care Facilities
 - xiv. Residential Substance Use Treatment and Mental Health Treatment Facilities

CALTCM <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Order-of-the-State-Public-Health-Officer-Health-Care-Worker-Vaccine-Requirement.aspx> September 13, 2021

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Health Care Worker Vaccine Exemptions

- Workers may be exempt from the vaccination requirements only upon providing the operator of the facility a declination form, signed by the individual, stating either of the following:
 - (1) the worker is declining vaccination based on Religious Beliefs, or
 - (2) the worker is excused from receiving any COVID-19 vaccine due to Qualifying Medical Reasons.

CALTCM <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Order-of-the-State-Public-Health-Officer-Health-Care-Worker-Vaccine-Requirement.aspx> September 13, 2021

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Health Care Worker Vaccine Exemptions

- To be eligible for a Qualified Medical Reasons Exemption, the worker must also provide to their employer a written statement signed by a physician, nurse practitioner, or other licensed medical professional practicing under the license of a physician stating that the individual qualifies for the exemption (but the statement should not describe the underlying medical condition or disability) and indicating the probable duration of the worker's inability to receive the vaccine (or if the duration is unknown or permanent, so indicate).
- Unvaccinated exempt worker must meet the designated COVID testing requirements when entering or working in the covered facilities.

CALTCM <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Order-of-the-State-Public-Health-Officer-Health-Care-Worker-Vaccine-Requirement.aspx> September 13, 2021

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Health Care Worker Vaccine Exemptions

- Unvaccinated exempt worker must meet the designated COVID testing requirements when entering or working in the covered facilities.



<https://www.cdoh.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Order-of-the-State-Public-Health-Officer-Health-Care-Workers-Vaccine-Requirement.aspx> September 13, 2021

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Health Care Worker Vaccine Exemption Q&As

Q - What if my employee is under age 12?

A - What are you doing employing people under age 12!

Q - What about RCFEs?

A – Statewide – as of this date no PIN mandating staff vaccination. Some counties have health officer orders that do include RCFEs – e.g. San Francisco defines RCFEs as “High Risk Setting”, mandates vaccination by Sept 15. Same exemptions.



<https://www.cdss.ca.gov/inforesources/community-care-licensing/policy/provider-information-notices/adult-senior-care>

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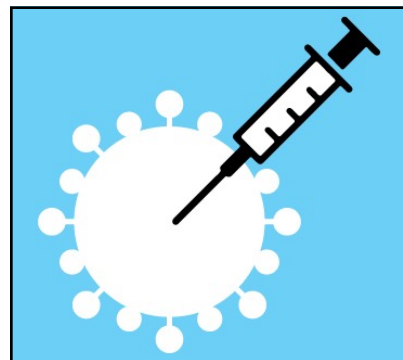
Controversies

- **“Religious exemptions from coronavirus vaccines are expected to become a legal battleground”**
 • <https://www.washingtonpost.com/local/religious-exemptions-covid-19-mandates/>
- **Vaccine Resisters Seek Religious Exemptions. But What Counts as Religious?**
 • <https://www.esquire.com/2021/09/11/how-covid-19-vaccine-exemptions-are/>
- **I'm a Former Pastor, and I Don't Believe in 'Religious Exemptions' to Vaccine Mandates** “...there is no actual religious basis for exemptions from vaccine mandates in any established stream of Christianity. Within both Catholicism and all the major Protestant denominations, no creed or Scripture in any way prohibits Christians from getting the vaccine. Even the sect of Christian Scientists, which historically has abstained from medical treatment, has expressed openness to vaccines for the sake of the wider community. The consensus of mainstream Christian leaders — from Pope Francis to Franklin Graham — is that vaccination is consistent with biblical Christian faith.”
 • <https://www.nytimes.com/2021/09/08/opinion/religious-exemptions-vaccine-mandates.html>



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HLB
 Understanding and Assessing COVID-19 Exemptions
 DECIDING TO GRANT EXEMPTIONS
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 SEPTEMBER 23, 2021

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Overview of Vaccines and Vaccinations

- On August 23, 2021, the FDA announced full approval for the Pfizer/BioNTech vaccine. This is the first COVID-19 vaccine to be subject to full review by FDA.
- The FDA has approved two other COVID-19 vaccines Emergency Use Authorization. (Moderna and Johnson & Johnson/Janssen)
- The Mayo Clinic currently estimates that 53.8% of the U.S. population is fully vaccinated and 56.9% of the population of California is fully vaccinated.

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Vaccination Willingness

- An August 17-23, 2021 survey conducted by Morning Consult found that 64 percent of eligible adult Americans had received at least one shot, 8 percent plan to get vaccinated, 10 percent are uncertain whether they will be, and 18 percent do not plan to get one.
- The percent of persons who do not plan to get the vaccine has fallen to 18 percent from 21 percent in mid-March.
- Despite willingness to get a COVID-19 vaccine increasing over time, a significant portion of the populous remains either unwilling or cautious about immunizations.

