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Hearing is set:
Hearing Date: _____
Hearing Time: _____
Judge/Calendar: _____

**SUPERIOR COURT OF WASHINGTON
FOR THURSTON COUNTY**

WASHINGTON FEDERATION OF STATE
EMPLOYEES,

Plaintiff,

v.

JAY INSLEE, GOVERNOR, OFFICE OF
FINANCIAL MANAGEMENT, AND STATE OF
WASHINGTON,

Defendants.

NO. 21-2-01495-34

COMPLAINT FOR UNFAIR LABOR
PRACTICE, IMPAIRMENT OF
CONTRACT, AND INJUNCTIVE RELIEF

Comes now the plaintiff, The Washington Federation of State Employees, by and through its attorneys at YOUNGLOVE & COKER, P.L.L.C., and complains and alleges as follows:

PARTIES

1. The Washington Federation of State Employees (WFSE) is now and at all times pertinent hereto was Council 28 of the American Federation of State, County and Municipal Employees, AFL-CIO.

1 8. RCW ch. 41.80 and RCW ch. 41.56. specifically impose a duty of good faith
2 bargaining on the State with regard to mandatory subjects of bargaining including wages, hours, and
3 other conditions of employment and the negotiation of any question arising under a collective
4 bargaining agreement.

5 9. On August 9, 2021, the Governor issued a “Proclamation by the Governor Amending
6 Proclamation 20-05, et. seq.” designated as proclamation 21-14 “Covid-19 Vaccination Requirement”
7 (the “Proclamation”). A copy is attached hereto as Exhibit A.

8 10. Originally the proclamation applied to the following “State Agencies:”

- 9 • Every agency listed at [https://www.governor.wa.gov/office-governor/office/executive-](https://www.governor.wa.gov/office-governor/office/executive-cabinet)
10 [cabinet](https://www.governor.wa.gov/office-governor/office/executive-cabinet);
11 • Every agency listed at [https://www.governor.wa.gov/office-governor/office/small-](https://www.governor.wa.gov/office-governor/office/small-cabinet)
12 [cabinet](https://www.governor.wa.gov/office-governor/office/small-cabinet); and
13 • Every agency under the authority of a board, council, or commission listed at
14 https://ofm.wa.gov/sites/default/files/public/publications/2021_State_Org_Chart.pdf.
15 except the State Board for Community and Technical Colleges”

16 11. Also on August 9, 2021, the Governor sent an email to State employees, including those
17 represented by the WFSE, regarding the subject of “COVID-19 vaccine mandate.” The email had two
18 attachments. A copy is attached hereto as Exhibit B.

19 12. In an August 18, 2021, press conference the Governor announced an extension of the
20 Proclamation to employees in “Washington’s higher education institutions.”

21 13. OFM has already published a “Vaccine Mandate Guidance” sheet for State agency
22 human resource offices in applying the Proclamation. A copy is attached hereto as Exhibit C.

14 14. Exhibits A and B prohibit any State employee (as well as other groups of individuals
15 identified therein) who is not “fully vaccinated” (meaning be at least two weeks post final COVID-19

1 vaccination) by October 18, 2021, from working in a State agency or institution of higher education,
2 unless exempt for medical or religious reasons as specified therein.

3 15. Given the Proclamation’s definition of “fully vaccinated,” coupled with the required
4 intervening time between vaccinations of some of the vaccines, for all employees, the real deadline to
5 have the vaccine administered is at least October 4, 2021, to allow two weeks after the final shot. For at
6 least one of the vaccines, the last day to get the first of two required shots is September 6, 2021. By
7 those dates, which are the real “deadlines,” the WFSE and the State would need to complete bargaining
8 and inform employees of any changes, and only then could employees decide whether to get vaccinated
9 and make arrangements to do so.

10 16. For those employees seeking an exemption based on medical or religious grounds, they
11 would have to additionally obtain the required supporting documentation, i.e. appropriate health care
12 provider verification and apply for and complete any accommodation process, and if that was
13 unsuccessful, start the vaccination process, perhaps as early as September 6, 2021.

14 17. The Proclamation presents a great many questions regarding the medical and religious
15 exemptions and accommodations in terms of both process and substance regarding fundamental matters
16 of great personal health and safety and of moral and ethical beliefs and concerns.

17 18. Exhibits A and B concern and impact employee working conditions and their terms and
18 conditions of employment and the adoption, implementation and the Proclamation and the impacts of
19 same are mandatory subjects of bargaining.

20 19. Both the WFSE’s CBA and the collective bargaining law applicable to the employees
21 represented by the WFSE obligate the State, before making a change to any mandatory subject of
22 bargaining and the impacts of decisions effecting the terms and conditions of employment, such as

1 wages, hours, and working conditions, to notify the WFSE and on demand to negotiate those matters
2 with the WFSE.

3 20. On August 13, 2021, the WFSE submitted a Demand to Bargain regarding the
4 Proclamation's impacts on the terms and conditions of employment of State employees in bargaining
5 units represented by the WFSE. A copy is attached hereto as Exhibit D.

6 21. The parties met pursuant to the WFSE's demand on August 16 and 18, 2021. During
7 the meeting, the WFSE requested information pertinent to the bargaining and necessary for it to better
8 determine the effects of the Proclamation and to develop and evaluate bargaining proposals. None of
9 the requested information has been received, nor has the State indicated if or when the requested
10 information might be provided.

11 22. During the meetings on August 16 and 18, 2021, the WFSE made multiple proposals to
12 modify or mitigate the impacts of the Proclamation. The State's response to each and every WFSE
13 proposal was "no." The State offered no proposals whatsoever, and never indicated its authority or
14 willingness to consider modification of the provisions of the Proclamation.

15 23. On information and belief, the WFSE alleges that the State bargaining representatives
16 lack authority to either agree to WFSE's proposals or to make proposals modifying the terms of the
17 Proclamation.

18 24. On August 20, 2021, the Governor issued a "Proclamation by the Governor Amending
19 Proclamations 20-05 and 20.14" designated as "Proclamation 21-14.1 Covid-19 Vaccination
20 Requirement." A copy of the amended Proclamation is attached hereto as Exhibit E.

21 **FIRST CAUSE OF ACTION – UNFAIR LABOR PRACTICE**

22 25. This Court has jurisdiction over public employer unfair labor practices ("ULPs").

1 *State ex rel. Graham v. Northshore Sch. Dist. No. 417*, 99 Wn. 2d 232, 662 P.2d 38 (1983).

2 26. Based on the totality of the circumstances, the State's actions constitute a refusal to
3 bargain, an unfair labor practice prohibited by RCW 41.80.110(1)(e) and interfere with or restrain
4 employees in the exercise of rights guaranteed by RCW ch. 41.80, an unfair labor practice prohibited
5 by RCW 41.80.110(1)(a), in the form of:

- 6 a) unilateral change,
- 7 b) bad faith bargaining,
- 8 c) predetermined resolve not to alter its position,
- 9 d) refusal to make counterproposals,
- 10 e) surface bargaining,
- 11 f) fait accompli,
- 12 g) lack of bargaining agent authority,
- 13 h) failure to provide information,
- 14 i) establishment of an arbitrary deadline for the completion of bargaining, and
- 15 j) insufficient notice and opportunity to engage in meaningful bargaining.

16 27. The Court should maintain the status quo by enjoining implementation of the
17 Proclamation and order the State to bargain in good faith regarding the Proclamation's terms and its
18 impacts on employees.

19 **SECOND CAUSE OF ACTION – IMPAIRMENT OF CONTRACT**

20 28. RCW 7.24.020 empowers this Court to declare parties' rights under both contract and
21 statutory provisions.

1 29. The Proclamation impairs the provisions of the WFSE’s CBAs with the State, in
2 violation of U.S. Const. art. I, § 10, cl. 1; and Wash. Const. art. I, § 23, by effectively excusing the
3 State from fulfilling its contractual obligation to engage in good faith bargaining with regard to
4 mandatory subjects and the impacts of decisions impacting employees’ terms and conditions of
5 employment regarding wages, hours and working conditions.

6 **THIRD CAUSE OF ACTION – INJUNCTIVE RELIEF**

7 30. RCW 7.40.020 empowers this Court to grant a preliminary and permanent injunction.

8 31. Unless the State is preliminarily enjoined pending the completion of bargaining and the
9 full and complete processing of the ULP by this Court, and the status quo maintained during those
10 processes, the legal rights of employees represented by the WFSE will be irreparably harmed and
11 impaired, and they will be denied any meaningful and effective remedy.

12 32. Unless temporarily enjoined during these proceedings and permanently thereafter from
13 giving effect to the Proclamation, the statutory, contractual, and constitutional rights of the WFSE and
14 the employees it represents will be irreparably harmed. For example, because of the uncertainty
15 surrounding the exemptions and accommodations and the shortness of time, employees pressed to
16 decide to get vaccinated may be required to either subordinate matters of conscience or have a serious
17 adverse reaction to the vaccine because of a medical disability.

18 33. The WFSE is without any plain, speedy, or adequate remedy at law on behalf of the
19 employees it represents, and unless the status quo is maintained, the employees it represents will be
20 deprived of any meaningful remedy and suffer irreparable harm.

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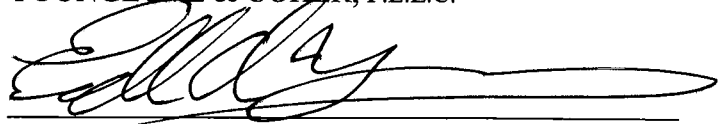
1 34. The State should be preliminarily enjoined from giving effect to or otherwise
2 implementing the Proclamation during the pendency of these proceedings and permanently enjoined
3 thereafter.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, plaintiff requests that the Court make and enter a preliminary injunction
6 enjoining the State from implementing the Proclamation during the pendency of the processing of
7 the ULP and pending a final judgment on this Complaint and permanently thereafter; that the Court
8 further determine the provisions of the Proclamation to be an unconstitutional impairment of the
9 WFSE's CBAs in violation of U.S. Const. art. I, § 10, cl. 1; and Wash. Const. art. I, § 12; and for
10 such other and further relief as the Court may seem just and proper.

