

COVID-19 VACCINATION MEDICAL AND RELIGIOUS EXEMPTION REQUEST

PROCEDURE

Issued: July 30, 2021

Revised and Reissued: September 24, 2021

I. Legal and Policy Authority

A. Employment Rights for People with Disabilities Policy

The Americans with Disabilities Act (ADA) and the California Fair Employment and Housing Act (FEHA) prohibit employment discrimination against qualified employees on the basis of disability. In accordance with the law, it is the policy of the City and County of San Francisco (City) to provide equal employment opportunities to qualified individuals with disabilities. The ADA and FEHA require the City to engage in the interactive process with qualified employees with a disability to determine whether the City can provide a reasonable accommodation for the employee's medical restrictions that allow the employee to perform the essential function of their position with or without accommodation.

B. Religious Accommodation

Title VII of the Civil Rights Act of 1964 and FEHA require covered employers to accommodate the sincerely held religious belief of qualified employees. To qualify, an employee must demonstrate that their belief is both sincere and religious rather than secular or scientific. Employers like the City are not required to accommodate employees if it would cause an undue burden on operations. For example, if the accommodation would be costly, infringe on other employees' job rights or benefits, compromise workplace safety, decrease workplace efficiency, or require other employees to do more than their share of potentially hazardous or burdensome work, the accommodation is not reasonable.

II. General Vaccination Requirements

All City employees were required to report their vaccination status and submit verifying documentation by July 29, 2021. Unvaccinated employees are required to update their vaccination status and provide verifying documentation as they receive vaccination doses.

Consistent with State and local Public Health Orders and City policy, the City requires employees to be vaccinated against COVID-19. This health and safety-related job requirement is effective as follows:

- By September 30, 2021, employees routinely working onsite in High-Risk Settings must have received the final dose of a COVID-19 vaccination;

- By October 13, 2021, employees who are not permanently stationed or regularly assigned to a High-Risk Setting, but who in the course of their duties may enter or work in those settings even on an intermittent or occasional basis for short periods, must be fully vaccinated against COVID-19; and
- By November 1, 2021, all other City employees must be fully vaccinated.

The local Public Health Order defines High-Risk Settings as certain care or living settings, including many congregate settings, where employees may have contact with vulnerable populations and where the risk of COVID-19 transmission is high. High-Risk Settings include general acute care hospitals, skilled nursing facilities, residential care facilities for the elderly, homeless shelters, and jails.

III. Medical and Religious Exemptions: A Two-Step Process

Employees may be exempt from COVID-19 vaccination requirements when a qualifying medical condition or sincerely held religious belief prevents them from receiving one of the available COVID-19 vaccinations. Employees who believe they qualify for an exemption from the vaccination requirement must seek an exemption from the department where they work.

Upon receipt of a request for an exemption, departments must review the employee’s request and supporting documentation, and, as necessary, engage in an interactive process to evaluate the request, to determine: (1) whether the employee has a qualifying medical condition or has stated a sincerely held religious belief that prohibits them from receiving the vaccination, and (2) if the answer to this first inquiry is “yes,” then whether the department has the ability to implement a reasonable accommodation to allow the employee to perform the essential functions of their position. An accommodation is not reasonable if it would pose an undue hardship on operations and present a substantial risk of harm associated with having unvaccinated employees in the workplace.

A. Step 1: Determining if There is a Qualifying Basis for an Exemption

At step 1, departments must determine whether employees qualify for a medical or religious exemption, applying the criteria below. This process may involve an interactive process with the employee, and the department may request supplemental information or documentation in support of the request:

For medical reasons (1) the employee has a qualifying disability that prevents them from receiving a COVID-19 vaccination, (2) the employee requests an exemption from the vaccination requirement, and (3) the employee provides required medical documentation to support an exemption; or

For religious reasons (1) the employee holds a sincerely held religious belief, practice or observance that is contrary to the practice of vaccination, (2) the employee requests an exemption from the vaccination requirement, and (3) the employee provides required documentation or information to support the sincerely held religious belief and exemption.

If the department finds that the employee has a qualifying medical condition or sincerely held religious belief that prohibits them from being vaccinated against COVID-19, then the department moves to step 2 of the process.

B. Step 2: Determining if the Department Can Reasonably Accommodate the Employee

At step 2, the department must determine whether the department can provide a reasonable accommodation that allows an unvaccinated employee to perform the essential functions of their current position.

