



COLLEGE EMPLOYEE AND STUDENT COVID-19 VACCINATION REQUIREMENT

April 28, 2021

Dear President and Board of Trustees,

This letter is in response to your recent communication to students, faculty and staff requiring the COVID-19 vaccination by the start of the fall 2021 semester.

A Voice for Choice Advocacy sincerely objects, on a legal, scientific and religious basis, to such a COVID-19 vaccine requirement, and asks your college NOT to require the COVID-19 vaccine as a prerequisite for in-person attendance, at this time or in the future.

For employees, the ability to decline the COVID-19 vaccine following Cal/OSHA requirements must be offered, as well as disability and religious accommodations per American Disabilities Act and the Civil Rights Act. Furthermore, if staff are offered a religious exemption, students must be offered the same. Without these accommodations, your college implementing this requirement would open yourselves up to discrimination lawsuits.

Furthermore, none of the COVID-19 vaccines have been fully tested for safety and efficacy, with clinical trials for the leading two vaccines not set to be completed for close to another year. While the FDA has authorized the Pfizer and Moderna mRNA and Johnson & Johnson COVID-19 vaccines for Emergency Use, these vaccines are still in the experimental phase with no large scale, long term data on the safety and efficacy of these vaccines. Under the Federal Public Readiness and Emergency Preparedness (PREP) Act, all COVID-19 vaccine makers are provided immunity from liability for their products. However, colleges implementing such a requirement would open themselves up for lawsuits if an employee or student is injured by a required COVID-19 vaccine, and insurance premiums would skyrocket.

There is also no conclusive data showing that the COVID-19 vaccine would lessen the transmission of COVID-19 within a community, and therefore getting the COVID-19 vaccine may not impact the rate of community spread significantly, and may lead to unknowing asymptomatic transmission.

Per state and federal laws, and to mitigate legal and insurance costs, AVFCA asks you to adhere to the following in making any COVID-19 vaccine policies for your college:

- **Make the COVID-19 vaccine a recommendation, not a requirement**
- **Include in the policy that religious belief and disability exemptions are allowed, without recourse, per Federal law**
- **Include in the policy that can sign a declination statement, without recourse, per CA state law**

These requests are supported by extensive legal and scientific information outlined below.

Employee Cal/OSHA Declination Statement

According to the California Occupational Safety and Health Administration (Cal/OSHA)'s Aerosol Transmissible Diseases Standard, Title 8, California Code of Regulations (CCR) Section 5199:

“Employers must make available the vaccinations that are appropriate for their employees’ exposures...Employees are permitted to decline any recommended vaccination, but the employer must ensure that they sign the statement...for each declined vaccine... An alternative declination statement is acceptable as long as it meets the CDPH requirements of Health and Safety Code Section 1288.7.” (https://www.dir.ca.gov/dosh/dosh_publications/ATD-Guide.pdf)

By law, no employer can override Cal/OSHA regulations and must allow for a declination statement for all employees. College staff should be made aware they have a right to decline the vaccine and will not be discriminated against or suffer retribution for doing so.

Religious Belief Exemptions

Per the 1964 Civil Rights act, the U.S. Equal Employment Opportunity Commission (EEOC), which enforces [Federal laws prohibiting employment discrimination](#), states employees are protected from employment discrimination when it involves religious discrimination:

“Religious discrimination involves treating a person (an applicant or employee) unfavorably because of his or her religious beliefs. The law protects not only people who belong to traditional, organized religions, such as Buddhism, Christianity, Hinduism, Islam, and Judaism, but also others who have sincerely held religious, ethical or moral beliefs. (<https://www.eeoc.gov/religious-discrimination>)”

“Once an employer is on notice that an employee’s sincerely held religious belief, practice, or observance prevents the employee from receiving the vaccination, the employer must provide a reasonable accommodation for the religious belief, practice, or observance unless it would pose an undue hardship under Title VII of the Civil Rights Act. Courts have defined “undue hardship” under [Title VII](#) as having more than a *de minimis* cost or burden on the employer. EEOC guidance explains that because the definition of religion is broad and protects beliefs, practices, and observances with which the employer may be unfamiliar, the employer should ordinarily assume that an employee’s request for religious accommodation is based on a sincerely held religious belief.”

(<https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>)

This is underscored by an article in the National Law Review (July 28, 2020)

(<https://www.natlawreview.com/article/vaccinate-or-terminate-mandatory-vaccination-workplace-policy>), which states:

“The EEOC first tackled mandatory vaccination in 2009 in response to the H1N1 (“swine flu”) pandemic and incorporated into its guidance established law concerning medical testing and religious objections. In its publication [Pandemic Preparedness for the Workplace](#), the EEOC provided guidance regarding disability-related medical inquiries and medical examinations that might be relevant in a pandemic. As part of the 2009 guidance, the EEOC unequivocally concluded that both the ADA and Title VII

prohibited an employer from compelling its employees to be vaccinated...regardless of their medical condition or religious beliefs – even during a pandemic.”