11 RESPECTFULLY SUBMITTED this 26th day of August, 2021.

12 YOUNGLOVE & COKER, P.L.L.C.

13 

14 Edward Earl Younglove III, WSBA #5873

15 Christopher John Coker, WSBA #28229

16 Attorneys for Plaintiff

EXHIBIT A



STATE OF WASHINGTON
— OFFICE OF GOVERNOR JAY INSLEE —

**PROCLAMATION BY THE GOVERNOR
AMENDING PROCLAMATION 20-05, et seq.**

21-14

COVID-19 VACCINATION REQUIREMENT

WHEREAS, on February 29, 2020, I issued Proclamation 20-05, proclaiming a State of Emergency for all counties throughout Washington State as a result of the coronavirus disease 2019 (COVID-19) outbreak in the United States and confirmed person-to-person spread of COVID-19 in Washington State; and

WHEREAS, as a result of the continued worldwide spread of COVID-19, its significant progression in Washington State, and the high risk it poses to our most vulnerable populations and our health care system, I have subsequently issued several amendatory proclamations, exercising my emergency powers under RCW 43.06.220 by prohibiting certain activities and waiving and suspending specified laws and regulations, including issuance of Proclamations 20-25, et seq., which limit Washingtonians' ability to participate in certain activities unless certain conditions are met; and

WHEREAS, during early stages of the COVID-19 pandemic, health professionals and epidemiological modeling experts indicated that the spread of COVID-19, if left unchecked, threatened to overwhelm portions of Washington's public and private health-care system; and

WHEREAS, to protect some of our most vulnerable populations – persons in health care facilities, long-term care facilities (which includes nursing homes), and similar congregate care facilities – and to protect our health and congregate care systems themselves, I issued several proclamations imposing heightened protections on workers, residents and visitors in those facilities; and

WHEREAS, although COVID-19 continues as an ongoing and present threat in Washington State, the measures we have taken together as Washingtonians over the past 18 months, including the willingness of most Washingtonians to take advantage of the remarkable, life-saving vaccines being administered throughout the state, have made a difference and have altered the course of the pandemic in fundamental ways; and

WHEREAS, after months of improving COVID-19 epidemiological conditions in Washington State, the emergence of highly contagious COVID-19 variants, including the “delta variant” that is at least twice as transmissible as the virus that emerged in late 2019, coupled with the continued significant numbers of unvaccinated people, have caused COVID-19 cases and hospitalizations to rise sharply among unvaccinated populations and have resulted in breakthrough infections in some fully vaccinated individuals; and

WHEREAS, COVID-19 vaccines are effective in reducing infection and serious disease, widespread vaccination is the primary means we have as a state to protect everyone, including persons who cannot be vaccinated for medical reasons, youth who are not eligible to receive a vaccine, immunocompromised individuals, and vulnerable persons including persons in health care facilities, long-term care facilities and other congregate care facilities from COVID-19 infections; and

WHEREAS, widespread vaccination is also the primary means we have as a state to protect our health care system, to avoid the return of stringent public health measures, and to put the pandemic behind us; and

WHEREAS, COVID-19 vaccinations have been available in Washington State from December 2020 to the present, and since April 15, 2021, all Washingtonians over the age of 16 have been eligible to receive free COVID-19 vaccinations from a wide variety of providers at many locations; and

WHEREAS, as of August 4, 2021, nearly 4.4 million Washingtonians, about 70% of those eligible and 58% of the total population, had initiated their vaccine series, leaving 2.1 million eligible Washingtonians who were unvaccinated; and

WHEREAS, according to the CDC, as of August 1, 2021, approximately 67% of staff in Washington state nursing homes were fully vaccinated; and

WHEREAS, healthcare workers face COVID-19 exposures in a variety of healthcare settings, with those involving direct patient care likely at higher risk; and

WHEREAS, COVID-19 vaccines are safe and effective. COVID-19 vaccines were evaluated in clinical trials involving tens of thousands of participants and met the U.S. Food & Drug Administration’s rigorous scientific standards for safety, effectiveness, and manufacturing quality needed to support emergency use authorization; and, to date, more than 346 million doses of COVID-19 vaccines have been given in the United States with 8.2 million of those doses administered in Washington, and serious safety problems and long-term side effects are rare; and

WHEREAS, on July 6, 2021, the Office of Legal Counsel of the United State Department of Justice issued a legal opinion stating that federal and state governments were not prohibited by federal law

from imposing vaccination mandates, even when the only vaccines available are those authorized under U.S. Food and Drug Administration Emergency Use Authorizations; and

WHEREAS, on July 26, 2021, approximately 60 medical groups, including the American Medical Association, the American College of Physicians, the American Academy of Pediatrics, the American Academy of Family Physicians, the American Nurses Association, the American Academy of Physician Assistants, the Association of Professionals in Infection Control and Epidemiology, the American Public Health Association, the Infectious Diseases Society of America, the American Geriatrics Society, the National Hispanic Medical Association, the National Medical Association, and the Society of Infectious Disease Pharmacists, issued a memorandum supporting mandatory, universal vaccination of all public and private health care and long-term care workers, noting that such a requirement is the “fulfillment of the ethical commitment of all health care workers to put patients as well as residents of long-term care facilities first and take all steps necessary to ensure their health and well-being”; and on August 2, 2021, the Washington State Society of Post-Acute and Long-Term Care Medicine submitted a letter in support of the above noted July 26, 2021 memorandum; and

WHEREAS, on July 15, 2021, the American College of Obstetricians and Gynecologists, together with the Society for Maternal-Fetal Medicine, posted a formal opinion stating that medical professionals have an ethical obligation to be vaccinated against COVID-19 to prevent the spread of harmful infectious diseases, and that women who are or may become pregnant should be vaccinated against COVID-19; and

WHEREAS, it is the duty of every employer to protect the health and safety of employees by establishing and maintaining a healthy and safe work environment and by requiring all employees to comply with health and safety measures; and

WHEREAS, state employees live in and provide services to the public in every county in our state, and many interact with the public on a regular basis, and they all interact with some portion of the community at large to varying degrees before and/or after state work hours; and

WHEREAS, to further our individual and collective duty to reduce the spread of COVID-19 in our communities, I am requiring all employees, on-site independent contractors, volunteers, goods and services providers, and appointees of designated state agencies to be fully vaccinated against COVID-19 on or before October 18, 2021; and

WHEREAS, the worldwide COVID-19 pandemic and its persistence in Washington State continue to threaten the life and health of our people as well as the economy of Washington State, and remain a public disaster affecting life, health, property or the public peace; and

WHEREAS, the Washington State Department of Health continues to maintain a Public Health Incident Management Team in coordination with the State Emergency Operations Center and other supporting state agencies to manage the public health aspects of the incident; and

WHEREAS, the Washington State Military Department Emergency Management Division, through the State Emergency Operations Center, continues coordinating resources across state government to support the Department of Health and local health officials in alleviating the impacts to people, property, and infrastructure, and continues coordinating with the state Department of Health in assessing the impacts and long-term effects of the incident on Washington State and its people; and

NOW, THEREFORE, I, Jay Inslee, Governor of the state of Washington, as a result of the above noted situation, and under Chapters 38.08, 38.52 and 43.06 RCW, do hereby proclaim and order that a State of Emergency continues to exist in all counties of Washington State, that Proclamation 20-05, as amended, remains in effect, and that, to help preserve and maintain life, health, property or the public peace pursuant to RCW 43.06.220(1)(h), and (3), I hereby prohibit, subject to the conditions, exceptions, and circumstances set forth below, the following activities:

1. Prohibitions. This order prohibits the following:
 - a. Any Worker from engaging in work for a State Agency after October 18, 2021 if the Worker has not been fully vaccinated against COVID-19;
 - b. Any State Agency from permitting any Worker to engage in work for the agency after October 18, 2021 if the Worker has not been fully vaccinated against COVID-19 and provided proof thereof to the agency;
 - c. Any Health Care Provider from failing to be fully vaccinated against COVID-19 after October 18, 2021; and
 - d. Any individual or entity that operates a Health Care Setting from permitting a Health Care Provider to engage in work for the individual or entity as an employee, contractor, or volunteer after October 18, 2021 if the Health Care Provider has not been fully vaccinated against COVID-19 and provided proof thereof to the individual or entity. Providers who do not work in a Health Care Setting must provide proof of vaccination to the operator of the facility in which the Provider works, if any, or, if requested, to a lawful authority. A lawful authority includes, but is not limited to, law enforcement, local health jurisdictions, and the state Department of Health.

2. Exemptions from Vaccine Requirement.
 - a. Health Care Providers and Workers for State Agencies are not required to get vaccinated against COVID-19 if they are entitled under the Americans With Disabilities Act (ADA), Title VII of the Civil Rights Act of 1964 (Title VII), the Washington Law Against Discrimination (WLAD), or any other applicable law to a disability-related reasonable accommodation or a sincerely held religious belief accommodation to the requirements of this order. Nothing herein precludes individuals or entities for which Health Care Providers work as employees, contractors, or volunteers and State Agencies from providing disability-related reasonable accommodations and religious accommodations to the requirements of this order as required by the laws noted above. As provided in the ADA, Title VII, and the WLAD, individuals or entities for which Health Care Providers work as

employees, contractors, or volunteers and State Agencies are not required to provide such accommodations if they would cause undue hardship.

- b. To the extent permitted by law, before providing a disability-related reasonable accommodation to the requirements of this order, individuals or entities for which Health Care Providers work as employees, contractors, or volunteers and State Agencies must obtain from the individual requesting the accommodation documentation from an appropriate health care or rehabilitation professional authorized to practice in the State of Washington stating that the individual has a disability that necessitates an accommodation and the probable duration of the need for the accommodation.
 - c. To the extent permitted by law, before providing a sincerely held religious belief accommodation to the requirements of this Order, individuals or entities for which Health Care Providers work as employees, contractors, or volunteers and State Agencies must document that the request for an accommodation has been made and the document must include a statement regarding the way in which the requirements of this order conflict with the religious observance, practice, or belief of the individual.
3. Acceptable Proof of Full Vaccination Against COVID-19: Where required above, Workers for State Agencies and Health Care Providers must provide proof of full vaccination against COVID-19 by providing one of the following:
- a. CDC COVID-19 Vaccination Record Card or photo of the card;
 - b. Documentation of vaccination from a health care provider or electronic health record; or
 - c. State immunization information system record.

Personal attestation is not an acceptable form of verification of COVID-19 vaccination.

4. Public and Private Entities and Employers May Exceed These Requirements: Nothing in this order prohibits individuals or entities employing or using the services of Health Care Providers and State Agencies from implementing requirements that exceed the requirements of this Order.

5. Definitions.

a. "Worker":

- For purposes of this order, "worker" includes:
 - A person engaged to work as an employee, independent contractor, service provider, volunteer, or through any other formal or informal agreement to provide goods or services, whether compensated or uncompensated, but does not include a visitor or patron;
 - The director, secretary, or other executive officer of a State Agency;
 - A person appointed to serve on a board, commission, or similar body that is an executive cabinet agency listed at <https://www.governor.wa.gov/office-governor/office/executive-cabinet> or

a small cabinet agency listed at <https://www.governor.wa.gov/office-governor/office/small-cabinet>.

- The following exceptions apply to the definition of “worker”:
 - Independent contractors, and any of their workers, are exempt from this order unless any provision of the contract to provide goods or services requires work to be performed in person and on site, regardless of frequency, whether other workers are present, or any contingent nature of that requirement.
 - For any State Agency that is listed as an agency under the authority of a board, council, or commission at https://ofm.wa.gov/sites/default/files/public/publications/2021_State_Org_Chart.pdf and that is not also listed as an executive cabinet agency at <https://www.governor.wa.gov/office-governor/office/executive-cabinet> or a small cabinet agency at <https://www.governor.wa.gov/office-governor/office/small-cabinet>, only the State Agency’s compensated employees are “workers” subject to the requirements of this proclamation.

b. “Health Care Provider” includes:

- Individuals with credentials listed in the [Healthcare Professional Credentialing Requirements](#) list;
- Individuals who are permitted by law to provide health care services in a professional capacity without holding a credential;
- Long-term care workers unless specifically excluded in this order; and
- Workers in any Health Care Setting, as defined herein.