Relevant to the step 2 inquiry, on September 10, 2021, the San Francisco Department of Public Health amended the local Health Order clarifying that masking and testing may not be an effective accommodation for some employees working in High-Risk Settings. The Order instructs employers to determine what accommodations are reasonable in light of the direct threat posed by COVID-19 and the risk posed by unvaccinated employees in the workplace. Consistent with this Order, departments must consider what, if any, reasonable accommodations exist for persons who are exempt from vaccination and therefore are unvaccinated in the workplace.

In accordance with the San Francisco Health Order, the Department of Human Resources (DHR) has determined that unvaccinated employees pose a direct threat to the health and safety of themselves or others while at work. Accordingly, departments must determine whether granting an exemption from the vaccination requirement will result in an unvaccinated employee posing a substantial risk of harm to others, or the employee, that cannot be mitigated with masking, regular testing, or other measures. **To the extent a department has already granted a request for exemption, the department may be required to withdraw approval to comply with the local Health Order as well as any changes to local health conditions.**

Some of the additional information departments must consider when evaluating whether they can offer a reasonable accommodation that allows the employee to perform the essential functions of their position without creating an undue burden or posing a health or safety risk to themselves or others include:

- (a) Whether the employee will place other people at risk of transmission of COVID-19 because they are required to come into contact (including on an emergency or occasional basis) with coworkers, members of the public, or with persons whose vaccination status is unknown, who are not yet eligible for the vaccine, or who are or may be members of a vulnerable population (e.g., the elderly, incarcerated people, and acute care patients, and people with compromised immune systems);
- (b) The type and frequency of testing available to employees and whether the department has the ability to provide and track requesting testing for employees;
- (c) The logistical and operational impact of ongoing testing;
- (d) Whether the department can ensure compliance with the mask mandate whenever the employee is around other people in the workplace;
- (e) Whether the proposed accommodation imposes an undue burden because it infringes on other employee's job rights or benefits, compromises workplace safety, decreases workplace efficiency, or requires other employees to do more than their share of potentially hazardous or burdensome work;
- (f) The number of employees available to perform a specific function and the impact on other employees of approving a vaccination exemption;
- (g) The ability of the department to accommodate persons with an exemption given that testing and masking may not be effective for employees working in High-Risk Settings; and
- (h) Whether the proposed accommodation would be unduly burdensome for any other reason, such as because it would be too costly or administratively unfeasible.

To determine employee requests for medical or religious vaccination exemptions, departments must generally engage employees in the interactive process. The interactive process may include requesting additional information to support the exemption requests, discussing the request and need for accommodation, and generally communicating with the employee, and third-parties as necessary, to determine whether accommodation is needed, and if so, what reasonable accommodations may be available to keep the employee at work. Employees who receive an exemption must be able to perform all essential job functions of their current position, or an available, vacant, non-promotive position for which the employee is qualified, with or without reasonable accommodation.

For additional guidance on the reasonable accommodation process, consult with the department's assigned Deputy City Attorney and DHR.

IV. Departmental Process for Review and Determinations

Requests for medical and religious exemptions will be processed by the employee's department personnel official and, if necessary, in consultation with the department's assigned Deputy City

Attorney and DHR. Departments will issue written determinations notifying employees of the approval or denial of their requests.

Approved requests must include the specific accommodation that the department will implement to enable the employee to remain at work. In most cases, departments should indicate that the accommodation is being offered on a temporary basis and subject to review and re-approval (for example, for three to six months) because departments may be required to reassess the availability of accommodations to account for changes in health and safety conditions and the potential hardship and expense of an accommodation.

Where the department denies an employee's request for an exemption, they must include the reason for the denial and when the basis for the denial is an inability to reasonably accommodate the employee in their current position, inquire whether the employee is interested in participating in a Citywide job search as a further reasonable accommodation effort.

A. Medical Exemption Process

1. Employees should complete and sign an **Employee Request for Reasonable Accommodation Form (COVID-19 Vaccination Exemption)**. Departments must consider any request for a disability-related accommodation that provides sufficient notice of an employee's asserted inability to comply with vaccination requirements due to a medical condition, whether the request is on the designated form, in writing, or communicated orally to a supervisor or department personnel official.
2. Employees must answer relevant questions regarding the medical condition that prevents getting vaccinated, but should not disclose the diagnosis or treatment plan.
3. Employees must submit a completed form, or an equivalent writing regarding the request for a medical exemption from the vaccination requirement, with medical verification of the employee's disability that prevents them from getting vaccinated, to a department personnel official, supervisor or manager.
4. Department personnel officials should make reasonable efforts to acknowledge receipt of an employee request for a medical exemption from vaccination requirements within two (2) business days. Acknowledgments may be via email stating the request has been received, or by returning a copy of the Employee Request for Reasonable Accommodation Form (COVID-19 Vaccination Exemption) stamped "Received" with the receipt date on the face of the document.

