

FAQ: Vaccines for Educators

November 4, 2021

Disclaimer: This publication is for informational purposes only and is not intended as a substitute for specific legal or other professional advice. If you have specific questions about your legal or contractual rights, contact your Education Minnesota field representative. This guidance will be updated periodically based on new information and guidance, so please refer back to this link for the most current information.

1. Who is currently eligible to receive vaccines in the state of Minnesota?

Beginning on November 3, Minnesota expanded eligibility for the Pfizer vaccine to all residents ages 5 and older. Moderna and Johnson and Johnson vaccines are also available to all residents 16 and older.

Minnesotans who are over the age of 65, have underlying health conditions, or who have higher risk based on where they live or work (this includes all educators) are now eligible for a booster shot of the COVID vaccine. For more information about booster shots and eligibility, visit the [Minnesota Department of Health website](#).

2. If I have not yet signed up for a vaccine, how do I sign up?

Sign-up is no longer necessary, but information about vaccine locations is available online at: <https://mn.gov/covid19/vaccine/find-vaccine/locations/index.jsp>

3. Is there a cost to educators and school staff who receive the vaccine?

No, all vaccines administered by the state are provided free of charge.

4. What is the most recent guidance from the CDC and MDH for K-12 schools, and how will it impact requirements for Minnesota schools this fall?

Following the release of [revised masking and safety guidelines](#) by the CDC, MDH has recently released its own [guidance](#) regarding best practices for the 2021-22 school year that will align with the CDC's recommendation. These recommendations are particularly directed to implementing layered prevention strategies (using multiple prevention strategies together consistently) to protect people who are not fully vaccinated. Some of the main issues covered in the guidance:

- All people ages 12 years and older should get vaccinated for COVID-19 before returning to in-person school, sports, or other activities to protect themselves and people around them who cannot get vaccinated.
- **Universal indoor masking for all teachers, staff, students, and visitors to K-12 schools, regardless of their vaccination status and regardless of the level of community transmission.**

- Schools should maintain at least 3 feet of physical distance between students within classrooms whenever possible.
- Students, teachers, and staff should stay home if they have signs of any infectious illness, and should contact their health care provider for testing and care.
- Students, teachers, and staff who have been fully vaccinated do not need to stay home even if they have had recent close contact with a confirmed case so long as they remain asymptomatic and do not test positive. Follow CDC testing guidance for anyone exposed to a confirmed case.
- People who are not fully vaccinated and returning to in-person school, sports, or extracurricular activities (and their families) should get tested regularly for COVID-19 according to CDC guidance.
- Schools should continue to strengthen good ventilation, rapid and thorough contact tracing in combination with isolation and quarantine, handwashing, respiratory etiquette, cleaning, and disinfection as important layers of prevention to keep schools safe.

Given the expiration of the Governor’s emergency powers, MDH and MDE currently only have legal authority to strongly encourage Minnesota school districts to adopt these practices. Individual school boards have authority to make them mandatory.

5. What are the details of OSHA’s vaccine mandate for workplaces with 100 or more employees?

Biden Administration [announced](#) that the U.S. Department of Labor’s Occupational Safety and Health Administration (OSHA) will soon require all employers with 100 or more employees to ensure that they are either fully vaccinated against the coronavirus or get tested at least once a week. A summary of OSHA’s new Emergency Temporary Standard (ETS) is available [here](#). Below are some key elements of the proposed rule:

- **Coverage.** The ETS applies to all employers of 100 or more employees (except those employed by the federal government) whether they are public or private, meaning that all public, private, and charter schools as well as higher education institutions are covered as long as they meet the employee threshold.
- **Every covered employer must create a policy.** The ETS requires covered employers to develop, implement, and enforce a mandatory COVID-19 vaccination policy, with an exception for employers that instead establish, implement, and enforce a policy allowing employees who are not fully vaccinated to elect to undergo weekly COVID-19 testing and wear a face covering at the workplace.
- **January 4 deadline.** While the ETS takes effect immediately following its publication on November 5, the deadline for covered employees to have their final vaccination dose (second shot for Moderna or Pfizer, first shot for J&J) or provide their first negative test to their employer and wear a face covering is Tuesday, January 4.
- **Proof of vaccination required.** The ETS requires employers to determine the vaccination status of each employee, obtain acceptable proof of vaccination, maintain

records of each employee's vaccination status, and maintain a roster of each employee's vaccination status.

- **Paid time off required for vaccination and recovery.** The ETS requires employers to support vaccination by providing employees reasonable time, including up to four hours of paid time, to receive each vaccination dose, and reasonable time and paid sick leave to recover from side effects experienced following each dose.
- **Testing costs.** The ETS does not require employers to pay for testing for unvaccinated employees, but Minnesota law requires employers to pay these costs, so unions should consider proposing in bargaining that employers must pay any testing costs to ensure compliance. If unions are unsuccessful in bargaining this language, employers will still be required to pay any testing costs not covered by an employee's insurance.

Although this new rule makes it unlikely that any covered employer would need to bargain over a vaccine mandate itself, we still encourage all affected locals to bargain the impact of the policy on terms and conditions of employment, such as access to testing, employee privacy, and any other staff safety measures above what the ETS requires. The latest version of our sample vaccine MOU is available [here](#).

