

## **COVID-19 Vaccine Frequently Asked Questions (FAQs) for Schools, Employers, Employees and Businesses**

**The purpose of this document is to provide employers, employees and businesses with frequently asked questions and answers that may be used to evaluate their options and to assist in responding to inquiries from their communities.**

### **What vaccines are available for COVID-19?**

The FDA issued Emergency Use Authorizations (EUA) for the Pfizer-BioNTech and Moderna COVID-19 vaccines.

### **What is an Emergency Use Authorization (EUA)?**

The FDA is permitted to make a product available during an emergency by issuing an EUA when certain criteria are met. This is different than typical FDA approval of a vaccine. One important difference from a typical FDA approval is that an EUA must address an individual's right to refuse the vaccine and any consequences of that refusal. Organizations contemplating requiring a COVID-19 vaccination should consider guidance or recommendations coming from the FDA and/or the CDC or other public health officials on this matter. The Pfizer-BioNTech and Moderna COVID-19 vaccines are the first widely used vaccines to be approved under an EUA.

### **Who can get the COVID-19 vaccines?**

The EUAs support the Pfizer-BioNTech COVID-19 vaccine for use in individuals 16 and older and the Moderna COVID-19 vaccine for use in individuals 18 and older. The CDC also provides guidance regarding use of these and other Covid-19 vaccines in certain populations. This guidance can be found here: [ACIP COVID-19 Vaccine Recommendations | CDC](#).

### **Where can I get more information about the COVID-19 vaccines?**

Additional information about the COVID-19 vaccines can be found here: [Frequently Asked Questions about COVID-19 Vaccination | CDC](#).

### **Will the COVID-19 vaccines be added to the list of mandatory vaccinations for schools?**

At this time, the Department of Health and Human Services (DHHS) has no plans to add the COVID-19 vaccines to the list of mandatory vaccinations for schools. In addition, the Pfizer-BioNTech COVID-19 vaccine is currently only approved for use in individuals aged 16 and

older and the Moderna COVID-19 vaccine is only approved for use in individuals aged 18 and older. Therefore, these vaccines could not be required for most students.

DHHS, through a rulemaking process, is permitted to add vaccines to the mandatory vaccine list for schools under RSA 141-C:20-a, II. State law provides exemptions to mandatory vaccination for schools which can be found at RSA 141-C:20-c.

### **Can a school district require students get a COVID-19 vaccine that is not on the State's mandatory list in order to attend school?**

No. State law already provides for a process to determine which vaccines are mandatory for students. State law preempts school districts, which means a school district cannot mandate that students get a vaccine that is not on the State's mandatory list in order to attend school.

### **Does the State recommend that employers and businesses mandate the COVID-19 vaccines for employees or customers?**

No. Because the Pfizer-BioNTech and Moderna COVID-19 vaccines have been approved through an Emergency Use Authorization, the State does not intend to mandate these vaccines in any way and generally does not recommend that these vaccines (or any other COVID-19 vaccine approved through an EUA) be mandated for employees or customers. Reasons for this recommendation include:

- The complexity of the legal issues surrounding mandates for vaccines approved through an EUA;
- The difficulty of determining how to implement mandates for vaccines approved through an EUA when the vaccines may not be approved or recommended for everyone;
- The questions of equity and fairness that a mandate poses when neither the Pfizer-BioNTech and Moderna COVID-19 vaccines nor other COVID-19 vaccines will be available to the entire population at the same time; and
- The fact that the State of New Hampshire does not have and will not be implementing any type of uniform vaccination certification for the purpose of implementing this type of mandate.

### **What should a business consider before imposing a COVID-19 vaccine mandate?**

If an employer or business does wish to mandate the Pfizer-BioNTech or Moderna vaccines (or other approved COVID-19 vaccines) for customers or employees, that employer or business should review the answers to the below questions. In addition, certain organizations may face specific circumstances not considered here. Employers and other organizations will want to carefully consider all implications of a vaccination mandate with their legal counsel.

The answers below assume that vaccinations are being considered only for employees or customers who fall into categories of individuals for whom the vaccine is both approved and

recommended and no applicable restrictions have been imposed as part of the EUA approval process.

**Can an employer require its employees to get a COVID-19 vaccine in order to come to work?**

Yes. Generally, employers have the right to implement a mandatory vaccination program. In fact, employers, such as healthcare and childcare providers, require flu vaccinations each year. However, mandatory vaccine programs administered by the employer may require pre-screening questions that must be job-related and consistent with business necessity. Employers should carefully consider all implications of a vaccination mandate and consult with their legal counsel.

Mandatory vaccination programs must be nondiscriminatory in nature, and employers may be required to make accommodations for employees under federal laws such as the Americans with Disabilities Act (ADA), the Civil Rights Act and other state and federal anti-discrimination laws. The Equal Employment Opportunity Commission (EEOC), which enforces federal laws regarding discrimination, has provided guidance on workplace vaccination programs, including for the COVID-19 vaccines. See [What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws](#).

Certain employers may also need to take into account collective bargaining requirements.

**Can a school district require teachers get a vaccine in order to come to work?**

A school district would be treated much like other employers. In addition, school districts may need to consider collective bargaining requirements.

**Can a business require customers to show proof of COVID-19 vaccination in order to patronize that business?**

Generally yes, as long as any required accommodations are made under the ADA and the business complies with any applicable provisions of the Civil Rights Act and any other state and federal anti-discrimination laws. Businesses should carefully consider all implications of a vaccination mandate and consult with their legal counsel. The State of New Hampshire does not recommend this type of mandate and will not be implementing any type of uniform vaccination certification for the purpose of implementing this type of mandate.