5. Department personnel officials should engage employees in the interactive process if the need for a medical exemption from vaccination requirements is not established by the employee's request and supporting medical certificates, or the employee does not submit sufficient medical verification. Department personnel should consult with the Office of the City Attorney and DHR with questions on requests for exemption.
6. Department personnel officials should use the **Health Care Provider Certification Form (COVID-19 Vaccine Exemption)** for requesting information from health care providers in support of a request for exemption from vaccination requirements.
7. If the department concludes that the employee has a qualifying medical condition that prohibits them from receiving the COVID-19 vaccine, the department must consider what, if any, reasonable accommodation it can offer that would allow the employee to continue to perform the essential functions of their job. The department must evaluate the considerations outlined above in Section III(B) when determining if it is able to reasonably accommodate the employee.
8. Department personnel officials should use the **Accommodation Determination Form (COVID-19 Vaccination Exemption)** to document and communicate final determinations on employee requests for medical exemption from vaccinations requirements. If the department determines to approve the request, it must send the packet to DHR for review before communicating the determination to the employee. If the department determines to deny the request, the department must state the reason for the denial on the form.
9. Copies of approved exemption requests must be sent to the employee's supervisor and reported in PeopleSoft along with the employee's "Unvaccinated" status.
10. If the employee will be accommodated, the department must implement the accommodation(s) by the date upon which the employee is required to be fully vaccinated under the City Vaccination Policy (i.e., October 13 or 14, or November 1).
11. If the employee fails to comply with the approved accommodations, including testing and masking requirements, the department will revoke the accommodation.

B. Religious Exemption Process

1. Employees should complete and sign an **Employee Request for Religious Accommodation Form (COVID-19 Vaccination Exemption)**. Departments must consider any request for a religious accommodation that provides sufficient notice of an employee's asserted inability to comply with vaccination requirements for religious

reasons, whether the request is on the designated form, in writing, or communicated orally to a supervisor or department personnel official.

2. Employees must answer all relevant questions regarding the religious belief, practice or observation that prevents them from getting the COVID-19 vaccination.
3. Employees must submit a completed form, or an equivalent writing regarding the request for a religious exemption from the vaccination requirement, with any relevant statements, documents, or information pertaining to the religious belief, practice or observation that prevents them from getting vaccinated to a department personnel official, supervisor or manager.
4. Department personnel officials should make reasonable efforts to acknowledge receipt of employee requests for religious exemptions from vaccination requirements within two (2) business days. Acknowledgments may be via email stating the request has been received, or by returning a copy of the Employee Request for Religious Accommodation Form (COVID-19 Vaccination Exemption) stamped "Received" with the receipt date on the face of the document.
5. Employees may be required to submit additional information regarding the religious nature or the sincerity of a particular belief, practice or observance. Relevant information may include:
 - (a) letters from a religious leader explaining the nature of the religious belief(s), practice(s) or observation(s) and the need for an exemption from the vaccination;
 - (b) articles from religious scholars that describe the nature of the religious belief(s), practices(s), or observance(s) and the need for an exemption from the vaccination requirement;
 - (c) excerpts from religious or sacred texts explaining religious belief(s), practices(s), or observance(s) that prohibit vaccination;
 - (d) written materials describing the religious belief(s), practice(s) or observance(s) that prohibits vaccination;
 - (e) statements, affidavits or other documents from the employee describing the beliefs, practices, or observances, including information regarding when the employee embraced the belief(s), practice(s) or observance(s), as well as when, where and how the employee has adhered to the belief, practice, or observance that prohibits vaccination;
 - (f) statements, affidavits or other documents from potential witnesses identified by the employee as having knowledge of whether the employee adheres or does not adhere to the belief(s), practice(s) or observance(s) that prohibits vaccination, (e.g., religious leader, family, friend, neighbor, supervisor, or coworker who may have

observed the employee's past adherence, or lack thereof, or discussed it with the employee).