“Health Care Provider” does not include, for purposes of this order:

- Individual providers, as defined in RCW 74.39A.240;
- Providers of personal care in a person’s home, such as home care, home health or hospice care;
- Providers who are not actively practicing or providing services; and
- Providers who provide services only at one or more of the settings that are expressly excluded from the list of Health Care Settings under this order.

c. “Health Care Setting” is any public or private setting that is primarily used for the delivery of in-person health care services to people, except as specifically exempted below. If located at a facility that is primarily used for the delivery of health-care services, such as a hospital, then the entire facility is a Health Care Setting. If located at a facility that is primarily used for another purpose, such as a pharmacy within a grocery store, school nurse’s office, or vaccination clinic within a business establishment, the Health Care Setting includes only the areas that are primarily used for the delivery of health care and the areas regularly occupied by Health Care Providers and people seeking care, but not the other areas of the facility.

“Health Care Setting” includes, but is not limited to:

- Acute care facilities, including, but not limited to, hospitals;
- Long-term acute care facilities;
- Inpatient rehabilitation facilities;
- Inpatient behavioral health facilities, including, but not limited to, evaluation and treatment facilities, residential treatment facilities, secure detox facilities;
- Residential long-term care facilities, including, but not limited to, nursing homes, assisted living facilities, adult family homes, settings where certified community residential services and supports are provided, and enhanced services facilities;
- Mobile clinics or other vehicles where health care is delivered;
- Outpatient facilities, including, but not limited to, dialysis centers, physician offices, and behavioral health facilities (including offices of psychiatrists, mental health counselors, and substance use disorder professionals);
- Dental and dental specialty facilities;
- Pharmacies (not including the retail areas);
- Massage therapy offices (this includes designated areas where massage is administered within non-health care settings like spas and wellness/fitness centers);
- Chiropractic offices;
- Midwifery practices and stand-alone birth centers;
- Isolation and/or quarantine facilities;
- Ambulatory surgical facilities;
- Urgent care centers; and
- Hospice care centers.

“Health Care Setting” does not include:

- Settings where sports and spectator events or other gatherings are held (including when credentialed athletic trainers are providing care to players), other than areas primarily used for the delivery of health care services, such as designated first aid areas (which are Health Care Settings);
- Department of Children, Youth & Families (DCYF)-licensed foster homes that do not primarily provide health care services;
- Research facilities where no health care is delivered to people;
- Veterinary health care settings;
- Animal control agencies; and
- Non-profit humane societies.

d. “State Agency” includes:

- Every agency listed at <https://www.governor.wa.gov/office-governor/office/executive-cabinet>;
- Every agency listed at <https://www.governor.wa.gov/office-governor/office/small-cabinet>; and

- Every agency under the authority of a board, council, or commission listed at https://ofm.wa.gov/sites/default/files/public/publications/2021_State_Org_Chart.pdf except the State Board for Community and Technical Colleges and the governing boards of four-year institutions of higher education.

- e. “Fully Vaccinated against COVID-19”: A person is fully vaccinated against COVID-19 two weeks after they have received the second dose in a two-dose series of a COVID-19 vaccine authorized for emergency use, licensed, or otherwise approved by the FDA (e.g., Pfizer-BioNTech or Moderna) or two weeks after they have received a single-dose COVID-19 vaccine authorized for emergency use, licensed, or otherwise approved by the FDA (e.g., Johnson & Johnson (J&J)/Janssen).

ADDITIONALLY, the specific prohibitions in this Proclamation are severable and do not apply to the extent that compliance with a prohibition would violate (1) any U.S. or Washington constitutional provision; (2) federal statutes or regulations; (3) any conditions that apply to the state’s receipt of federal funding; (4) state statutes; or (5) applicable orders from any court of competent jurisdiction.

ADDITIONALLY, nothing in this Proclamation limits otherwise applicable requirements related to personal protective equipment, personnel training, and infection control policies and procedures.

I again direct that the plans and procedures of the *Washington State Comprehensive Emergency Management Plan* be implemented throughout state government. State agencies and departments are directed to continue utilizing state resources and doing everything reasonably possible to support implementation of the *Washington State Comprehensive Emergency Management Plan* and to assist affected political subdivisions in an effort to respond to and recover from the COVID-19 pandemic.

I continue to order into active state service the organized militia of Washington State to include the National Guard and the State Guard, or such part thereof as may be necessary in the opinion of The Adjutant General to address the circumstances described above, to perform such duties as directed by competent authority of the Washington State Military Department in addressing the outbreak. Additionally, I continue to direct the Department of Health, the Washington State Military Department Emergency Management Division, and other agencies to identify and provide appropriate personnel for conducting necessary and ongoing incident related assessments.

Violators of this order may be subject to criminal penalties pursuant to RCW 43.06.220(5). Further, if people fail to comply with the required facial coverings, social distancing and other protective measures while engaging in this phased reopening, I may be forced to reinstate the prohibitions established in earlier proclamations.

This order is effective immediately. Unless extended or amended, upon expiration or termination of this amendatory proclamation the provisions of Proclamation 20-25, et seq., will continue to be in

EXHIBIT B

From: Governor Jay Inslee <Governor.JayInslee@governor.wa.gov>
Sent: Monday, August 9, 2021 2:05 PM
Subject: COVID-19 vaccine mandate

Dear fellow state employee,

I am writing today to let you know that I am requiring, by issuance of a proclamation, that all employees who work in state service for executive cabinet agencies must be fully vaccinated against COVID-19 by October 18, 2021, along with on-site contractors and volunteers. I have also mandated vaccination in some private health and long-term care services. I am taking this action pursuant to my emergency powers as Governor of the State of Washington found at RCW 43.06.220.

This is not a decision I made lightly. I directed my staff to listen deeply to stakeholders, including labor organizations and department managers, to understand the many challenges facing state government as we respond to the impact of the COVID-19 pandemic. Many of you are critical frontline workers and serve the public in positions which were not able to be performed remotely. You have been courageous beyond measure. Many of you shifted your approach and managed to achieve continuity of services from your homes in a way we have never asked of you before. This was hard and you persevered in providing excellent service to the state in extraordinarily difficult times while some of you experienced personal and professional losses due to the disease. This has been a grueling period for all.

Now, we have the most effective tools available to operate safe workplaces and strengthen our commitment to the public – the COVID-19 vaccines. The COVID-19 vaccines have been deemed safe and effective by the U.S. Food and Drug Administration and comparable agencies around the world. Timing couldn't be better because we are also facing a new strain of the disease that is more easily transmitted and more aggressive, especially for unvaccinated persons. Hospitals are jammed and health care personnel are exhausted.

In arriving at my decision on how best to keep employees and customers safe, I considered permitting an employee to elect to test on a regular routine rather than mandating state employees be vaccinated against COVID-19, but ultimately determined that option was not suitable. I would like you to understand that thinking.

- First, we have implemented a routine testing process in many of our 24-7 facilities for unvaccinated staff and it has not prevented outbreaks. Unfortunately, outbreaks have continued to occur affecting employees, clients and families and we have lost dedicated staff. We owe it to those in our care and their families to do everything in our power to prevent these events. We owe it to you, our employees, and your families as well.
- Increasingly, the scale of a testing approach to across the entire state enterprise is costly and administratively burdensome. Sustaining a strategy which permits staff to test weekly would cost more than \$66 million per year and still would not provide the protection in our work and care settings that we need.
- As we head into another surge of COVID-19 outbreaks across our state, driven by a rapidly increasing presence of the DELTA variant, it is more important than ever that we all act now to protect ourselves, our co-workers and our communities.

I understand we may not agree, but I hope this letter has helped you to understand the thinking which led to this decision. I expect your agency leadership will be communicating with you on details and, where applicable, with exclusive bargaining representatives on the impacts of this mandate. Our agencies will also work diligently to support

individuals with medical or religious beliefs to require accommodation from this directive. I am confident the time we have between now and October 18 is adequate to effectively implement this requirement and do what is needed to protect the safety of Washingtonians.

Thank you for your compassion and service. Together, we can combat COVID-19.

Very truly yours,

Jay Inslee

Additional information:

- [Vaccination mandate FAQs](#)
- [DOH vaccine fact sheet](#)

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— WASHINGTON GOVERNOR —

JAY INSLEE

August 9, 2021

FAQs for vaccine mandate for some state employees and certain private employers

Who does the Proclamation apply to?

All Cabinet Agency worksites and employees and Health Care employees in private sector health care and in long term care settings including but not limited to nursing homes, adult family homes, assisted living, enhanced services facilities, RTFs, and other treatment facilities. This includes most contractors, volunteers and other positions that have any onsite presence in a workplace setting. The proclamation does not cover separately elected officials, boards and commissions or K-12 and higher education institutions, but those organizations are encouraged to adopt a similar approach.

What does the Proclamation do?

The proclamation requires all state employees and most health and long-term care providers to be fully vaccinated with a recommended COVID-19 vaccine by October 18, 2021 as a condition of employment. Employers will need to verify vaccination status of all employees.

For state employees:

With so many state employees working remotely, does the requirement only apply if/when they return to the office?

No. The requirement applies to all state workers regardless of their work setting. All workers need to be prepared to come to a worksite at any time necessary to meet business needs.

Staff have been successful keeping infection rates low with safety precautions such as social distancing, hand washing, and mask wearing, why is this needed?

Frontline workers in state service and across the private sector have continued working since the initial "Stay home, Stay Healthy" order. They, rightfully, are becoming weary of the day to day stress of high and dangerous caseloads. Significant efforts have been made to address workplace safety in the face of COVID, a new workplace hazard. Even with all of those safety efforts we did not curtail all outbreaks. The threat of COVID-19 is evolving as new more easily transmitted and aggressive variants become prevalent in our state. We now have the tool of vaccine, which is the single most effective resource to combat spread, prevent illness and death. The state of Washington has a duty to our employees to provide a safe work environment free of known hazards, and to reduce risk to the public we serve. This safety measure is equally important to fight the spread of COVID generally and statewide because it will help to protect the communities in which we live and interact before and after our state work hours. Private employers operate under the same workplace safety standards as the state.

When will this be in effect?

The order is effective immediately, the deadline to become fully vaccinated will be October 18, 2021.

Is there any avenue to opt out of vaccination?

Under the proclamation, employees must show proof of vaccination by October 18, 2021. State employees may work with their agency's human resources office if they need a reasonable accommodation for medical or religious reasons. Private sector employers may choose a different process.

What is the mechanism for proving vaccination?

The Department of Labor and Industries (L&I) and the Department of Health (DOH) have published requirements and guidance that all employers must adhere to. State agencies already have protocols in place per the Healthy WA – Roadmap to Recovery Guide v11 to develop vaccination verification. Many are in the early stages of implementation while others have been doing this work for the entire COVID response period. Updates to the protocol will be made as needed to meet any new requirements. For state employees, proof of vaccination is required; attestation is not allowed. Except for self-attestation, private employers may choose a different process.

How will agencies safeguard my vaccination information?

State agencies have protocol in place for safeguarding confidential information. Vaccination information will meet these requirements.

What if someone refuses to get vaccinated?

All employees must be fully vaccinated by October 18, 2021 as a qualification of fitness for continued employment. Employees who refuse will be subject to non-disciplinary dismissal from employment for failing to meet the qualifications of the job. Those employees granted a reasonable accommodation for medical or religious reasons may not be subject to non-disciplinary dismissal. There may be continued or additional safety requirements for employees who are granted accommodations.

What if an employee is vaccinated but refuses to provide verification?

State employees must provide proof of vaccination. Employees who refuse will be subject to non-disciplinary dismissal from employment for failing to meet the qualifications of the job.

Will employees have any recourse to losing employment?