6. How do schools know whether students and staff are vaccinated? Is it legal for them to ask or require students or staff to be vaccinated against COVID-19?

The most practical way for schools to determine a person's vaccination status is to ask or require parents and staff to provide documentation in the form of a vaccination card or documentation from a medical provider.

a. Students

Schools and child care facilities are currently required by [state law](#) to ask parents and guardians to provide documentation that students have received immunization against a number of diseases, including tetanus, polio, and hepatitis B, subject to exceptions for those who have a medical reason for declining or a conscientious objection to vaccination, with required documentation. COVID-19 is not currently a required immunization, but the Legislature could add it. The Department of Health also has the authority to add the COVID-19 vaccine to the list of required immunizations through rulemaking, but this process could take up to 18 months.

Schools and childcare facilities are not currently *required* to mandate vaccination of K-12 students against COVID-19, and it is unclear whether they have the legal authority to do so. A number of higher education institutions have announced plans to require their students to be vaccinated in order to be on campus in the fall. In addition, the Los Angeles Board of Education passed a policy requiring all students ages 12 and older to be vaccinated against COVID-19 by December 19 in order to attend in-person classes.

b. Staff

In May, the Equal Employment Opportunity Commission, which enforces and provides guidance on federal anti-discrimination laws, issued [guidance](#) stating that employers could mandate that employees be vaccinated, provided that the employer makes accommodations for employees who do not get vaccinated because of a disability or a sincerely held religious belief. (See section K). In addition, the Fifth Circuit Court of Appeals [recently held](#) that a hospital in Texas had the right to require its employees to get vaccinated against COVID-19. Although this decision is not binding in Minnesota, it is persuasive, and it relied on a prior Supreme Court decision upholding the constitutionality of vaccination mandates.

Because the requirement to be vaccinated is a term and condition of employment, employers must bargain any vaccine mandate with an exclusive representative. Locals that feel strongly in favor of having a vaccine mandate in place may even want to consider proposing this to their school district. A sample staff vaccination MOU for locals to use with employers is available [here](#). If a federal or state government vaccine mandate takes effect, the requirement itself may not be subject to bargaining, but any effects of that mandate not required by law still are.

Based on this guidance, it is likely the case that schools may legally ask staff whether or not they are vaccinated, but they should not ask additional information about an employee's health condition unless it is for the purpose of making an exception to a vaccine mandate based on disability or religion. Employers should also maintain this information in confidence, as it likely constitutes private personnel data under Minnesota law.

6. Do schools have the legal authority to require students and staff to wear face coverings if they are not fully vaccinated?

Yes. Even if a school district does not have a vaccine mandate for students and staff, and even if the state does not require face coverings, individual school districts may choose to implement CDC guidance by requiring staff and students to continue wearing face coverings indoors if they are not fully vaccinated against COVID-19. However, without a verification system as described in question 5 above, this would be done on an honor system.

7. Do schools have the legal authority to require students and staff to submit to regular COVID testing if they do not get vaccinated?

It is uncertain whether school districts will have this authority absent state law or regulations from the state or federal government. Schools will need to seek their own counsel regarding the legality of mandating testing for students.

Districts may be able to require that unvaccinated staff participate in regular screening testing; however, we would consider required testing of staff a mandatory subject of bargaining, and suggest that locals work on an MOU that specifies:

- Who will administer the tests and how often;
- Whether or not the tests will occur on worktime (staff would need to be paid for time spent getting tested outside the workday); and
- How the school district or charter school will maintain the privacy of test results.

8. Will Education Minnesota represent members who are disciplined for refusing to get vaccinated?

We can't make a definitive guarantee that we would or would not represent a member who refuses to get a vaccine at this time since there is still a great deal about vaccine implementation for school employees that we don't know. In discipline cases outside of teacher terminations, local unions would have a say in whether a case goes to hearing. In all cases, our ability to be successful would depend on the specific reason(s) the educator refused vaccination and whether the policy was negotiated with the exclusive representative. Education Minnesota will advocate for school vaccination policies that are fair and reasonable, understanding the clear public health benefits of COVID-19 vaccination while upholding any legal rights employees may have to opt out under state and/or federal law.

9. What are some trusted sources of information on COVID vaccines?

Minnesota Public Radio interview on MDH Commissioner Jan Malcolm and infectious disease director Kris Ehresmann on COVID-19 and children:

<https://www.mprnews.org/story/2021/07/14/concerned-about-children-and-the-covid-variants-heres-what-you-need-to-know>

Reuters fact check of false claims that COVID vaccines are experimental or have not been adequately tested: <https://www.reuters.com/article/factcheck-covid-vaccines/corrected-fact-check-covid-19-vaccines-are-not-experimental-and-they-have-not-skipped-trial-stages-idUSL1N2M70MW>

Minnesota Department of Health: www.health.state.mn.us/diseases/coronavirus/vaccine.html

U.S. Food & Drug Administration: www.fda.gov/emergency-preparedness-and-response/coronavirus-disease-2019-covid-19/covid-19-vaccines

Advisory Committee on Immunization Practices, U.S. Centers for Disease Control: www.cdc.gov/vaccines/acip/index.html

World Health Organization: www.who.int/emergencies/diseases/novel-coronavirus-2019/covid-19-vaccines