The COVID-19 vaccine requirement is also a violation of employee and students’ first amendment right to religious exemption, and is without legal precedence. Denying staff and students the ability to honor their religious convictions goes against the founding principles of the US Constitution. There is no immediate threat of a severe adverse reaction to a contagious disease that justifies stripping these staff and students of their freedom of religion. Requiring the COVID-19 vaccine for staff and students would equate to religious discrimination.

By law, every employer must allow for a religious exemption to a COVID-19 vaccine requirement for all employees and contractors. Without this, employers implementing this requirement would open themselves up for religious discrimination lawsuits. It then falls on your college to have equity among employees and students and allow a religious and personal/conscious belief exemption so as to avoid widespread discrimination.

The Precautionary Principle

As an article in the American Journal of Public Health states, “The precautionary principle asserts that the burden of proof for potentially harmful actions by industry or government rests on the assurance of safety and that when there are threats of serious damage, scientific uncertainty must be resolved in favor of prevention.” (<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1446778/>).

While fully tested vaccines may provide a level of immunity in the future, vaccine development is usually a long, complex process, often lasting 10-15 years, involving a combination of public and private involvement (www.historyofvaccines.org/content/articles/vaccine-development-testing-and-regulation). Vaccines usually go through animal trials and then once a vaccine has been proven safe and effective in animals they are moved to three-stages of human trials (www.cdc.gov/vaccines/basics/test-approve.html).

Let us not forget the past. In 1976, an outbreak of swine flu at a US military base led to fears of a devastating pandemic. By the end of the year, 40 million out of some 200 million Americans were vaccinated for the new strain with a brand new rushed vaccine, but no pandemic appeared, dozens of vaccine recipients were diagnosed with Guillain-Barré syndrome and public health credibility suffered (<https://www.history.com/news/swine-flu-rush-vaccine-election-year-1976>). In 2009, another H1N1 vaccine was rushed to market without fully being tested, due to fears of a global swine flu pandemic. It resulted in one in every 50,000 who received the vaccine having their immune system attack clusters of neurons. Scientists studied this for six years and in 2015, the UK government officially acknowledged that the vaccine caused brain damage, leading to permanent narcolepsy (www.cdc.gov/vaccinesafety/concerns/history/narcolepsy-flu.html).

The two COVID-19 vaccine frontrunners (Pfizer and Moderna) use mRNA technology and the third (AstraZeneca) uses adenovirus-vectored vaccine technology, none of which have ever been approved by the FDA for human use. There is no knowledge of the safety or efficacy of these novel vaccines technologies long term. These vaccines are completely experimental and those given the vaccines prior to

the completion of the phase three trials late next year are guinea pigs, and will be monitored for two years during this live experiment.

Furthermore, previous coronavirus vaccine testing (for SARS and MERS) resulted in severe issues of Disease Enhancement. Disease Enhancement occurs after an animal or human receive a vaccine and then when exposed to the virus develop more severe symptoms than those who had not been vaccinated. For example, in studies of an experimental SARS vaccine reported in 2004, vaccinated ferrets developed damaging inflammation in their livers after being infected with the virus (www.ncbi.nlm.nih.gov/pubmed/12725690; www.ncbi.nlm.nih.gov/pmc/articles/PMC3454321/; www.sciencedirect.com/science/article/pii/S0264410X05009163). COVID-19 vaccine trials have not been conducted sequentially to exclude the possibility of this serious reaction happening if exposed to the virus months or even years after vaccination.

The goal of an EUA vaccine should NOT be 100% vaccination, or even close to that. With never before vetted technology, without completed clinical trials and without full FDA approval, a COVID-19 vaccine must only be offered to those who will be severely impacted by not taking the vaccine. We know from the CDC that 99.2% of the population survives COVID-19, and even among the highest mortality groups the survival rate is over 94%.

AVFCA asks that if a college recommends the COVID-19 vaccine to their staff and students that their recommendations, marketing and communication make the following clear, so their staff and students can make an informed decision:

- The relative known risks of the COVID-19 vaccine vs COVID-19, its survival rate, therapeutic treatment options to aid informed consent.
- The COVID-19 vaccine is approved by the FDA with Emergency Use Authorization, and has not gone through full clinical trials for safety and efficacy. Therefore the long term safety and efficacy of the vaccine is unknown.
- The vaccine clinical trials have been conducted among those who are healthy, not pregnant or lactating, and who have not had COVID-19. Therefore no safety data among those who are sick, those who are pregnant or lactating, or those who have had COVID-19 exists.
- Current COVID-19 vaccine uses mRNA or adenovirus-vectored vaccine technology, which has never been approved by the FDA for human use. Therefore its long term effects are unknown.
- The vaccine manufacturer and person administering the vaccine has no liability and therefore if a person has an adverse reaction from the vaccine they have no recourse to sue or get any financial compensation from them, but the employer is liable if the vaccine is required.
- All adverse reactions should reported by the patient to their physician who is obligated to file a report in the Vaccine Adverse Events Reporting System database, as well as contact the manufacturer. The patient can also file a report themselves.
- The majority of clinical trial COVID-19 vaccine recipients were injected less than 4 months ago. Not only can the safety not be established, but the long term efficacy can also not be established. It is not known how long the vaccine antibodies will last or if they will confer immunity if the virus mutates. Furthermore, the length of immunity for those who have had COVID-19 has not been fully established, but leading researchers believe it is at least six months, but likely much longer (<https://www.biorxiv.org/content/10.1101/2020.11.15.383323v1>;