6. Department personnel officials will review requests for religious exemptions and determine whether additional information is required.
7. Employees who do not submit requested information within a reasonable period of the request for additional information from a department personnel official may be denied an exemption from the vaccination requirement, unless the department approves an extension of time for submitting the requested information.
8. Employees may use the **Religious Accommodation Certification Form (COVID-19 Vaccination Exemption)** to submit additional information in support of a request for religious exemption from the vaccination requirement.
9. Department personnel officials will make determinations and respond to an employee requests for religious exemptions from the vaccination requirement within a reasonable time after receiving an accommodation request and any supporting information requested by the department. Department personnel should consult with the department's assigned Deputy City Attorney and DHR regarding questions on requests for exemption.
10. If the department concludes that an employee has a sincerely held religious belief that prohibits them from receiving the COVID-19 vaccine, the department must consider what, if any, reasonable accommodation it can offer that would allow the employee to continue to perform the essential functions of their job. The department must evaluate the considerations outlined above in Section III(B) when determining if it is able to reasonably accommodate the employee.
11. Department personnel officials should use the **Accommodation Determination Form (COVID-19 Vaccination Exemption)** to document and communicate final determinations on employee requests for religious exempts from vaccinations requirements. If the department determines to approve the request, it must send the packet to DHR for review before communicating the determination to the employee. If the department determines to deny the request, the department must state the reason for the denial on the form.
12. Copies of approved exemption requests must be sent to the employee's supervisor and reported in PeopleSoft along with the employee's "Unvaccinated" status.

13. If the employee will be accommodated, the department must implement the accommodation(s) by the date upon which the employee is required to be fully vaccinated under the City Vaccination Policy (i.e., October 13 or 14 or November 1).

14. If the employee fails to comply with the approved accommodations, including testing and masking requirements, the department will revoke the accommodation.

V. Contesting Department Determinations

An employee who believes that the department's determination on their request for an exemption violates protections for employees with disabilities or religious beliefs may file an internal discrimination complaint with the DHR, Equal Employment Opportunity Division, for a determination by the Human Resources Director, whose determinations are appealable to the Civil Service Commission. Employees may, in the alternative, file a grievance alleging disability or religious discrimination in violation of provisions in the applicable Memorandum of Understanding. Filing a complaint or grievance does not stay the department's further action in connection with its review, approval, or denial of an employee's request for exemption.

VI. Testing and Masking Requirements for Unvaccinated Employees

Unvaccinated employees with an approved exemption must:

1. Test for COVID-19 at least once a week (or more as required by the state and local Public Health Orders) using either a nucleic acid (including polymerase chain reaction (PCR)) or antigen test; AND
2. Wear a Well-Fitted Mask (or other face covering as required by the state or local Public Health Orders) at all times while working indoors or in a vehicle with another person or, if outdoors, when less than six feet from any other individual. Employees subject to this requirement may remove their mask indoors for the limited purpose of eating or drinking, but must be at least six feet from others when doing so, or when alone in a private office with the door closed.

Masking and testing do not necessarily constitute a complete or sufficient reasonable accommodation. These are the minimal safety requirements for unvaccinated persons in the workplace. Departments must determine, on a case-by-case basis, whether the masking and testing requirements above are adequate an reasonable accommodation for employees seeking an exemption from the vaccination requirement. Departments should refer to guidance in section III(B), to make determinations on what, if any, accommodations will enable employees to remain in their current jobs.

V. Citywide Job Search Process

Only employees with qualifying disabilities or sincerely held religious beliefs that prevent vaccination may participate in the Citywide job search, following a determination by their department that no reasonable accommodation will enable them to remain in and perform the essential functions of their current jobs.

If an eligible employee expresses interest in participating in the Citywide vacancy search, departments should promptly refer the vaccination exemption request to the DHR, EEO Division, Citywide Reasonable Accommodation Coordinator. The Citywide Reasonable Accommodation Coordinator will contact the employee to confirm participation in the search process. Participation in the citywide job vacancy search is voluntary.

DHR will conduct the search for 60 days. An employee placed in a vacant position may be required to serve a probationary period. Employees who decline the Citywide job search will be subject to separation on the applicable vaccination deadline for inability to meet the job-related vaccination requirement.

If an employee elects to participate in the Citywide job search and the applicable deadline for full vaccination (October 13 or 14 or November 1) has passed, the employee will remain out of the workplace pending the results of the search. In such cases, employees may use any accrued paid leave balances other than paid sick leave.