



A Union of Professionals

Frequently Asked Questions

Vaccination of Healthcare Workers for H1N1 and Other Communicable Diseases

Q. Can employers require healthcare workers to be vaccinated against H1N1 or other communicable diseases?

A: If healthcare workers are not covered by a collective bargaining agreement, they may be required by their employers to show proof of vaccination as a condition of employment—unless there is a state law that allows the workers to opt out.

If there is a contract in place, workers may have additional rights. In 2007, a federal court upheld an arbitrator's ruling that Virginia Mason Hospital in Seattle violated the collective bargaining agreement with the Washington State Nurses Association when the hospital unilaterally implemented a new policy requiring that employees either produce proof of flu vaccination or face termination. The arbitrator ruled that the new requirement should have been negotiated with the union because it was a condition of both initial and continued employment and therefore a mandatory subject of bargaining.

It's important to note that arbitration rulings do not set precedent in the same way that legal decisions do—another arbitrator looking at the same facts could rule differently—but arbitration rulings do provide helpful guidance on how a similar case could be argued.

It's also important to note that the hospital subsequently instituted a new policy requiring nurses who had not been immunized to either take prophylactic antiviral medication or wear facemasks when in direct contact with patients during flu season. That policy was not found to be a mandatory subject of bargaining because there was no threat of termination attached.

Q: Do federal or state laws require mandatory vaccination of healthcare workers?

A: There are no federal laws requiring vaccination, but the Joint Commission does require accredited organizations to offer influenza vaccinations to staff, including volunteers and licensed independent practitioners with close patient contact as a condition of accreditation.

Fifteen states* have regulations regarding vaccination of healthcare providers. Those regulations require facilities to offer vaccination to providers and, in some cases, require employees to provide proof that they have been vaccinated; however, there are exemptions in every state law that allow some people to opt out.

A new policy from the New York State Department of Health, effective August 13, 2009, requires mandatory influenza vaccination as a condition of employment for newly hired healthcare employees, and as a requirement for current healthcare employees. The only exemption from this policy is when a nurse practitioner or physician determines that influenza immunization is medically contraindicated for an individual.

Q: Can workers claim exemption from requirements that they be vaccinated?

A: All of the states that have laws governing the issue allow workers to opt out if vaccinations are medically contraindicated or if the worker declines on religious grounds. With the exceptions of Arkansas and Maine, where the law applies only to nursing homes, all states also allow opt-outs if the employee refuses the vaccine after being fully informed of the health risks of not being immunized.

Q: What are the arguments for mandatory vaccination of healthcare workers?

A: The spread of seasonal influenza is a perennial issue; now, however, we are confronting the prospect of both seasonal influenza and the novel H1N1 influenza. There is research indicating that influenza rates spike very rapidly, primarily in long-term healthcare facilities, and there is some evidence of rapid transmission in other healthcare settings. Clinicians and researchers are looking for effective methods to reduce the transmission of influenza. One argument focuses on vaccinating all residents in long-term institutions and all healthcare workers; the argument points out that:

- The overall influenza vaccination rate among U.S. healthcare workers (HCWs) is low (approximately 40 percent).
- Increasing vaccination rates among HCWs limits the incidence of influenza and the impact of a pandemic on the population.
- Lowest rates of vaccination are among those most likely to be providing direct care to vulnerable populations (HCWs who are under 50, who are black and who are health aides).

Q: What are the arguments against mandatory vaccination of healthcare workers?

A: Mandatory vaccination is just one strategy for reducing the spread of influenza. It should be part of a comprehensive program that includes training, education, and work-related strategies for reducing exposure and spread.

- Vaccination is no guarantee of immunity. Vaccine efficacy rates can vary according to the seasonal vaccination being offered.
- Vaccines may be more or less effective depending on the ability of the virus to mutate over time.
- Mandatory vaccination, implemented as the primary strategy in reducing the rate and spread of infection, provides a false sense of security and may result in less emphasis on a comprehensive program. Workers need to continue practicing methods to protect themselves and their patients from exposure and infection.
- An education and information campaign has been proven to be effective at significantly increasing the rates of vaccination among healthcare workers.

Q: What would a comprehensive program to prevent all influenzas include?

A:

- Broad employee education and training prior to vaccination.
- Availability and use of appropriate respiratory protection devices (N95) after medical clearance, fit testing and training.
- Meticulous hand washing and glove use.
- Non-punitive use of sick leave for symptomatic workers.
- Free and voluntary immunizations, made available during work hours.
- Provision of antiviral medications once exposure is suspected.

Q: What types of contract language should unions consider negotiating regarding H1N1 and other contagious illnesses?

A:

- Non-punitive, free and accessible vaccination programs.
- Right to sign an informed declination, without punitive action, after receiving education.
- Medical clearance, fit testing and training of all staff for respirator use.
- Ensuring an adequate supply of N95 respirators.
- Active medical management program that encourages symptomatic workers to report to employee healthcare.
- Sick leave policies that match federal guidelines.
- Written procedures for handling of suspected and documented cases of H1N1 patients.
- Free, antiviral medications for exposed personnel.

* States with laws regarding vaccination of healthcare workers: Alabama, Arkansas, Florida, Kentucky, Maine, Maryland, New Hampshire, New York, North Carolina, Oklahoma, Oregon, Pennsylvania, Rhode Island, Texas and Utah.