<https://www.nature.com/articles/s41591-020-01143-2>;

<https://www.medrxiv.org/content/10.1101/2020.08.11.20171843v2>). Research has also implied T-cell cross-reactivity from previous coronavirus infections conferring immunity

(<https://pubmed.ncbi.nlm.nih.gov/32753554/>; <https://pubmed.ncbi.nlm.nih.gov/32753554/>).

- While the three frontrunner vaccines are thought to lessen the symptoms of COVID-19, they seem not to prevent the transmission, as is the case with other vaccines, such as the pertussis vaccine. If this is the case, the vaccine will reduce the rate of severe symptoms, but may mask transmission.

Colleges should follow the Precautionary Principle and heed on the side of caution not requiring the COVID-19 vaccine, until there is the scientific assurance that the COVID-19 vaccine will not put their employees, students and the community in a higher risk category.

COVID-19 vaccine liability and Workers Compensation Claims

Under section 564 of the Federal Food, Drug, and Cosmetic Act (FD&C Act), the FDA Commissioner may allow unapproved medical products or unapproved uses of approved medical products to be used in an emergency to diagnose, treat, or prevent serious or life-threatening diseases or conditions caused when there are no adequate, approved, and available alternatives. However, vaccines, or other medical products, that are approved under Emergency Use Authorization have not gone through thorough safety and efficacy testing, and may be based on very limited evidence and consciously or unconsciously influenced by the intense pressure to speed vaccines to market (as is likely the case with a COVID-19 vaccine). Furthermore, under the Federal Public Readiness and Emergency Preparedness (PREP) Act all COVID-19 vaccine makers are provided immunity from liability for their products (<https://www.phe.gov/Preparedness/legal/prepact/Pages/default.aspx>). However, if an employee is injured from a vaccine required by their employer, their employer becomes liable for that injury. Not only can the employer be sued, but the injury in California would be considered a compensable injury under Workers Compensation, regardless of where the vaccine is obtained.

In order for an injury to be compensable pursuant to the California Workers' Compensation Law, the injury must: (i) *arise out of*; and (ii) *occur within the course of an employee's employment*. *California Labor Code*, Section 3600. This two-pronged requirement is the standard test for an allowance of workers' compensation benefits to be issued in the State of California. To note, when Courts are faced with applying this test, it is well-settled law that the Court "must be guided by the equal fundamental principal that the requirement is to be liberally construed *in favor of awarding benefits*." *Maher v. Workers' Comp. Appeals Bd.* (1983) 33 Cal.3d 729, 733.

As such specifically relates to a potential adverse injury suffered by an employee as a result of an employer required vaccination, it has long been held in the State of California that where an employee submits to inoculation or a vaccination **at the direction of the employer and for the employer's benefit**, any injury resulting from an adverse reaction therefrom is compensable under the California Workers' Compensation Act. *Maher v. Workers' Comp. Appeals Bd.* (1983) 33 Cal.3d 729, 734-735; *Roberts v. U.S.O. Camp Shows* (1949) 91 Cal.App.2d 884, 885.

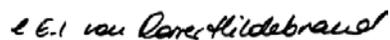
Notwithstanding the foregoing, it is important to note the distinction between college “encouraged” vaccines and college “mandated” vaccines. Specifically, there is legal support for denying liability on behalf of a college should the college only “encourage” their staff and students to get the vaccine as such act of taking the vaccine would then potentially be classified as “voluntary,” and thus, not be deemed to have occurred “within the course of an employee’s employment.” On the other hand, those vaccines which are mandated as a condition of an employee’s employment / continued employment with a company have consistently been classified by the Courts of the State of California to fall within the scope of an employment-related activity. As such, vaccine-related injuries suffered by staff or students who were forced into taking vaccines by their college will likely be deemed as compensable through Workers’ Compensation or other liability insurance.

Colleges should not require the COVID-19 vaccine for staff or students, so as not to take on this liability or the huge potential financial repercussions that may occur through lawsuits and workers compensation claims.

For all these reasons, A Voice for Choice Advocacy asks colleges not to require COVID-19 vaccines of any of their staff or students, under any circumstance, and at the very least offer religious and medical exemptions.

Thank you for your time and consideration.

Sincerely,



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Giving issues a voice, A Voice for Choice Advocacy advocates for people’s rights to be fully informed about the composition, quality, and short- and long-term health effects of all products that go into people’s bodies, such as food, water, air, pharmaceuticals and cosmetics.