MAYOR'S OFFICE REPORT

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Vaccination Mandate Wars

- Two states ban private employers from utilizing mandates. (MT, ND)
 - State Worker Mandates:
 - 19 states mandate vaccination. (WA, CA, OR, NV, CO, NM, MN, IL, NC, DC, MD, VA, MA, NY, NJ, CT, VT, DE, HI)
 - 7 states have banned mandates for government employees.
 - Health Worker Mandates:
 - 22 states mandate vaccination. (WA, CA, OR, NV, CO, NM, MN, IL, NC, DC, MD, VA, MA, NY, NJ, CT, VT, DE, KY, PA, RI, ME)
 - 5 states mandates are banned for health workers. (TX, AR, TN, GA, MT)
 - 3 states not allowed to check vaccine status except in healthcare setting. (AZ, UT, OK)
- © National Academy for State Health Policy

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California Mandates

- State Employees - On July 26, the state announced that all state employees would be required to show proof of vaccination or be tested at least once a week for COVID-19 starting Aug. 2.
- Education - On Aug. 11, Gov. Gavin Newsom announced teachers and staff in private and public K-12 schools would be required to show proof of vaccination against the coronavirus or receive a coronavirus test at least once per week.

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California Mandates – Health Care

- On July 26, the state announced that all healthcare workers would be required to show proof of vaccination or be tested at least once a week for COVID-19 starting Aug. 9. The deadline for full compliance for health care facilities is Aug. 23.
- Under an August 5, 2021, **state public health order**, CDPH ordered that all health facility workers in California must be fully vaccinated for COVID-19 by September 30.
- On Aug. 19, the California Department of Public Health issued an order requiring corrections staff who provide healthcare or who could be exposed to the coronavirus in a healthcare setting to be fully vaccinated by Oct. 14.

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State Public Health Order

- Under an August 5, 2021, **state public health order**, CDPH ordered that all health facility workers in California must be fully vaccinated for COVID-19 by September 30.
- The order provides that workers may be exempt from the vaccination requirements only upon providing the facility operator a declination form, signed by the individual stating either of the following:
 - (1) the worker is excused from receiving any COVID-19 vaccine due to Qualifying Medical Reasons; or
 - (2) the worker is declining vaccination based on Religious Beliefs.

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State Public Health Order - Continued

- **Covered Health Care Facilities:** General Acute Care Hospitals; Skilled Nursing Facilities (including Subacute Facilities); Intermediate Care Facilities; Acute Psychiatric Hospitals; Adult Day Health Care Centers; Program of All-Inclusive Care for the Elderly (PACE) and PACE Centers; Ambulatory Surgery Centers; Chemical Dependency Recovery Hospitals; Clinics & Doctor Offices (including behavioral health, surgical); Congregate Living Health Facilities; Dialysis Centers; Hospice Facilities; Pediatric Day Health and Respite Care Facilities; Residential Substance Use Treatment and Mental Health Treatment Facilities
- **Approved Vaccines:** Pfizer-BioNTech or Moderna or vaccine authorized by the World Health Organization. The one-dose vaccine is: Johnson and Johnson [J&J]/Janssen.
- **Workers:** All paid and unpaid individuals who work in indoor settings where (1) care is provided to patients, or (2) patients have access for any purpose.

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State Public Health Order – Qualifying Medical Reason Exemption

- To be eligible for a Qualified Medical Reasons exemption the worker must provide to their employer a written statement signed by a physician, nurse practitioner, or other licensed medical professional practicing under the license of a physician stating that the individual qualifies for the exemption (**but the statement should not describe the underlying medical condition or disability**) and indicating the probable duration of the worker's inability to receive the vaccine (or if the duration is unknown or permanent, so indicate).

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State Public Health Order – Religious Beliefs Exemption

- Guidance from CDPH:
 - The Public Health Order only mentions that there is a Religious Beliefs Exemption but sheds no light on how to interpret.
 - Additional Guidance provide by CDPH on August 20, 2021 only provides the following clarification:
 - Public Health Order requires only that workers provide the operator of the facility a declination form, signed by the worker, stating that the worker is declining vaccination based on Religious Beliefs.
 - This sheds no light on how to evaluate whether a Religious Beliefs are genuine or just pretextual justification.**

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Religious Beliefs Exemption – Balancing Act

- In this vacuum of guidance, each organization is going to have to consider their overall policy with respect to vaccinations of staff and patients, including what approach they take in reviewing, processing, and granting requests for religious belief exemptions.

Deferential to Staff Assertion	Closer Examination of Staff Assertion
Retain staff that may seek out employers that are willing to grant exemption.	Staff and Patients may have better expected health outcomes because of higher vaccination rates.
Reduction in chance of being sued for religious discrimination.	Increase in chance of being sued for religious discrimination.

