

Santa Clara County Requires Employers to Determine Worker Vaccination Status by June 1, 2021

May 20, 2021

On May 18, 2021, California's Santa Clara County announced that it will be entering the yellow tier of California's [Blueprint for a Safer Economy](#) – and issued a new [Health Order](#) – effective May 19.

The Santa Clara County Public Health Department [landing page](#) links to the new Order, as well as an executive summary, FAQs and other resources.

The new Order recognizes that the public health threat from COVID-19 is decreasing in Santa Clara County, but says COVID-19 continues to pose a risk, especially to residents who aren't fully vaccinated. The Order states that vaccines are the most effective method of preventing transmission of COVID-19, as well as cases and deaths, and that part of the primary intent of the Order is to increase vaccination rates.

The following is a summary of the key portions of the new Order for Santa Clara County employers.

Requirements for businesses

Section 9 of the new Order contains specific requirements applicable to all businesses and government entities:

- **Businesses must determine the vaccination status of employees, onsite contractors and volunteers.** Businesses must ascertain the vaccination status of all personnel, defined to include employees, contractors, vendors and other individuals who regularly provide services on-site. The County has clarified on its [FAQs page](#) that businesses must determine the vaccination status of all workers on-site at an employer's facilities in Santa Clara County, and are strongly encouraged, but not required, to ascertain vaccination status of personnel working remotely.

Businesses must complete their initial assessment of vaccination status by **no later than June 1, 2021**, and must thereafter obtain updated vaccination status **every 14 days** for all personnel who weren't fully vaccinated. The County has provided a [self-certification form](#) employers can use to conduct these assessments.

The FAQs clarify that employers must treat vaccination status like other private medical information received from employees, and that employees may choose to decline to provide their vaccination status. Businesses are instructed to assume that those who decline to provide their vaccination status are unvaccinated (and thus must continue to obtain updated vaccination status from those individuals every 14 days).

The new Order has a recordkeeping requirement, and the FAQs clarify that this means businesses must have a record for each staff member reflecting that person's vaccination status. The record may include the self-certification form linked above or any other documentation establishing vaccine status, such as the employee's CDC vaccine card.

In the FAQs, the County justifies this assessment requirement on the grounds that some workplace rules differ depending on a

worker's vaccination status and businesses need to know worker vaccination status so they can follow the rules and keep their workers, customers and community safe. The FAQs also state that any business that fails to ask about and record the vaccination status of its workers is subject to enforcement and may be required to pay fines of up to \$5,000 per violation per day.

- **Businesses must comply with the Health Officer's Mandatory Directive for Unvaccinated Personnel.** This [new directive](#), also issued May 18, imposes requirements and "strong recommendations" for businesses regarding any personnel who aren't fully vaccinated.

One new requirement is that businesses must provide all unvaccinated personnel, **whether working onsite or remotely**, with information on how to get vaccinated. Businesses can use this [sample information sheet](#) to meet this requirement.

The directive also reinforces pre-existing requirements, such as requiring unvaccinated on-site workers to wear face coverings and following [applicable guidance](#) regarding excluding such personnel from the workplace if they are a "close contact" to a confirmed COVID-19 case or are confirmed to have COVID-19.

The directive also contains two strong recommendations from the Santa Clara County Health Officer:

- Businesses are urged, but not required, to prohibit unvaccinated personnel from engaging in any work-related travel, especially more than 150 miles from the county.
 - Businesses are urged, but not required, to require all unvaccinated personnel to obtain weekly PCR testing for COVID-19, or daily antigen testing with COVID PCR confirmation of any positive results.
- **Businesses must continue to require face coverings indoors (including for fully vaccinated individuals).** Also on May 18, Santa Clara County issued a [Mandatory Directive on Use of Face Coverings](#) requiring individuals, businesses and governmental entities to follow the California Department of Public Health's (CDPH) [Guidance for the Use of Face Coverings](#), issued May 3.

Under the CDPH's current guidance (which may change), **face coverings continue to be required, regardless of vaccination status**, for any indoor settings outside of an individual's home, including public transportation. The Santa Clara County FAQs clarify that this includes the workplace. The only exemptions relevant to an office-based workplace are people working alone in a closed office or room or eating or drinking while maintaining social distancing, or people exempt from wearing face coverings due to a medical condition.

- **Businesses must continue to report COVID-19 cases.** The new Order retains the requirement that all personnel immediately alert the business if they test positive for COVID-19 and were present in the workplace within 48 hours before or 10 days after onset of symptoms or, for asymptomatic individuals, within 48 hours before or 10 days after the date they were tested. If a business learns that one of its personnel tested positive and was at the workplace within that timeframe, it must report the positive case to the Santa Clara County Public Health Department **within 24 hours** and comply with all case investigation and contact tracing measures directed by the County. Additional step-by-step guidance is provided for businesses [on the county's website](#).

The new Order also encourages businesses to consider moving operations and activities outdoors.

Lifted restrictions

The new Order lifts some previous restrictions, in recognition of widespread vaccination and fewer cases of COVID-19 in the community:

- **Maximizing telework is no longer required.** Under previous versions of Santa Clara County's health orders, businesses

permitted to reopen were still required to maximize the number of people who worked remotely. This requirement has been lifted in the May 18 Order.

- **Social-distancing protocols are no longer required.** Under previous versions of Santa Clara County’s health orders, businesses permitted to reopen were required to submit a social-distancing protocol, signed under penalty of perjury, to the Santa Clara County Public Health Department. This requirement has been lifted, but employers are reminded to continue to comply with any state rules, including the Cal/OSHA emergency temporary standards, which were summarized in a [previous Cooley alert](#) and currently require social distancing, regardless of vaccination status.
- **Local capacity limitations are lifted.** Santa Clara County had previously issued a local Mandatory Directive on Capacity Limitations, which is no longer effective. Employers are reminded to consult the [state guidance](#), which recommends limiting the number of workers in the office at one time to accommodate social distancing.

Recommended steps for employers

Employers in Santa Clara County should complete their initial assessment of vaccination status by June 1, and be prepared to conduct follow up assessments every 14 days thereafter. Employers should also carefully review the other aspects of the new Order and mandatory directives summarized above and incorporate any relevant changes into their policies and procedures.

In addition, employers should review and comply with all state rules and guidance, including the Cal/OSHA Emergency Temporary Standards and any guidance from the CDPH, as well as federal guidance from the CDC and OSHA. While we expect requirements at various levels of government to change in the upcoming weeks and months, it is important to remember that **employers must comply with whatever guidance is the most restrictive.**

If you have questions about this new Santa Clara County Health Order or other aspects of COVID-19 safety in the workplace, please reach out to a member of the Cooley employment team.

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