

PUBLICATION

COVID-19 Vaccinations: Will K-12 Students Be Mandated to Take Them?

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Throughout the COVID-19 pandemic, schools across the country have been striving to strike the proper balance between providing students quality instruction while keeping their students, faculty and staff healthy and safe. Many schools began the 2020 academic year by providing remote learning or hybrid learning schedules and implementing rigorous health and safety measures to prevent the spread of COVID-19. However, as the school year progressed, and the threat of the pandemic seemingly waned in areas in the country, many schools began to reopen more robustly and welcomed their students back to campus.

Near the end of the fall semester, following the Thanksgiving holiday, a new surge in coronavirus cases hit the nation. With the pandemic worsening, many schools have been forced to close for in-person learning and pivot to remote learning again, just as they had begun reopening. Now, with the U.S. administering its first COVID-19 vaccinations on December 14, 2020, and a second COVID-19 vaccine approved by the FDA and slated to begin distribution soon, many schools are considering whether they *can* or *should* mandate that their K-12 students receive the COVID-19 vaccination once it becomes more widely available.

While numerous vaccinations are already required for students to attend school, the authority to add new requirements is highly state-specific, and many unknowns remain about how states will treat the COVID-19 vaccine in the student context.¹

States' Power

States have the power to mandate COVID-19 vaccination under the Supreme Court's 1905 ruling, *Jacobson v. Commonwealth of Massachusetts*. Presently, all 50 states have legislation requiring specified vaccines for students to attend school. However, rules regarding adding new vaccinations are highly state-specific. In Tennessee, for example, municipalities and local boards of health are authorized to institute additional vaccination requirements "for the prevention and control of communicable diseases."² In Louisiana, elementary and secondary schools, colleges, universities and licensed day care centers are authorized, upon recommendation by the office of public health, to exclude unimmunized persons from entering the facility in the event of an outbreak of a vaccine-preventable disease at the facility.³

Although all states mandate vaccinations for their students, most provide for exemptions for various reasons, including medical, religious, or philosophical reasons. Many states have, however, preserved their authority to require vaccinations, despite objections from parents, in times of an epidemic. For example, in Tennessee, parents or guardians may file with school authorities a statement that the immunization and other preventative measures conflict with the parents' or guardians' religious tenets and practices, affirmed under the penalties of perjury, to avoid vaccination. Tennessee law, however, specifically provides that parents cannot provide a statement of waiver from immunizations during an epidemic or immediate threat of an epidemic.⁴

Flu Vaccination

How states have handled requiring the flu vaccination may indicate how they will handle the COVID-19 vaccine. Prior to the coronavirus pandemic, some states, including New Jersey, parts of New York, Ohio, Connecticut, Pennsylvania and Rhode Island, already [required flu vaccinations](#) for children who attend daycare and/or preschool. This year Massachusetts became the first state to mandate flu vaccination for all children six months of age or older who are attending Massachusetts childcare, pre-school, K-12 schools, and colleges and universities.⁵ New Jersey and Vermont were considering a similar flu vaccination mandate earlier this year. Considering very few states require the flu vaccination, despite how long it has been widely available, this could indicate that states are unlikely to require the COVID-19 vaccination for its student populations. As we have seen, however, the risks associated with the coronavirus pandemic are not entirely analogous to the risks posed by the flu.

What We Know and Takeaways

Like many issues pertaining to the pandemic, regulation and guidance on the COVID-19 vaccine is rapidly evolving. We continue to monitor how federal, state, and local authorities will handle potential COVID-19 vaccine mandates in student populations. Further, it is still unknown as to whether a school can mandate a vaccine that is only approved for emergency use, as is the current status of the COVID-19 vaccine.⁶ Several states, including Tennessee, Pennsylvania, and Texas, have indicated that, when available, the COVID-19 vaccines may be optional for K-12 populations. Tennessee's Governor Bill Lee said, "Vaccines are a choice and people have the choice and will have the choice in this state as to whether or not they should take that vaccine." He continued, "That will be our strategy and that is what we think will happen all across the state." It is likely many other states will follow suit.

Federal, state, and local authorities must balance many considerations in regulating vaccination of student populations for coronavirus. Right now, COVID-19 vaccine manufacturers are only in the early stages of testing the vaccines on children. Many speculate that a children's vaccine will not be ready for distribution by the 2021-2022 school year, considering the lack of clinical studies. The Pfizer coronavirus vaccine is presently only authorized for people 16 and older. As discussed during the FDA hearing for the Pfizer vaccine, state and local authorities will need to consider in their risk/benefit analyses for requiring the vaccination that children sickened with coronavirus tend to experience milder symptoms than adults. The state and local authorities will also need to consider the fact that there is conflicting evidence about the extent to which children spread coronavirus, and the unknown long-term effects in children who take the vaccine.

At this time, schools should carefully and continuously review their Student Handbooks and immunization policies to determine compliance with current law and assess whether school policies should be updated to capture new developments and guidance from the CDC and local health and education authorities.

Your [Baker Donelson Education Team](#) continues to closely monitor developments in this rapidly evolving area and stands ready to answer any questions you have. If you have any questions, please contact [Melissa Grand](#) or [Ashley Gibson](#).

¹ For an analysis of whether the COVID-19 vaccine can be mandated for employees, see our [alert](#) and [webinar](#).

² Tenn. Comp. R. & Regs. 1200-14-01.25.

³ See La. R.S. 17:170.

⁴ Tenn. Code Ann. § 49-6-5001.

⁵ 105 CMR 220.000 - Immunization of Students Before Admission to School.

⁶ See our [webinar](#) for a discussion of the COVID-19 vaccine's Emergency Use Authorization (EUA) and implications on employer mandates of the vaccine.