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Religious Beliefs Exemptions Generally - Equal Employment Opportunity Commission (EEOC)

- EEOC guidance states that there should be open dialogue between employees and employers when it comes to confirming religious exemptions.
- According to the EEOC, an employer can request documentation supporting an exemption request on the basis of a sincerely held religious belief if the employer is aware of facts that provide an objective basis for questioning either the religious nature or the sincerity of a particular belief, practice or observance. See 29 C.F.R. 1605.
 - For example: Prior vaccination history or an assertion of a religious belief by a religious organization that is contradicted by that religious organization’s public statements.

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Religious Beliefs v. Personal Belief - EEOC

- “In most cases whether or not a practice or belief is religious is not at issue. However, in those cases in which the issue does exist, the Commission will define religious practices to include moral or ethical beliefs as to what is right and wrong which are sincerely held with the strength of traditional religious views. This standard was developed in *United States v. Seeger*, 380 U.S. 163 (1965) and *Welsh v. United States*, 398 U.S. 333 (1970)”
- “The Commission has consistently applied this standard in its decisions. The fact that no religious group espouses such beliefs or the fact that the religious group to which the individual professes to belong may not accept such belief will not determine whether the belief is a religious belief of the employee or prospective employee.”

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Religious Beliefs Exemptions - *Fallon v. Mercy Catholic Medical Center of SE PA* (3rd Cir. 2017) 877 F.3d 487

- In 2012, the Hospital began requiring employee flu vaccinations. Fallon, submitted requests for exemption in 2012 and 2013 outlining his “sincerely held beliefs” regarding the risk of vaccines. The Hospital approved the exemption requests in both years.
- In 2014, after evaluating his request and detailed essay setting out his religious beliefs, the Hospital denied Fallon’s request, citing changes in its standards for exemption. The Hospital requested a letter from a clergyperson supporting Fallon’s requested exemption, which was not provided because he did not belong to any religious organization. He was subsequently terminated and filed suit alleging religious discrimination.

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Religious Beliefs Exemptions - *Fallon v. Mercy Catholic Medical Center of SE PA* (3rd Cir. 2017) 877 F.3d 487

- The Court examined whether Fallon’s beliefs were religious, and thus, entitled to protection.
- Utilized a 3-part test to determine whether the alleged beliefs are religious and therefore protected by Title VII:
 - (1) a religion addresses fundamental and ultimate questions having to do with deep and imponderable matters.
 - (2) a religion is comprehensive in nature; it consists of a belief-system as opposed to an isolated teaching.
 - (3) a religion often can be recognized by the presence of certain formal and external signs.
- Applying this test, they found that a sincere belief that one should not be vaccinated for health reasons and a distrust of science did not constitute a religious belief.

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Religious Beliefs Exemptions – Initial Factors to Consider

Has the staff member filled out your organization's request form?

Does the staff member meet the definition of worker?

Has the staff member identified a sincere religious belief that requires accommodation?

Has the staff member stated his or her religious belief unambiguously?

It is appropriate to expect requests to state the religious belief and to expect the staff member to explain how it conflicts with the order to receive the COVID-19 vaccine.

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Religious Beliefs Exemptions – Reason to Doubt

- A general statement with no further explanation, such as, "against my religion," "against God's will," or "it would be sinful."
- A statement that does not identify a belief that conflicts with the order for health care worker's to be vaccinated, such as, "we were made in the image of God."
- A statement that appears to identify a personal belief, as opposed to religious belief, such as, "against my principles" or "against my personal beliefs."
- A statement that his or religion is opposed to its members receiving the vaccine when public pronouncements of the religious organization contradict such statement.
- The staff member has acted in a way that is inconsistent with the professed belief, such as, getting previously vaccinated.

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Religious Beliefs Exemptions – Follow-Up Questions

- Ask the staff member to provide a basic explanation of his or her religious belief.
- Ask the staff member to clarify the nature of the conflict with the order, such as, "religious opposition to blood products," objection to use a cell from fetal cell lines, or objections to an ingredient in the vaccine.
- Ask the staff member about their previous vaccination record and ask for explanation as to why the COVID-19 vaccine is different than prior vaccinations.
- Ask the staff member to provide documentation detailing the tenets of their religious beliefs that conflict with the requirement for health care workers to receive the COVID-19 vaccination.
- Ask the staff member to submit letters of verification from clergy or third parties.

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Granted Exemptions – Now What?

- If a provider grants an exemption, then the exempt worker must:
 - Test for COVID-19 with either PCR or antigen test that either has Emergency Use Authorization by the U.S. Food and Drug Administration or be operating per the Laboratory Developed Test requirements by the U.S. Centers for Medicare and Medicaid Services. Testing must occur twice weekly for unvaccinated exempt workers in acute health care and long-term care settings, and once weekly for such workers in other health care settings. **The provider must maintain records of these test results.**
 - Wear a surgical mask or higher-level respirator approved by the National Institute of Occupational Safety and Health (NIOSH), such as an N95 filtering facepiece respirator, at all times while in the facility.

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