Any post dismissal dispute over a dismissal action would follow any applicable collective bargaining agreement, civil service rules, and/or agency policy and procedure.

On what legal grounds can this be imposed?

In response to the emerging COVID-19 threat, the Governor declared a state of emergency on February 29, 2020, using his broad emergency authority under RCW 43.06. More specifically, under RCW 43.06.220, after a state of emergency has been declared, the Governor may suspend statutes and prohibit any activity that he believes should be prohibited to help preserve and maintain life, health, property or the public peace. Under an emergency such as this, the Governor's paramount duty is to focus on the health and safety of our communities. In addition, the Governor is also a large employer and needs to meet the obligation to provide a safe workplace for government employees. This Proclamation answers both of those obligations.

How will the state be engaging with labor on this issue?

We understand that there will be many questions about the processes that agencies, and other employers, will use to implement this direction. Employers value their relationships with labor organizations and will discuss the impacts of this directive as requested.

What stakeholders were consulted in arriving at this decision?

The state engaged with labor organizations, local governments, and private healthcare, and received communications from various associations representing segments of private healthcare settings. These engagements revealed differing viewpoints and perspectives. Many organizations expressed an interest in implementation of a “vaccination or test” approach. Many other settings have taken this approach. We considered this feedback in great depth and deemed that approach infeasible in state government and across our health systems. The state and some private entities have used a “vaccination or test” system in various congregate care settings and many recognized it to have not stopped the threat to our communities and places of work, as outbreaks have persisted. The cost and administrative process to sustain, or expand, this model long-term is significant. Ultimately, the state made the tough decision to proceed with a mandate for the healthcare workforce and the state employee workforce.

Given the spread of the Delta variant, what other steps is the state taking to protect the workforce and the community?

The state continues to assess what measures need to be in place in state agencies and community settings. L&I and DOH are engaged daily on disease data analytics, health requirements, and workplace safety requirements to determine what is working well and what is not. The current variant is very rapidly spreading amongst unvaccinated populations that were previously a lesser target for the virus.

Younger unvaccinated people are getting sicker faster and more often. Grounded in the Healthy WA – Roadmap to Recovery Guide for state agencies, monthly updates are provided to state Cabinet agencies to meet CDC, DOH, and L&I requirements and to determine agency implementation directions. We take into consideration business, customer, and employee impacts as we develop our implementation strategies to keep people healthy and safe in our worksites. This includes planning for return to work that emphasizes a new hybrid model of service delivery.

We continue to update masking and physical distancing requirements in a way that best protects our employees and the people we serve. We have increased options for customers to get services online or remotely to decrease the need for in person contact and travel. We have also prioritized closing business gaps where in person services are needed as we pay attention to equity in our approach to customer access.

Will the state provide additional guidance regarding this directive?

The state will establish additional resources as needed to help employees and employers move into compliance with this directive.

COVID-19 Vaccines: What to Know

Where can I get vaccinated?



Your health provider



Mass vaccination clinics

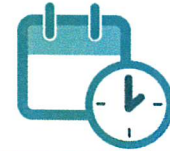


Local pharmacies



Pop-up or community clinics

How do I make an appointment?



Call your provider or make an appointment online

Visit our website: vaccinelocator.doh.wa.gov/

Or call 1-800-525-0127, then press #.
Language assistance is available.

It varies. You may hear about the clinic from a friend or community member. Ask them how to sign up.

What should I bring to my vaccine appointment?

You may be asked for the following, but you do not need to give them:

- identification
- insurance card
- social security number



You do not need to be a U.S. citizen to get the vaccine. They will not ask for your immigration status.

Personal data will only be used for public health purposes.

How much does the vaccine cost?

You get the vaccine at no cost to you. You should not be charged or get a bill.



Do I need a second shot?



Some of the vaccines are two doses. It takes about two weeks after you've been fully vaccinated for the most protection.

Pfizer-BioNTech	2 doses, 21 days apart
Moderna	2 doses, 28 days apart
Johnson & Johnson	1 dose



For more information

Visit: COVIDVaccineWA.org or DOH.WA.GOV/Coronavirus



Call: 1-800-525-0127, then press #. Language assistance is available.

What are the side effects?

You are likely to have side effects.

Throughout your body:

- Tiredness
- Headache
- Muscle pain
- Chills
- Fever
- Nausea



On your arm where you got the shot:

- Pain
- Redness
- Swelling



For vaccines with two shots, the side effects may be worse after the second shot.

Call 911 if you have an allergic reaction. You can sign up for V-safe to report any side effects: v-safe.cdc.gov.

What does the COVID-19 vaccine do?

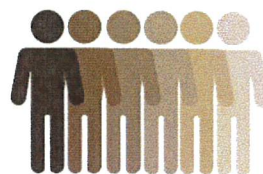


The COVID-19 vaccine trains your body to build defenses to the disease that keep you from getting sick.

Are the vaccines safe?

Yes. All the vaccines were tested on **tens of thousands** of people.

They were shown to be safe across people of many races and those with health conditions like obesity, diabetes, heart disease, liver disease, and HIV.



The Department of Health checks safety reports regularly to make sure there are no safety concerns.

Is one vaccine better than others?

The differences between the vaccines are hard to compare because they were tested at different times and places.

It is important to remember that in clinical trials, all of the available vaccines were proven to work very well at preventing COVID-19.



Why should I get vaccinated?

Getting vaccinated will help you stay safe at work and hang out with your friends and family again.

You'll be much less likely to get seriously ill, be hospitalized, or die from COVID-19.



EXHIBIT C

OFM SHR Vaccine Mandate Guidance

Proclamation 21-14 COVID-19 Vaccination Requirement

This information is intended to help Human Resource leaders within state organizations navigate questions related to Governor Jay Inslee’s August 10, 2021, Proclamation 21-14. This guidance applies to the state’s cabinet agencies and many boards and commissions and will be updated as needed. If your agency has a question, concern or additional issue that you believe should be added to this document, please email us at shrCovid@ofm.wa.gov. We will respond to any questions or concerns you might have via email. Please do not have individual employees send questions directly to us. We are unable to provide guidance to individual employees of your agencies.

The proclamation covers most state employees and volunteers and some contractors. More information will be forthcoming surrounding the requirements for contractors. Information on contractors is also being provided to your agency contracts lead. It will be important to coordinate with them as well.

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1. Who does Proclamation 21-14 apply to?

Most state agency worksites and employees (as described in the list below) and health care employees in private sector health care and in long term care settings, including but not limited to nursing homes, adult family homes, assisted living, enhanced services facilities, residential treatment facilities, and other treatment facilities. This includes most contractors, volunteers and other positions that have any on-site presence in a workplace setting. The proclamation does not cover separately elected officials, K-12 and higher education institutions, but those organizations are encouraged to adopt a similar approach.

The following is a list of entities that this proclamation applies to:

- All large and small cabinet agency leadership, staff/employees, on-site contractors and on-site volunteers;
- All agencies under the authority of a board/council/commission (b/c/c) that are ALSO listed as a large or small cabinet agency on the Governor's website are treated the same as large and small cabinet agencies. That includes the following b/c/c's: the UTC, WSAC, ELUHO, EFSEC, LCB, BTA, and BIIA.
- All other agencies that are under the authority of a b/c/c (but are not a large or small cabinet agency) are also included, but the proclamation only applies to compensated workers (employees and on-site contractors) of those agencies.
 - o The proclamation does not apply to the board members of these agencies, even if they receive a stipend and/or reimbursement of travel costs.
 - o So, for example, the compensated employees and on-site contractors of the Department of Fish & Wildlife, Caseload Forecast Council, and Criminal Justice Training Commission are all included in the proclamation and must be vaccinated by October 18, 2021. The full list is much longer of included agencies, so the above is just an example. However, any board, council, or commission members themselves are not included, even if they receive a stipend and/or reimbursement of travel costs.
 - o Attached is a 2021 org chart that should help with identifying the "full list" of agencies that are under the authority of a b/c/c. is a 2021 org chart that should help with identifying the "full list" of agencies that are under the authority of a b/c/c.

2. Does the vaccination requirement apply to new hires?

Yes. Agencies should ensure that new hires meet the requirement by October 18, 2021. It is advised that agencies include information about the requirement in recruitment announcements and that candidates are informed during the hiring process of the requirement to be fully vaccinated with one of the authorized COVID-19 vaccines by October 18, 2021.

3. Does the vaccination requirement apply to customers/clients?

No.

4. What does the proclamation do?

The proclamation applies science and data to put into place the most effective means we currently have of combatting COVID-19 and the impact of increasing variants, which is

COVID-19 vaccination. To do this, it requires state agency employees covered under the proclamation and most health and long-term care providers to be fully vaccinated with an authorized COVID-19 vaccine by October 18, 2021, as a condition of employment. Employers will need to verify vaccination status of all new hires and existing employees, as well as any other individuals identified in Question #1 above.

5. What stakeholders were consulted in arriving at this decision?

The state engaged with labor organizations, local governments, and private healthcare, and received communications from various associations representing segments of private healthcare settings. These engagements revealed differing viewpoints and perspectives. Many organizations expressed an interest in implementation of a “vaccination or test” approach. Many other settings have taken this approach. The state considered this feedback in great depth and deemed that approach infeasible in state government and across our health systems. The state and some private entities have used a “vaccination or test” system in various congregate care settings and many recognized it to have not stopped the threat to our communities and places of work, as outbreaks have persisted. The cost and administrative process to sustain, or expand, this model long-term is significant. Ultimately, the state made the tough decision to proceed with a mandate for the healthcare workforce and the state employee workforce.

6. With so many state employees working remotely, does the vaccination requirement only apply if/when they return to the office?

No. The vaccination as a condition of employment requirement applies to all employees who are subject to the proclamation regardless of their work setting. All workers need to be prepared to come to a worksite at any time necessary to meet business needs. Even if an employee has no expectation of coming into the workplace, the proclamation still requires that they be fully vaccinated by October 18, 2021.

7. Does the proclamation apply to out-of-state contractors who perform work on behalf of Washington state employees, but have no requirement to come to the worksite?

Contractors are not required to obtain vaccination, provided that their contract for services does not include a requirement to provide in-state on-premises services. If their contract for services in any way requires them to provide in-state on-premise services, then the requirement to be fully vaccinated by October 18, 2021, applies to them.

8. Staff have been successful keeping infection rates low with safety precautions such as social distancing, hand washing, and mask wearing. Why is this needed?

Frontline workers in state service and across the private sector have continued working since the initial “Stay home, Stay Healthy” order. They, rightfully, are becoming weary of the day to day stress of high and dangerous caseloads. Significant efforts have been made to address workplace safety in the face of COVID, a new workplace hazard. Even with all of those safety efforts we did not curtail all outbreaks. The threat of COVID-19 is evolving as new, more easily transmitted and aggressive variants become prevalent in our state. We now have the

tool of vaccine, which is the single most effective resource to combat spread and prevent illness and death. The state of Washington has a duty to our employees to provide a safe work environment free of known hazards, and to reduce risk to the public we serve. This safety measure is equally important to fight the spread of COVID-19 generally and statewide because it will help to protect the communities in which we live and interact before, during and after our state work hours. Private employers operate under the same workplace safety standards as the state.

9. If an employee has previously been infected with COVID-19, and can show that they have the antibodies against the virus, are they exempt from the vaccine requirement?

