

COVID-19 UPDATE



BLUEPRINT FOR A SAFER ECONOMY UPDATE

March 30, 2021- CDPH has once again made updates to the state's Blueprint for a Safer Economy. This week, thirteen counties moved to a less restrictive tier. From Purple (widespread) to Red (substantial): Fresno, Glenn, Kings, Madera, and Yuba. From Red (substantial) to Orange (moderate): Alameda, Butte, Colusa, Los Angeles, Modoc, Orange, Santa Cruz, and Tuolumne. No counties moved to a more restrictive tier.

The March 20th county tier status is:

- **Purple (Widespread) - 3 counties**
 - Inyo, Merced, and San Joaquin
- **Red (Substantial) - 36 counties**
 - Every other county not listed in other tiers.
- **Orange (Moderate) - 17 counties**
 - Alameda, Butte, Colusa, Lassen, Los Angeles, Marin, Mariposa, Modoc, Orange, Plumas, San Francisco, San Mateo, Santa Clara, Santa Cruz, Trinity, Tuolumne, and Yolo
- **Yellow (Minimal) - 2 counties**
 - Alpine and Sierra

For more information on a county's status, please visit - <https://covid19.ca.gov/safer-economy/>.

For more information on the vaccination progress, please visit - <https://covid19.ca.gov/vaccines/#California-vaccines-dashboard>.

EXPANDED VACCINE ELIGIBILITY IN CALIFORNIA

March 25, 2021 - With supply of vaccines expected to significantly increase in the coming weeks, the state is expanding vaccine eligibility to more Californians. Starting April 1, individuals aged 50+ will be eligible to make an appointment, and individuals 16+ will be eligible to make an appointment to be vaccinated starting on April 15.

For more information on the vaccination progress, please visit - <https://covid19.ca.gov/vaccines/#California-vaccines-dashboard>.

USDA ANNOUNCES 'PANDEMIC ASSISTANCE FOR PRODUCERS'

March 24, 2021- Agriculture Secretary Tom Vilsack announced that USDA is establishing new programs and efforts to bring financial assistance to farmers, ranchers and producers who felt the impact of COVID-19 market disruptions. This new initiative - **USDA Pandemic Assistance for Producers** - will reach a broader set of producers than previous COVID-19 aid programs. USDA is dedicating at least \$6 billion toward the new programs. The Department will also develop rules for new programs that will put a greater emphasis on outreach to small and socially disadvantaged producers, specialty crop and organic producers, timber harvesters, as well as provide support for the food supply chain and producers of renewable fuel, among others. Existing programs like the Coronavirus Food Assistance Program (CFAP) will fall within the new initiative and, when statutory authority allows, will be refined to better address the needs of producers.

USDA will reopen sign-up for CFAP 2 for at least 60 days beginning on April 5, 2021. The Pandemic Assistance for Producers program has 4 parts: New Programs (\$6B); Existing Programs (\$500M); CFAP 1, CFAP 2, and CFAP AA Adjustments; and, Reopening the CFAP 2 Sign-up.

Please stay tuned for additional information and announcements under the **USDA Pandemic Assistance to Producers** initiative, which will help to expand and more equitably distribute financial assistance to producers and farming operations during the COVID-19 national emergency. Please visit www.farmers.gov for more information on the details of this announcement.

Please feel free to contact our office for more information regarding this announcement.

CAN EMPLOYERS REQUIRE EMPLOYEES TO BE VACCINATED AGAINST COVID-19?

Can an employer require its employees to be vaccinated against COVID-19?

According to the California Department of Fair Employment and Housing (DFEH) the short answer is, "an employer may require employees to receive and FDA approved vaccination against COVID-19 infection so long as the employer does not discriminate against or harass employees or job applicants on the basis of a protected characteristic, provides reasonable accommodations related to disability or sincerely-held religious beliefs or practices, and does not retaliate against anyone for engaging in protected religious beliefs or practices, and does not retaliate against anyone for engaging in a protected activity (such as requesting a reasonable accommodation).

What if an employee refuses to vaccinate based on disability or religion?

