



Dworkin
Chambers
Williams
York
Benson &
Evans, PC

Centerpoint I Building
3900 East Mexico Avenue, Suite 1300
Denver, CO 80210
p: 303-584-0990 f: 303-584-0995
gbenson@dnvrlaw.com

Gregory K. Chambers
*Gerri O'Brien Williams
Steven G. York
Gary J. Benson
Melissa J. Loman Evans
C. Sandra Pyun
Maral Arjomandi
**Sean J. O'Brien
Christopher W. Crabtree

*Also licensed in Illinois
** Also licensed in Texas

August 6, 2021

FAQs on Denver's Vaccine Mandate

On August 2, 2021, Mayor Hancock issued an Executive Order for the City and County of Denver, requiring the personnel of certain entities to be fully vaccinated against COVID-19 by September 30, 2021. The full text of this Executive Order can be viewed [here](#). The key features and common questions raised by the Order are discussed below. We will continue to monitor any developments and provide updates as appropriate.

1. Who needs to be vaccinated?

The Executive Order requires all personnel of the following types of entities to be fully vaccinated against COVID-19 by September 30, 2021:

- The City and County of Denver;
- Care facilities;
- Hospitals;
- **Clinical settings**;
- Limited healthcare settings;
- Shelters for people experiencing homelessness, including day and overnight shelters;
- Correctional facilities, including jails, detention centers and community corrections sites and residences;
- Schools, including post-secondary and higher education;
- Childcare centers and services;
- Any entity providing home care to patients; and
- Any entity providing first responder services

The Executive Order explicitly defines “Clinical settings” to include dentist offices. The term “personnel” is defined broadly to include employees, contractors, volunteers, and any other individual providing services on behalf of one of the above entities.

A person is not considered fully vaccinated until two weeks after the final vaccine dose is administered. Accordingly, personnel of covered entities should receive their final vaccine dose no later than September 15, 2021 to ensure compliance. The only exception to the September 30,

2021 deadline for full vaccination is for hospital personnel, who are permitted to satisfy the COVID-19 vaccination requirement consistent with the timeline for meeting flu and other vaccination requirements.

Employers are still obligated to provide reasonable accommodations for employees who do not get vaccinated due to a medical or religious exemption. What accommodations can be made will vary from case to case and depend on the specific facts involved.

2. Does the Order only apply to personnel working in Denver?

The plain language of the Executive Order indicates that it only applies to personnel working in the City and County of Denver. The Order does not require Denver-based employers to mandate vaccines for all personnel regardless of where they perform work.

For instance, if a dental practice has one office in Denver and one office in Golden, the Executive Order only requires the personnel in the Denver office to be vaccinated. However, if an employee from the Golden office provides any services in the Denver office after September 30, then he or she must be fully vaccinated.

3. How will this Order be enforced?

Each covered entity is responsible for enforcing the Executive Order among its respective personnel and may decide the most appropriate mechanism for enforcement. There is no requirement that non-compliant personnel must be terminated or otherwise disciplined; for example, employers have the discretion to put unvaccinated personnel on unpaid leave or to reassign unvaccinated personnel to offices outside of Denver. The only requirement is that personnel of a covered entity must be fully vaccinated in order to work in Denver (unless a reasonable accommodation is offered due to a medical or religious exemption). Until an individual's vaccination status is ascertained, he or she must be treated as unvaccinated.

Covered entities are strongly encouraged to develop a system for enforcement, to communicate that system to its personnel, and to apply the system consistently.

The Denver Department of Public Health and Environment (“DDPHE”) enforces the Executive Order among all covered entities. The Order does not contain any information about what potential consequences a covered entity may face for non-compliance. However, employers should assume that they will face a fine and the potential closure of business if they do not comply with the Executive Order.

4. How do I verify my personnel are vaccinated?

Personnel can provide their vaccine cards as proof of vaccination. Personnel can also obtain proof of vaccination through the Colorado Immunization Information System Public Portal.

The Colorado Immunization Information System Public Portal can be accessed at: <https://cdphe.colorado.gov/prevention-and-wellness/disease-and-injury-prevention/immunization/for-the-public/immunization>

Covered entities should maintain copies of proof of vaccination that can be submitted to the DDPHE upon request. However, this proof must be kept separate and apart from employees' personnel files since it is likely to contain protected, medical information.

5. Do I have to give employees time off to get vaccinated?

Employers cannot require that employees get vaccinated outside of work hours, so employees must be allowed time off to get vaccinated during work hours if necessary. This is particularly important for employees who are attempting to comply with the Executive Order.

Under Colorado's Healthy Families and Workplaces Act, employees are entitled to use accrued paid time off as well as paid leave related to a public health emergency to obtain preventive care. Preventive care includes both receiving a vaccination and recovering from the side effects of a vaccination. Whether a specific employee is entitled to paid time off will depend on the amount of accrued leave and other paid leave remains available to the employee.

6. If I fire employees for non-compliance, can they still receive unemployment?

Currently, there is no clear-cut answer to this question. Separated employees can generally receive unemployment benefits unless they were terminated for gross misconduct. The phrase "gross misconduct" means: the willful or wanton disregard of an employer's interests; negligence or harm that demonstrates the employee's culpability or wrongful intent; or assault or threatened assault of co-workers, supervisors, or others at the work site.

It is unclear if the Colorado Department of Labor and Employment will determine that failing to comply with this Executive Order will rise to the level of gross misconduct. We will continue to monitor developments on this and other issues relating to the Order.