No, there is no exception for those with COVID-19 anti-bodies; however, employees in this situation may qualify for a medical accommodation if it is not safe yet for them to receive the vaccine (see [Question #13](#) below).

10. What vaccines must an employee receive to be compliant with the proclamation?

Employees may choose any of the three FDA-approved COVID-19 vaccines, manufactured by Pfizer, Moderna, or Johnson and Johnson, respectively. If you have employees participating in approved clinical trials or who have been fully vaccinated with a WHO approved vaccine, please contact OFM SHR for consultation at shrCovid@ofm.wa.gov.

Employees should pay attention to dose timelines to ensure they are able to receive the last dose of the selected vaccine regimen at least two weeks prior to the October 18, 2021, deadline.

Below is a chart that will assist you in communicating with employees about key deadlines:

Vaccine	Series dose requirement	First dose no later than	Second dose	Complete d series	Fully vaccinated = two weeks past final dose (must be by 18 October)
Pfizer	2 doses, 21 days apart	09/13/21	10/04/21	10/04/21	10/18/21
Moderna	2 doses, 28 days apart	09/06/21	10/04/21	10/04/21	10/18/21
Janssen/Johnson & Johnson	Single dose	10/04/21	N/A	10/04/21	10/18/21

11. What if an employee received the vaccine in another state or country?

If an employee received one of the FDA-approved COVID-19 vaccines, Pfizer, Moderna or Johnson and Johnson, in another state or country, they are in compliance with the proclamation. If you have employees participating in approved clinical trials or who have

been fully vaccinated with a WHO-approved vaccine that is not FDA approved, please contact OFM SHR for consultation at shrcovid@ofm.wa.gov.

12. What if an employee is in a clinical or experimental trial and has been fully vaccinated with a vaccine the FDA has not currently approved?

The proclamation requires all state employees and most health and long-term care providers to be fully vaccinated with an authorized COVID-19 vaccine by October 18, 2021, as a condition of employment. Employers will need to verify vaccination status of all employees. If you have employees participating in approved clinical trials or who have been fully vaccinated with a WHO approved vaccine that is not FDA approved, please contact OFM SHR for consultation at shrcovid@ofm.wa.gov.

13. What if an unvaccinated employee contracts COVID-19 and is recommended to wait 90 days before receiving the COVID-19 vaccine? Would they still have to meet the October 18, 2021, deadline?

If an individual is advised by their medical provider that they should not get the vaccine within a particular timeframe, and following that recommendation would cause the individual to miss the October 18, 2021, deadline, the individual must seek an accommodation or would be separated from employment. However, they would need to become fully vaccinated as soon as the waiting period ends.

14. When will this be in effect?

The proclamation is effective immediately and the deadline to provide proof that an individual is fully vaccinated will be October 18, 2021. Being fully vaccinated means that an individual is at least two weeks past their final dose of an authorized COVID-19 vaccine regimen. Therefore, individuals would need to receive the second shot of a two-shot vaccine regimen or the single shot of the one-dose regimen by no later than October 4, 2021. Employees are urged not to wait to schedule an appointment to ensure they can be in compliance with the timeline, as availability of a particular vaccine regimen may vary by location and the timeframes between shots also vary (see chart in [Question #10](#)).

15. Are adverse effects from vaccination a compensable work-related injury for workers compensation purposes?

Likely yes; for those who obtain a vaccine as required for their continued employment (either by their employer or by the Governor's recent proclamation), an adverse reaction claim would be allowed. Coverage would include any medical costs related to the reaction and wage replacement benefits if they were unable to work, as certified by their doctor, for more than three days after the date of the vaccine. Note: Wage replacement, or time-loss benefits, require a three-day waiting period unless the person is off work for fourteen (14) or more days.

16. Can employers ask job applicants about their vaccination status?

Yes. It is not a disability related inquiry under the Americans with Disability Act (ADA) to ask an applicant if they have been vaccinated. However, follow up questions about why a person is not vaccinated should not occur until after a job offer is made since such questions may

reveal a disability. Proof of vaccine should not be required until a job offer is made. See [EEOC Guidance](#).

17. Can agencies make a conditional offer based on vaccination by October 18, 2021? Do agencies need to obtain proof of vaccination before hiring an employee before the October 18, 2021 vaccine deadline?

Agencies should ensure that new hires meet the requirement by October 18, 2021. There is no prohibition against making a conditional offer. The employee should be informed that failure to meet the condition will result in revocation of the offer absent a medical or religious accommodation. Proof of vaccine should not be required until a job offer is made.

18. How does this impact recruitments that are in process now? Is that a change in working conditions that needs to be added to recruitments currently open? Current recruitments should be updated to include the vaccine as a condition of employment and a statement that medical and religious accommodations will be considered. Agencies should also update job descriptions to include vaccination as a condition of employment. All future recruitments should include these requirements. If a current recruitment is in process and the changes in the recruitment announcement or job posting are challenging to make, agencies should ensure all applicants are aware of the requirement.

Sample language for in-process recruitment:

Per Governor Inslee's [Proclamation 21-14 \(Download PDF reader\)](#), state employees must be fully vaccinated no later than October 18, 2021. Your vaccine status will be verified at New Employee Orientation. Please reach out to the HR Office at *(insert email address and/or phone number)* if you need information on medical or religious accommodation.

19. Can an agency refuse to hire if they learn that the candidate has no intention of complying with the working condition to be fully vaccinated by October 18, 2021?

If a candidate has no intention of being fully vaccinated by the October 18, 2021, deadline, they are not qualified for the position, assuming there is no medical or religious accommodation.

20. When can agencies begin asking for proof of vaccination? And what kinds of proof can agencies collect?

Employers can begin asking for proof of vaccination immediately for current employees.

Each agency must determine what type of proof it will require as outlined in the Healthy Washington – Roadmap to Recovery Guide for agencies under the authority of the Governor. These requirements are based on the Washington Labor and Industries (L&I) and Washington Department of Health (DOH) guidance that all employers must adhere to. State agencies already have protocols in place per the Healthy Washington – Roadmap to Recovery Guide to develop vaccination verification. Updates to the protocol will be made as needed to meet any new requirements. At this time, agencies are permitted to use visual verification, rather than retaining copies of vaccination records.

Under the proclamation the following types of proof are permitted:

- a. U.S. Centers for Disease Control COVID-19 Vaccination Record Card or photo of the card;
- b. Documentation of vaccination from a health care provider or electronic health record; or
- c. State immunization information system record.

Personal attestation is not an acceptable form of verification of COVID-19 vaccination.

21. Where must information confirming an employee has been vaccinated, including a copy of the vaccination, be kept?

Information confirming an employee has been vaccinated is confidential and must be stored separately from the employee's personnel file.

Each agency will need to decide if it is advisable to retain a copy of an employee's vaccination records based on its business needed. Agencies should consult with their assigned labor and personnel assistant attorney general to discuss legal risks associated with the retention of such records, as opposed to creation of an agency generated documentation verifying an employee's vaccine status.

22. How will agencies safeguard vaccination information?

Per EEOC guidance, the ADA requires an employer to maintain the confidentiality of employee medical information, such as documentation or other confirmation of COVID-19 vaccination. This ADA confidentiality requirement applies regardless of where the employee gets the vaccination. Although the EEO laws themselves do not prevent employers from requiring employees to bring in documentation or other confirmation of vaccination, this information, like all medical information, must be kept confidential and stored separately from the employee's personnel files under the ADA.

23. Is the DOH going to assist agencies in verifying vaccination status?

At this time, it is not anticipated that DOH will be providing vaccine information directly to agencies.

24. Does the proclamation allow for any exemptions, including accommodations for medical or religious reasons?

Under the proclamation, all employees subject to the proclamation must show proof of vaccination by October 18, 2021. Employees may work with their agency's human resources office if they need a reasonable accommodation for medical or religious reasons.

25. What are the requirements for receiving an accommodation based on medical reasons?

If an employee cannot obtain a vaccine because of a disability and they cannot be reasonably accommodated to safely work, the employer may exclude the unvaccinated employee from the workplace. This does not necessarily mean that the employee may be terminated. The employer should determine if the employee is entitled to other accommodations, such as remote work, and if protections under other federal, state, or local laws apply. See

Vaccination and the ADA. If you believe that an employee cannot be reasonably accommodated to safely work, please contact your assigned Labor and personnel assistant attorney general.

If an employee cannot meet a safety-related qualification standard because of a disability, the employer may not require the employee to comply unless it can demonstrate the individual would pose a direct threat to the health or safety of the employee or others in the workplace. A direct threat is a significant risk of substantial harm that cannot be eliminated or reduced by reasonable accommodation. This determination requires an assessment of whether 1) there is a direct threat and, if there is, 2) whether a reasonable accommodation would reduce or eliminate the threat. See EEOC Guidance.

Whether a direct threat exists requires an individualized assessment of the employee's ability to safely perform the essential functions of the job utilizing four factors: (1) the duration of the risk; (2) the nature and severity of the potential harm; (3) the likelihood that the potential harm will occur; and (4) the imminence of the potential harm. The determination should be based on a reasonable medical judgment that relies on the most current medical knowledge about COVID-19. This could include the level of community spread at the time of the assessment, statements from the CDC, and information from the employee's health care provider. Other considerations include the type of work environment; ventilation, level of interaction with other individuals, the number of partially or fully vaccinated individuals already in the workplace, whether other employees are wearing masks or undergoing routine screening testing, and the space available for social distancing. See EEOC Guidance.

If the assessment demonstrates the non-vaccinated employee with a disability would pose a direct threat to self or others, the employer must consider whether providing a reasonable accommodation, absent undue hardship, would reduce or eliminate that threat. Potential reasonable accommodations could include requiring the employee to wear a mask, work a staggered shift, making changes in the work environment (such as improving ventilation systems or limiting contact with other employees and non-employees), permitting telework if feasible, or reassigning the employee to a vacant position in a different workspace. See EEOC Guidance.

If there is no reasonable accommodation that will allow the unvaccinated employee to be physically present to perform their current job without posing a direct threat, the employer must consider if telework is an option or if there are other possible accommodations. See EEOC Guidance.

26. What documentation can the employer require for employees seeking medical accommodation?

Agencies may follow their standard procedure for addressing a request for a medical accommodation; however, the documentation required for a vaccine accommodation should be narrowly tailored to determine if the employee has a medical condition which prevents them from receiving the vaccine. See Proclamation 21-14, which states:

Agencies must obtain from the individual requesting the accommodation documentation from an appropriate health care or rehabilitation professional authorized to practice in the State of Washington stating that the individual has a disability that necessitates an accommodation and the probable duration of the need for the accommodation.

See **sample form below**.



Vaccine_Sample_Me
dical_Accommodatic

27. What are the requirements for receiving an accommodation based on religious reasons?

An employee who has a sincerely held religious belief that prevents them from being vaccinated against COVID-19 may request an accommodation by notifying a supervisor in their chain of command or their human resources office. The employee must participate in the interactive accommodation process and provide all information reasonably needed to evaluate the request.

Please keep in mind that once an employer is on notice of a request, it cannot require an employee to put the request in writing. The proclamation requires the *employer* to document the request for accommodation and the document must include a statement regarding the way in which the requirements of the order conflict with religious observance, practice or belief of the individual. Guidance on how to evaluate a request for religious accommodation is available below.