If an employer mandates vaccination in its workforce, and an employee objects to vaccination on the basis of disability, the employer must engage in the interactive process with, and reasonably accommodate, the employee with a disability-related reason for not being vaccinated, and the

employer may not retaliate against an employee for requesting such an accommodation. However, if the employer shows that the accommodation imposes an undue hardship, the employee is unable to perform the employee's essential duties even with reasonable accommodations, or the employee cannot perform those duties in a manner that would not endanger the employee's health or safety or the health or safety of others even with reasonable accommodations, the employer may exclude the employee from the workplace. Whether a reasonable accommodation exists is a fact-specific determination. Among the accommodations that an employer and employee might consider are whether the employee is able to work from home or whether reasonable procedures and safeguards could be put in place at the worksite that would enable to employee to work without endangering the employee or others.

If an employee holds a sincerely held religious belief or practice employers should engage in an interactive process with the employee similar to the disability context. Generally, a reasonable accommodation is one that eliminates the conflict between the religious belief or practice and the vaccination requirement and may include, but is not limited to, job restructuring, job reassignment, or modification of work practices. However, unless specifically requested by the employee, an accommodation related to religious creed is not considered reasonable if such accommodation results in the segregation of the individual from other employees or the public. If the employer shows that an accommodation imposes an undue hardship, the employer may exclude the employee from the workplace.

What if an employer requires employees to be vaccinated but the employee objects to receiving because they do not trust that the vaccine is safe?

If an employee does not have a disability reason or sincerely held religious reason for not being vaccinated with an FDA-approved vaccine, the employer is not legally required by the FEHA to reasonably accommodate the employee. Employers are permitted to enforce reasonable disciplinary policies and practices but the FEHA prohibits employers from retaliating against any employee for engaging in protected activity. For example, an employer may not retaliate against someone who alleges that the employer's vaccination policy intentionally discriminates on the basis of race, national origin, or another protected characteristic, or has a disparate impact on a protected group.

Is asking an employee to show proof of receipt of a COVID-19 vaccination a disability-related inquiry subject to ADA regulations?

Simply requesting proof of receipt of a COVID-19 vaccination is not likely to elicit information about a disability and, therefore, is not a disability-related inquiry. However, subsequent employer questions, such as asking why an individual did not receive a vaccination, may elicit information about a disability and would be subject to the pertinent ADA standard that they be "job-related and consistent with business necessity." If an employer requires employees to provide proof that they have received a COVID-19 vaccination from a pharmacy or their own health care provider, the employer may want to warn the employee not to provide any medical information as part of the proof in order to avoid implicating the ADA.

Is the administration of a COVID-19 vaccine to an employee by an employer (or by a third-party with whom the employer contracts to administer the vaccine) a "medical examination" for purposes of the ADA?

If a vaccine is administered to an employee by an employer for protection against contracting COVID-19, the employer is not seeking information about an individual's impairments or current health status and, therefore, it is not a medical examination. Although the administration of a

vaccination is not a medical examination, pre-screening vaccination questions may implicate the ADA's provision on disability-related inquiries, which are inquiries likely to elicit information about a disability. If the employer administers the vaccine, it must show that such pre-screening questions it asks employees are "job-related and consistent with business necessity." To meet this standard, an employer would need to have a reasonable belief, based on objective evidence, that an employee who does not answer the questions and, therefore, does not receive a vaccination, will pose a direct threat to the health or safety of her or himself or others.

There are two circumstances in which disability-related screening questions can be asked without needing to satisfy the "job-related and consistent with business necessity" requirement. First, if an employer has offered a vaccination to employees on a voluntary basis (i.e. employees choose whether to be vaccinated), the ADA requires that the employee's decision to answer pre-screening, disability-related questions also must be voluntary. 42 U.S.C. 12112(d)(4)(B); 29 C.F.R. 1630.14(d). If an employee chooses not to answer these questions, the employer may decline to administer the vaccine but may not retaliate against, intimidate, or threaten the employee for refusing to answer any questions. Second, if an employee receives an employer-required vaccination from a third party that does not have a contract with the employer, such as a pharmacy or other health care provider, the ADA "job-related and consistent with business necessity" restrictions on disability-related inquiries would not apply to the pre-vaccination medical screening questions.

Does an employer who requires employees to get vaccinated have to abide by Cal OSHA COVID-19 Emergency regulations or other guidelines?

Yes. As long as the regulations are in effect, employers must implement and enforce COVID-19 safety procedures required by the Cal-OSHA Emergency regulations.

Are there any other issues that might result?

In agriculture there may be some employees whose name and/or birthdate on their vaccination card does not match the information provided on their I-9. Such individuals may have to provide a reason as to why the information does not match and documentation to rectify the situation.