

Sweeney Mason

LLP

Coronavirus (COVID-19) Update:

Santa Clara County Issues New Health Order that Requires Employers to Determine Employees' COVID-19 Vaccination Status

Effective May 18, 2021, Santa Clara County moved into the "Yellow Tier" under California's Blueprint for a Safer Economy and the County finally issued a new COVID-19 Health Order ("Order"), replacing the prior October 5, 2020 health order.

The Order retires many of the previous requirements imposed on businesses: maximizing telework is no longer required, the Social Distancing Protocol submitted no longer needs to be implemented or posted, and the Mandatory Directive on Capacity Limitations has been eliminated (although certain industries still face capacity limitations under the Yellow Tier requirements). **The Order continues to impose the face covering and employer case reporting requirements.**

Employee COVID-19 Vaccination Status

The most significant change for businesses under the new Order requires businesses to ascertain the vaccination status of all "personnel" who are currently or will be working at a facility or worksite in the County. This includes employees, independent contractors, interns, and volunteers who are currently or will be working at any worksite in the County, even if the business itself is not located in the County. It is not required, although it is strongly encouraged, for businesses to obtain the status of personnel working remotely. Businesses should require all subcontractors to confirm that the subcontractor has ascertained the vaccination status of all of its employees.

The deadline to comply with this requirement is June 1. Businesses have an ongoing obligation to obtain an updated vaccination status every 14 days from each individual who is not fully vaccinated at the time the initial assessment was completed, until they are fully vaccinated. The County has provided a [template request form](#) for employees to complete. Employees may choose to decline to provide their vaccination status. Businesses are to assume that those who decline to provide their vaccination status are unvaccinated. Accordingly, businesses must continue to obtain an updated status from those who decline to answer.

If an employee refuses to respond altogether, the employer should complete the form, indicate that the individual refused to complete and sign it, and note that the individual will be considered as “declined to answer,” and therefore treated as unvaccinated under the Order and subject to reassessment every 14 days.

Record-Keeping Requirements

Businesses must maintain a vaccination status record for each employee. This can include the self-certification form linked above or any other documentation establishing vaccine status, such as a copy of the personnel’s CDC vaccination card. All records relating to vaccination status must be maintained confidentially and should be treated the same as any other medical information collected about employees (such as workers’ compensation files or drug test results). Employers will not be required to provide the records to the County, but will be required to present evidence of compliance with the Order upon request. Please note that if your business is subject to the requirements of the California Consumer Privacy Act (CCPA), collecting vaccination status information triggers a notice of collection.

Enforcement

Any business that fails to ask about and record the vaccination status of its workers is subject to fines of up to \$5,000 per violation per day.

Please review the [Vaccination Status FAQs](#) for additional information.

Sweeney Mason LLP continues to monitor the rapidly evolving situation pertaining to the COVID-19 virus and resulting legal issues. We are finding that the laws and orders released by

the Federal, State, County and Local governments are, in some cases, ambiguous, vague and/or contradictory, resulting in some confusion among a broad cross-section of our clients. At this juncture, and given the fast-paced changes to the applicable orders and mandates, as well as the ambiguities inherent in the orders there is no “one-size-fits-all” approach to COVID-19-related legal matters. As a result, contracts, employment issues, ongoing lawsuits and other matters impacted by the COVID-19 outbreak should be analyzed on a case-by-case basis and with the assistance of Sweeney Mason LLP.

Sweeney Mason LLP is in daily contact with governmental offices and various trade organizations to monitor the developments surrounding the COVID-19 outbreak. While much of our personnel continues to work remotely, Sweeney Mason LLP is fully operational and will continue to assist our clients and community with their legally related issues and concerns during this uncertain time.

For more information, please contact our employment team at 408-356-3000 or via email: Roger Mason at rmason@smwb.com or Rachael Brown at reb@smwb.com.

The following links may assist you in evaluating some of the issues you may have. Stay safe!

Cal/OSHA:

[Preparing Your Workplace for COVID-19](#)

[Emergency Temporary Standards](#)

[Emergency Temporary Standards FAQs](#)

California:

[Blueprint for a Safer Economy](#)

[EDD COVID-19 Overview](#)

[EDD COVID-19 FAQs](#)

[Supplemental Paid Sick Leave FAQs](#)

Santa Clara County:

[Current Risk Reduction Order \(October 5, 2021\)](#)

[Risk Reduction Measures \(March 2, 2021\)](#)

[Social Distancing Protocol \(October 5, 2021\)](#)

[Public Health Department FAQs](#)

[Requirements for Businesses](#)

[Guidance for Businesses](#)

San Jose:

[Paid Sick Leave Ordinance](#)

DOL Publications:

[FFCRA FAQs](#)

[FFCRA Required Notice](#)

IRS Guidelines:

[FFCRA Tax Credits](#)

[Employee Retention Tax Credits Under CARES Act](#)

SBA Guidelines:

[PPP FAQs](#)

CDC Guidelines:

[Interim Guidance on Risk Assessment for Individuals with Possible COVID-19 Exposure](#)

[Interim Guidance for Businesses and Employers](#)



The information provided in this publication is general in nature and is not intended to answer every question that may arise under different fact situations and should not be relied on in the place of professional advice in a given case. If you have specific questions, please contact Sweeney Mason LLP.

SWEENEY MASON LLP's philosophy is that by educating our clients, and other businesses, about their legal obligations, including changes in the law, we best serve our legal goal of minimizing or preventing expensive litigation.

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