GuidanceOnEvaluat
ingReligiousAccomr

28. What documentation can the employer require for employees seeking religious accommodation?

Agencies may request that employees provide documentation to support a request for religious accommodation, and agencies must continue to engage in the accommodation process with employees even if the form is not completed, but must document the responses in the form in accordance with Proclamation 21-14, which states:

To the extent permitted by law, before providing a sincerely held religious belief accommodation to the requirements of this Order, individuals or entities for which Health Care Providers work as employees, contractors, or volunteers and State Agencies must document that the request for an accommodation has been made and the document must include a statement regarding the way in which the requirements of this order conflict with the religious observance, practice, or belief of the individual.

See sample form below.



Vaccine_Sample_Religious_Accommodat

29. What can an employer do if they suspect an employee is being untruthful in their request for accommodation?

If you have reason to suspect that an employee is not being truthful, please work with your assigned Labor and personnel assistant attorney general for legal advice.

30. What can an employer do if they suspect a vaccination record is fraudulent?

If you have reason to suspect the vaccination record is fraudulent, please work with your assigned Labor and personnel assistant attorney general for legal advice. It is recommended that agencies notify employees in advance that disciplinary action may be taken should fraudulent information be provided.

31. What if someone refuses to get vaccinated?

All employees must be fully vaccinated by October 18, 2021, as a qualification of fitness for continued employment unless they have been granted an accommodation for religious or medical reasons. There may be continued or additional safety requirements for employees who are granted accommodations. Absent an approved medical or religious accommodation, employees who do not meet the vaccine condition for continued employment will be separated from employment.

32. What appeal rights will employees have if they are separated because they do not obtain vaccine as a condition of employment?

An employee may utilize applicable collective bargaining agreements, civil service rules, and/or agency policy and procedure regarding separation from employment.

33. If an employer requires vaccinations as a condition of employment and an employee refuses to obtain vaccination, is the employee entitled to unemployment benefits?

When an employee's separation is the result of failure to comply with an employer's requirement to become vaccinated, Employment Security Department (ESD) will examine a number of factors. These factors may include when the employer adopted the requirement, whether the employee is otherwise eligible for benefits, the specific terms of the vaccine

policy including allowable exemptions, and the reason why the employee did not comply with the vaccine requirement.

For example, when the employer offered religious or medical accommodations, but the employee does not qualify for an accommodation and does not comply with the vaccine requirement, a claim would likely be denied. However, some individuals may still qualify based on their own unique circumstances. ESD will evaluate each case on its own merit.

34. On what legal grounds can this be imposed?

In response to the emerging COVID-19 threat, the Governor declared a state of emergency on February 29, 2020, using his broad emergency authority under RCW 43.06. More specifically, under RCW 43.06.220, after a state of emergency has been declared, the Governor may suspend statutes and prohibit any activity that he believes should be prohibited to help preserve and maintain life, health, property or the public peace. Under an emergency such as this, the Governor's paramount duty is to focus on the health and safety of our communities. This Proclamation answers that obligation.

35. Is the proclamation in conflict with L&I's new law giving protection to those who are high risk?

No. An employee with an accommodation under the Health Emergency Labor Standards Act (HELSEA) may also be eligible for medical accommodation for the vaccine requirement. Furthermore, a vaccinated employee may also seek an accommodation under HELSEA.

36. How will the state be engaging with labor on this issue?

We understand that there will be many questions about the processes that agencies, and other employers, will use to implement this direction. Employers value their relationships with labor organizations and will discuss the impacts of this directive as requested. On August 10, 2021, OFM provided global notice to all the impacted unions. When unions respond with a demand to bargain, the state will meet its bargaining obligation.

37. Given the spread of the Delta variant, what other steps is the state taking to protect the workforce and the community?

The state continues to assess what measures need to be in place in state agencies and community settings. The L&I and DOH are daily engaged in disease data analytics, health requirements, and workplace safety requirements to determine what is working well and what is not. The current variant is very rapidly spreading among unvaccinated populations that were previously a lesser target for the virus. Younger unvaccinated people are getting sicker faster and more often. Grounded in the Healthy WA – Roadmap to Recovery Guide for state agencies, monthly updates are provided to state Cabinet agencies to meet CDC, DOH, and L&I requirements and to determine agency implementation directions. We take into consideration business, customer, and employee impacts as we develop our implementation strategies to keep people healthy and safe in our worksites. This includes planning for return to work that emphasizes a new hybrid model of service delivery. We continue to update masking and physical distancing requirements in a way that best protects our employees and the people we serve. We have increased options for customers to get services online or remotely to decrease the need for in person contact and travel. We have also prioritized

closing business gaps where in person services are needed as we pay attention to equity in our approach to customer access.

38. Will the state provide additional guidance regarding this directive?

The state will establish additional resources as needed to help employees and employers move into compliance with this directive.

39. Will the state provide resources to assist employees in getting vaccinated?

Employees whose agencies do not provide vaccination on site may use a reasonable amount of leave to travel and receive each dose of the COVID-19 vaccine. There are resources to help agencies locate where vaccination is available. This includes a [Vaccine locator](#) created by DOH.

40. What if employees who are vaccinated have side effects?

Like other routine vaccines, the CDC indicates that side effects may be experienced, which are normal signs the body is building protection. See [CDC Side Effects](#). Employees who need to take leave due to side effects from the COVID-19 vaccine may use accrued leave in accordance with agency policy or applicable collective bargaining agreement, or may request shared leave. The availability of workers' compensation is addressed above in [Question #15](#).

41. Can non-cabinet agencies and higher education institutions require their employees to be vaccinated by October 18, 2021, as well?

Agencies and state organizations not covered by the proclamation, including higher education, should work with their assigned labor and personnel assistant attorney general to answer this question.

42. If an employee chooses to retire, will they be able to before the October 18, 2021, deadline?

This checklist provides a general timeline for those who are planning to retire, although all the timeframes could be reduced and a number of items could be skipped for those looking to make a decision quickly. See <https://www.drs.wa.gov/retirement-planning/checklist/>. Given the amount of time before the deadline, employees may want to proceed with the items indicated for three to twelve months from retirement as soon as possible.

Please note: The first step for employees who wish to retire is getting the official retirement estimate done. If an employee has already completed this step, the rest of the process can move quite quickly, and Department of Retirement Systems (DRS) will prioritize the benefit estimate for the earliest retirement dates. Once that is complete filling out the retirement application is quite quick. If a person plans to work at all in October, the retirement date would be November 1 and the employee will still be well within the three-month timeframe.

DRS has confirmed that they would not deny someone the opportunity to retire based on their approach to prioritizing requests. DRS would like agencies to assist employees by providing lists of employees who plan to retire by October 18, 2021, *as soon as possible* so that DRS can flag them for priority. OFM SHR encourages agency HR staff to assist staff by getting this information to DRS quickly.

EXHIBIT D



WASHINGTON FEDERATION OF STATE EMPLOYEES
WFSE/AFSCME • AFL-CIO
STATE HEADQUARTERS OFFICE
1212 JEFFERSON ST. S.E. SUITE 300, OLYMPIA WA 98501
(360) 352-7603 • (800) 562-6002 • FAX (360) 352-7608

openoffice

Sent by Electronic Mail Only: August 13, 2021

Diane Lutz, Section Chief
Labor Relations Section
Office of Financial Management
PO Box 47500
Olympia, WA 98504-7500

DEMAND TO BARGAIN: OFM: Proclamation 21-14 Vaccination Requirement | WFSE#21-00600

Dear Diane,

This letter represents a demand to bargain on the above referenced issue per the provisions of Article 38 of the Collective Bargaining Agreement between the State of Washington and the Washington Federation of State Employees (WFSE).

Article 38.1 states: *"The Employer will satisfy its collective bargaining obligation before making a change with respect to a matter that is a mandatory subject.*

A. *The Employer will notify the Executive Director of the Union of these changes in writing, citing this Article."*

This is consistent with the statutory duty to bargain under Chapter 41.80, RCW.

The Executive Director of the Union has received the required notification per Article 38.1.A from the Office of Financial Management. At this time, we are invoking our right to request negotiations on mandatory subjects.

Please contact Melissa Mills at Melissam@wfse.org to acknowledge agreement or schedule negotiations. Thank you for your prompt response and I look forward to discussing this important matter with you.

Sincerely,

/s/ Leanne Kunze

WFSE Executive Director

LK:mm

cc: Jenny Ho, WFSE Director of Advocacy
Mike Yestramski, WFSE/AFSCME Council 28 President
Scott Lyders, OFM/LRS Labor Negotiator

EXHIBIT E



STATE OF WASHINGTON
— OFFICE OF GOVERNOR JAY INSLEE —

**PROCLAMATION BY THE GOVERNOR
AMENDING PROCLAMATIONS 20-05 and 20-14**

21-14.1

COVID-19 VACCINATION REQUIREMENT

WHEREAS, on February 29, 2020, I issued Proclamation 20-05, proclaiming a State of Emergency for all counties throughout Washington State as a result of the coronavirus disease 2019 (COVID-19) outbreak in the United States and confirmed person-to-person spread of COVID-19 in Washington State; and

WHEREAS, as a result of the continued worldwide spread of COVID-19, its significant progression in Washington State, and the high risk it poses to our most vulnerable populations and our health care system, I have subsequently issued several amendatory proclamations, exercising my emergency powers under RCW 43.06.220 by prohibiting certain activities and waiving and suspending specified laws and regulations, including issuance of Proclamations 20-25, et seq., which limit Washingtonians' ability to participate in certain activities unless certain conditions are met; and

WHEREAS, during early stages of the COVID-19 pandemic, health professionals and epidemiological modeling experts indicated that the spread of COVID-19, if left unchecked, threatened to overwhelm portions of Washington's public and private health-care system; and

WHEREAS, to protect some of our most vulnerable populations—persons in health care facilities, long-term care facilities (which includes nursing homes), and similar congregate care facilities—and to protect our health and congregate care systems themselves, I issued several proclamations imposing heightened protections on workers, residents, and visitors in those facilities; and

WHEREAS, although COVID-19 continues as an ongoing and present threat in Washington State, the measures we have taken together as Washingtonians over the past 18 months, including the willingness of most Washingtonians to take advantage of the remarkable, life-saving vaccines being administered throughout the state, have made a difference and have altered the course of the pandemic in fundamental ways; and

WHEREAS, after months of improving COVID-19 epidemiological conditions in Washington State, the emergence of highly contagious COVID-19 variants, including the "Delta" variant that is at least twice as transmissible as the virus that emerged in late 2019, coupled with the continued significant numbers of unvaccinated people, have caused COVID-19 cases and hospitalizations to rise sharply among unvaccinated populations and have resulted in breakthrough infections in some fully vaccinated individuals; and

WHEREAS, COVID-19 vaccines are effective in reducing infection and serious disease, and widespread vaccination is the primary means we have as a state to protect everyone, including persons who cannot be vaccinated for medical reasons, youth who are not eligible to receive a vaccine, immunocompromised individuals, and vulnerable persons including persons in health care facilities, long-term care facilities and other congregate care facilities from COVID-19 infections; and

WHEREAS, widespread vaccination is also the primary means we have as a state to protect our health care system, to avoid the return of stringent public health measures, and to put the pandemic behind us; and

WHEREAS, COVID-19 vaccinations have been available in Washington State from December 2020 to the present, and since April 15, 2021, all Washingtonians over the age of 16 have been eligible to receive free COVID-19 vaccinations from a wide variety of providers at many locations; and

WHEREAS, as of August 4, 2021, nearly 4.4 million Washingtonians, about 70% of those eligible and 58% of the total population, had initiated their vaccine series, leaving 2.1 million eligible Washingtonians who were unvaccinated; and

WHEREAS, according to the U.S. Centers for Disease Control and Prevention (CDC), as of August 1, 2021, approximately 67% of staff in Washington state nursing homes were fully vaccinated; and

WHEREAS, healthcare workers face COVID-19 exposures in a variety of healthcare settings, with those involving direct patient care likely at higher risk; and

WHEREAS, COVID-19 vaccines are safe and effective. COVID-19 vaccines were evaluated in clinical trials involving tens of thousands of participants and met the U.S. Food & Drug Administration's (FDA) rigorous scientific standards for safety, effectiveness, and manufacturing quality needed to support emergency use authorization; and, to date, more than 346 million doses of COVID-19 vaccines have been given in the United States with 8.2 million of those doses administered in Washington, and serious safety problems and long-term side effects are rare; and

WHEREAS, on July 6, 2021, the Office of Legal Counsel of the United State Department of Justice issued a legal opinion stating that federal and state governments were not prohibited by federal law from imposing vaccination mandates, even when the only vaccines available are those authorized under the FDA's Emergency Use Authorizations; and

WHEREAS, on July 26, 2021, approximately 60 medical groups, including the American Medical Association, the American College of Physicians, the American Academy of Pediatrics, the American Academy of Family Physicians, the American Nurses Association, the American Academy of Physician Assistants, the Association of Professionals in Infection Control and

Epidemiology, the American Public Health Association, the Infectious Diseases Society of America, LeadingAge, the National Hispanic Medical Association, the National Medical Association, and the Society of Infectious Disease Pharmacists, issued a memorandum supporting mandatory, universal vaccination of all public and private health care and long-term care workers, noting that such a requirement is the “fulfillment of the ethical commitment of all health care workers to put patients as well as residents of long-term care facilities first and take all steps necessary to ensure their health and well-being”; and on August 2, 2021, the Washington State Society of Post-Acute and Long-Term Care Medicine submitted a letter in support of the above noted July 26, 2021 memorandum; and

WHEREAS, on July 15, 2021, the American College of Obstetricians and Gynecologists, together with the Society for Maternal-Fetal Medicine, posted a formal opinion stating that medical professionals have an ethical obligation to be vaccinated against COVID-19 to prevent the spread of harmful infectious diseases, and that women who are or may become pregnant should be vaccinated against COVID-19; and

WHEREAS, it is the duty of every employer to protect the health and safety of employees by establishing and maintaining a healthy and safe work environment and by requiring all employees to comply with health and safety measures; and

WHEREAS, state employees live in and provide services to the public in every county in our state, and many interact with the public on a regular basis, and they all interact with some portion of the community at large to varying degrees before and/or after state work hours; and

WHEREAS, to further our individual and collective duty to reduce the spread of COVID-19 in our communities, I issued Proclamation 21-14 requiring all employees, on-site independent contractors, volunteers, goods and services providers, and appointees of designated state agencies to be fully vaccinated against COVID-19 on or before October 18, 2021; and

WHEREAS, child-care settings, K-12 schools, colleges, universities, and community colleges, (collectively, “educational settings”) are foundations of Washington’s communities and its future, and provide a variety of vital services to students, families, and communities, thereby making providing childcare services and in-person instruction in the fall 2021 a priority; and

WHEREAS, increasing vaccination rates at educational settings is the strongest protective measure against COVID-19 available and, together with masking, vital to providing in-person instruction in as safe a manner as possible; and

WHEREAS, on July 12, 2021, I issued Proclamation 20-12.4 prohibiting institutions of higher education from providing in-person instruction unless the institutions comply with specific requirements related to vaccination, masking, and operations; and

WHEREAS, on July 30, 2021, I issued Proclamation 20-9.4, prohibiting K-12 schools from providing in-person learning unless the schools comply with masking instructions provided by the Department of Health and the Office of the Superintendent of Public Instruction; and

WHEREAS, the sharp increase in COVID-19 cases and hospitalizations, primarily among unvaccinated populations but also in breakthrough infections in some fully vaccinated individuals, makes it vital to expand the vaccination requirement to workers in educational settings; and

WHEREAS, to provide additional clarity I am extending the prohibition to additional groups and providing additional guidance relating to the vaccination requirement imposed in Proclamation 21.14; and

WHEREAS, the worldwide COVID-19 pandemic and its persistence in Washington State continue to threaten the life and health of our people as well as the economy of Washington State, and remain a public disaster affecting life, health, property or the public peace; and

WHEREAS, the Washington State Department of Health continues to maintain a Public Health Incident Management Team in coordination with the State Emergency Operations Center and other supporting state agencies to manage the public health aspects of the incident; and

WHEREAS, the Washington State Military Department Emergency Management Division, through the State Emergency Operations Center, continues coordinating resources across state government to support the Department of Health and local health officials in alleviating the impacts to people, property, and infrastructure, and continues coordinating with the state Department of Health in assessing the impacts and long-term effects of the incident on Washington State and its people; and

NOW, THEREFORE, I, Jay Inslee, Governor of the state of Washington, as a result of the above noted situation, and under Chapters 38.08, 38.52 and 43.06 RCW, do hereby proclaim and order that a State of Emergency continues to exist in all counties of Washington State, that Proclamation 20-05, as amended, remains in effect, and that, to help preserve and maintain life, health, property or the public peace pursuant to RCW 43.06.220(1)(h), and (3), I hereby amend and supersede the prohibitions in 20-14 as set out below, subject to the conditions, exceptions, and circumstances also set forth below, for the following activities:

1. Prohibitions. This order prohibits the following:
 - a. Any Worker from engaging in work for a State Agency after October 18, 2021 if the Worker has not been fully vaccinated against COVID-19;
 - b. Any State Agency from permitting any Worker to engage in work for the agency after October 18, 2021 if the Worker has not been fully vaccinated against COVID-19 and provided proof thereof as required below;
 - c. Any Worker from engaging in work for the operator of an Educational Setting after October 18, 2021 if the Worker has not been fully vaccinated against COVID-19;
 - d. Any operator of an Educational Setting from permitting a Worker to engage in work for the operator after October 18, 2021 if the Worker has not been fully vaccinated against COVID-19 and provided proof thereof as required below;

- e. Any Health Care Provider from failing to be fully vaccinated against COVID-19 after October 18, 2021; and
- f. Any operator of a Health Care Setting from permitting a Health Care Provider to engage in work for the operator as an employee, contractor, or volunteer in their capacity as a Health Care Provider after October 18, 2021 if the Health Care Provider has not been fully vaccinated against COVID-19 and provided proof thereof as required below. Providers who do not work in a Health Care Setting must provide proof of vaccination to the operator of the facility in which the Provider works, if any, or, if requested, to a lawful authority. A lawful authority includes, but is not limited to, law enforcement, local health jurisdictions, and the state Department of Health.

2. Exemptions from Vaccine Requirement.

- a. Disability and Religious Accommodations
 - Workers for State Agencies, Workers for operators of Educational Settings, and Health Care Providers are not required to get vaccinated against COVID-19 under this Order if they are unable to do so because of a disability or if the requirement to do so conflicts with their sincerely held religious beliefs, practice, or observance. Workers for State Agencies, Workers for operators of Educational Settings, and Health Care Providers are prohibited from claiming an exemption or accommodation on false, misleading, or dishonest grounds, including by providing false, misleading, or dishonest information to a State Agency, operator of an Educational Setting, or operator of a Health Care Setting when seeking an accommodation.
 - In implementing the requirements of this Order, State Agencies, operators of Educational Settings, and operators of Health Care Settings:
 - Must provide any disability-related reasonable accommodations and sincerely held religious belief accommodations to the requirements of this Order that are required under the Americans with Disabilities Act of 1990 (ADA), the Rehabilitation Act of 1973 (Rehabilitation Act), Title VII of the Civil Rights Act of 1964 (Title VII), the Washington Law Against Discrimination (WLAD), and any other applicable law. As provided in the above-noted laws, State Agencies, operators of Educational Settings, and operators of Health Care Settings are not required to provide accommodations if they would cause undue hardship.
 - Must comply with the procedures required under the above-noted laws and any other applicable law when considering and deciding whether to provide accommodations;
 - Must, to the extent permitted by law, before providing a disability-related reasonable accommodation to the requirements of this order, obtain from the individual requesting the accommodation documentation from an appropriate health care or rehabilitation professional stating that the individual has a disability that

- necessitates an accommodation and the probable duration of the need for the accommodation;
- Must, to the extent permitted by law, before providing a sincerely held religious belief accommodation to the requirements of this Order, document that the request for an accommodation has been made and include a statement in the document explaining the way in which the requirements of this order conflict with the sincerely held religious belief, practice, or observance of the individual;
 - Must, to the extent permitted by law, require an individual who receives an accommodation to take COVID-19 safety measures that are consistent with the recommendations of the state Department of Health for the setting in which the individual works; and
 - Are prohibited from providing accommodations:
 - That they know are based on false, misleading, or dishonest grounds or information;
 - That they know are based on the personal preference of the individual and not on an inability to get vaccinated because of a disability or a conflict with a sincerely held religious belief, practice, or observance; or
 - Without conducting an individualized assessment and determination of each individual's need and justification for an accommodation; i.e., "rubberstamping" accommodation requests.
- c. Any individual who is unable to get fully vaccinated against COVID-19 by October 18, 2021 due to the requirements of their participation in a COVID-19 vaccine clinical trial is exempt from this Order. Any such individual who is a Worker for a State Agency or a Worker for an operator of an Educational Setting must provide documentary proof of their participation in the COVID-19 vaccine clinical trial to any State Agency or operator of an Educational Setting for which they engage in work. Any such individual who is a Health Care Provider must provide documentary proof of their participation in the COVID-19 vaccine clinical trial to any operator of a Health Care Setting for which they engage in work as an employee, contractor, or volunteer in their capacity as a Health Care Provider. A State Agency, operator of an Educational Setting, or operator of a Health Care Setting is prohibited from permitting any such individual to engage in work for them after October 18, 2021 if the individual fails to provide such proof.
- d. Individuals who are too young to receive any COVID-19 vaccine, as authorized for emergency use, licensed, or otherwise approved by the FDA, are exempt from this Order. Any individual who becomes old enough to receive any COVID-19 vaccine, as authorized for emergency use, licensed, or otherwise approved by the FDA, while this Order is in effect must come into compliance with the requirements of this Order within 60 days of the day they became eligible. Any State Agency, operator of an Educational Setting, or operator of a Health Care Setting for which such an individual engages in work must also come into

compliance with the requirements of this Order with respect to the individual by that deadline.

3. Proof of Full Vaccination Against COVID-19:

- a. Where required above, Workers for State Agencies, Workers for operators of Educational Settings, and Health Care Providers must provide proof of full vaccination against COVID-19 by providing one of the following:
 - CDC COVID-19 Vaccination Record Card or photo of the card;
 - Documentation of vaccination from a health care provider or electronic health record;
 - State immunization information system record; or
 - For an individual who was vaccinated outside of the United States, a reasonable equivalent of any of the above.
- b. A State Agency, operator of an Educational Setting, or an operator of a Health Care Setting must obtain a copy of or visually observe proof of full vaccination against COVID-19 for every individual who is engaged in work for them and required to provide such proof under this Order.
- c. Personal attestation is not an acceptable form of verification of COVID-19 vaccination.

4. Election to Require Employers of Contractors to Assume Responsibility for Vaccination Verification and Accommodation Requirements

- a. Notwithstanding anything to the contrary in this Order, a State Agency, an operator of an Educational Setting, or an operator of Health Care Setting may elect to require the employer of a contractor who is subject to this Order to assume responsibility for the vaccination verification and accommodations requirements in this Order. This election may be made with respect to any or all of an employer's contractor-employees who are subject to this Order.
- b. If such an election is made, after October 18, 2021, the employer's contractor-employees are prohibited from engaging in work for the State Agency, operator of the Educational Setting, or operator of the Health Care Setting, and the State Agency, operator of the Educational Setting, or operator of the Health Care Setting is prohibited from permitting such employee to engage in work for them, unless the following requirements are met:
 - By October 18, 2021, the employer must obtain a copy of or visually observe proof of full vaccination against COVID-19 for every current employee who is subject to the vaccination requirement in this Order;
 - The employer must obtain a copy of or visually observe proof of full vaccination against COVID-19 for every employee hired after October 18, 2021 who is subject to the vaccination requirement in this Order;
 - The employer must follow the requirements for granting disability and religious accommodations to its current and future employees that apply to State Agencies, operators of Educational Settings, and operators of Health Care Settings under this Order;
 - By October 18, 2021, the employer must submit to the State Agency, operator of the Educational Setting, or operator of the Health Care Setting

a signed declaration in substantially the form prescribed in RCW 5.50.050 declaring that the employer has met the above requirements;

- The employer must submit additional signed declarations upon the request of and by the date designated by the State Agency, operator of the Educational Setting, or operator of the Health Care Setting;
- If an employer is also a contractor subject to this Order, the employer must include in their declaration that the employer is fully vaccinated against COVID-19 or is unable to get vaccinated because of a disability or a conflict between the vaccination requirement and their sincerely held religious beliefs, practice, or observance, as applicable; and
- The employer must cooperate with any investigation or inquiry the State Agency, operator of the Educational Setting, or operator of the Health Care Setting makes into the employer's compliance with these requirements, including by providing information and records upon request, except any information or records that the employer is prohibited by law from disclosing.

- c. Any State Agency, operator of an Educational Setting, or operator of Health Care Setting who makes the election above retains the right to investigate or inquire into the employer's compliance with the above requirements, to obtain proof of vaccination directly from any contractor-employee, and to withdraw the election in whole or in part at any time.

5. Public and Private Entities and Employers May Exceed These Requirements: Nothing in this order prohibits State Agencies, operators of Educational Settings, and operators of Health Care Settings from implementing requirements that exceed the requirements of this Order.

6. Definitions.

a. "Worker":

▪ "Worker" includes:

- A person engaged to work as an employee, on-site volunteer, or on-site contractor for a State Agency, an operator of an Educational Setting, or an operator of a Health Care Setting, as applicable;
- The director, secretary, or other executive officer of a State Agency; and
- A person appointed to serve on a board, commission, or similar body that is an executive cabinet agency listed at <https://www.governor.wa.gov/office-governor/office/executive-cabinet> or a small cabinet agency listed at <https://www.governor.wa.gov/officegovernor/office/small-cabinet>, the State Board for Community and Technical Colleges, a board of trustees for a community or technical college, or a governing board of a four-year institution of higher education.

▪ The following exceptions apply to the definition of "Worker":

- Visitors and patrons are not Workers.
- In Educational Settings:

- o Students of, persons attending, and persons receiving services at or from an Educational Setting are not Workers.
 - o On-site contractors are not Workers if they do not work in places where students or persons receiving services are present.
 - o Family, friend, and neighbor (FFN) child care providers are not Workers.
 - For any State Agency that is listed as an agency under the authority of a board, council, or commission at https://ofm.wa.gov/sites/default/files/public/publications/2021_State_Org_Chart.pdf and that is not also listed as an executive cabinet agency at <https://www.governor.wa.gov/office-governor/office/executive-cabinet> or a small cabinet agency at <https://www.governor.wa.gov/office-governor/office/small-cabinet>, other than the State Board for Community and Technical Colleges, the boards of trustees for community and technical colleges, and the governing boards of four-year institutions of higher education, only the State Agency’s compensated employees are “Workers” subject to the requirements of this proclamation.
- b. “Contractor” includes any person who provides goods, services, or public works services pursuant to a contract with another person or entity, including, for purposes of this Order, a State Agency, an operator of an Educational Setting, or an operator of a Health Care Setting. The term includes subcontractors. The term does not include parties to a lease or rental agreement, unless the agreement requires a party to provide services, in which case only the persons who provide those services are “contractors.”
- c. “Contract” is defined as provided under Washington law. Generally, a contract is a promise or a set of promises for the breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty, regardless of the particular form, title, or description is not relevant.
- d. “Health Care Provider” includes:
- Individuals with credentials listed in the [Healthcare Professional Credentialing Requirements](#) list;
 - Individuals who are permitted by law to provide health care services in a professional capacity without holding a credential;
 - Long-term care workers unless specifically excluded in this order; and
 - Workers in any Health Care Setting, as defined herein.

“Health Care Provider” does not include, for purposes of this order:

- Individual providers, as defined in RCW 74.39A.240;
- Individuals who provide only personal care services, as defined in RCW 74.39A.009(24), in people’s homes;
- Providers who are not actively practicing or providing services; and

- Providers who provide services only at one or more of the settings that are expressly excluded from the list of Health Care Settings under this order.
- e. “Health Care Setting” is any public or private setting that is primarily used for the delivery of in-person health care services to people, except as specifically exempted below. If located at a facility that is primarily used for the delivery of health-care services, such as a hospital, then the entire facility is a Health Care Setting. If located at a facility that is primarily used for another purpose, such as a pharmacy within a grocery store, school nurse’s office, or vaccination clinic within a business establishment, the Health Care Setting includes only the areas that are primarily used for the delivery of health care, but not the other areas of the facility.

“Health Care Setting” includes, but is not limited to:

- Acute care facilities, including, but not limited to, hospitals;
- Long-term acute care facilities;
- Inpatient rehabilitation facilities;
- Inpatient behavioral health facilities, including, but not limited to, evaluation and treatment facilities, residential treatment facilities, secure detox facilities;
- Residential long-term care facilities, including, but not limited to, nursing homes, assisted living facilities, adult family homes, settings where certified community residential services and supports are provided, and enhanced services facilities;
- Mobile clinics or other vehicles where health care is delivered;
- Outpatient facilities, including, but not limited to, dialysis centers, physician offices, and behavioral health facilities (including offices of psychiatrists, mental health counselors, and substance use disorder professionals);
- Dental and dental specialty facilities;
- Pharmacies (not including the retail areas);
- Massage therapy offices (this includes designated areas where massage is administered within non-health care settings like spas and wellness/fitness centers);
- Chiropractic offices;
- Midwifery practices and stand-alone birth centers;
- Isolation and/or quarantine facilities;
- Ambulatory surgical facilities;
- Urgent care centers; and
- Hospice care centers.

“Health Care Setting” does not include:

- Settings where sports and spectator events or other gatherings are held (including when credentialed athletic trainers are providing care to players), other than areas primarily used for the delivery of health care

services, such as designated first aid areas (which are Health Care Settings);

- Department of Children, Youth & Families (DCYF)-licensed foster homes that do not primarily provide health care services;
- Research facilities where no health care is delivered to people;
- Veterinary health care settings;
- Animal control agencies; and
- Non-profit humane societies.

d. “State Agency” includes:

- Every agency listed at <https://www.governor.wa.gov/officegovernor/office/executive-cabinet>;
- Every agency listed at <https://www.governor.wa.gov/officegovernor/office/small-cabinet>; and
- Every agency under the authority of a board, council, or commission listed at https://ofm.wa.gov/sites/default/files/public/publications/2021_State_Org_Ch_art.pdf.

e. “Educational Setting” includes:

- All public and private universities, colleges, community colleges, and technical colleges and private career/vocational schools subject to licensure by the Workforce Training & Education Coordinating Board;
- All public schools, public school districts, charter schools, private schools, educational service districts, the Washington School for the Deaf, the Washington State School for the Blind, and the Washington Youth Academy; and
- All early learning and child care programs serving groups of children from multiple households, including, but not limited to, Early Childhood Education and Assistance Programs, Family Home Child Care, Child Care Centers, Outdoor, Nature-based Child Care, School-aged Child Care, license-exempt preschools, and license-exempt youth development programs (e.g., municipal parks & recreation programs, YMCA, Boys & Girls Clubs).

e. “Fully Vaccinated against COVID-19”: A person is fully vaccinated against COVID-19 two weeks after they have received the second dose in a two-dose series of a COVID-19 vaccine (e.g., Pfizer-BioNTech or Moderna) or a single-dose COVID-19 vaccine (e.g., Johnson & Johnson (J&J)/Janssen) authorized for emergency use, licensed, or otherwise approved by the FDA or listed for emergency use or otherwise approved by the World Health Organization.

f. “On-site volunteer” and “on-site contractor” includes:

- A volunteer or contractor who is reasonably likely or contractually obligated to engage in or in fact engages in work while physically present at a building, facility, jobsite, project site, unit, or other defined

area owned, leased, occupied by, or controlled by a State Agency, an operator of an Educational Setting, or an operator of a Health Care Setting.

“On-site volunteer” and “on-site contractor” does not include:

- A volunteer or contractor who is reasonably likely or contractually obligated to engage in or in fact engages in work during which they are physically present at a site for only a short period of time and any moments of close physical proximity to others on site are fleeting. Examples include contractors delivering supplies by truck to a construction site where they remain physically distanced from others on the site or a driver for a contracted shipping and delivery service briefly entering a site to pick up parcels for shipping.
- g. “Operator of an Educational Setting” and “operator of a Health Care Setting” do not include clients, patients, patrons, customers, or similar individuals served by Worker for a State Agency, Worker for an Educational Setting, or Health Care Provider.

ADDITIONALLY, the specific prohibitions in this Proclamation are severable and do not apply to the extent that compliance with a prohibition would violate (1) any U.S. or Washington constitutional provision; (2) federal statutes or regulations; (3) any conditions that apply to the state’s receipt of federal funding; (4) state statutes; or (5) applicable orders from any court of competent jurisdiction.

ADDITIONALLY, nothing in this Proclamation limits otherwise applicable requirements related to personal protective equipment, personnel training, and infection control policies and procedures.

I again direct that the plans and procedures of the *Washington State Comprehensive Emergency Management Plan* be implemented throughout state government. State agencies and departments are directed to continue utilizing state resources and doing everything reasonably possible to support implementation of the *Washington State Comprehensive Emergency Management Plan* and to assist affected political subdivisions in an effort to respond to and recover from the COVID-19 pandemic.

I continue to order into active state service the organized militia of Washington State to include the National Guard and the State Guard, or such part thereof as may be necessary in the opinion of The Adjutant General to address the circumstances described above, to perform such duties as directed by competent authority of the Washington State Military Department in addressing the outbreak. Additionally, I continue to direct the Department of Health, the Washington State Military Department Emergency Management Division, and other agencies to identify and provide appropriate personnel for conducting necessary and ongoing incident related assessments.

