

Diane Regester

From: John Armeno <jarmeno@optonline.net>
Sent: Tuesday, January 26, 2021 9:52 AM
To: Anthony Basantis; Anthony Cureton ; Armando Fontoura (Armando Fontoura); Bob Nolan; Carmel Morina (Carmel Morina); Chuck Miller ; Darring Russo; Eric Scheffler; Frank Schillari; Fred Brown; Gilbert Wilson; James J. McDonald; James M. Gannon; John Kemler; Michael Mastronardy; Michael Strada; Mildred.scott@co.middlesex.nj.us; Peter Corvelli; Richard Berdnik; Robert Austino; Shaun Golden
Subject: FW: May a Public Employer Require Vaccination Against COVID-19? For the most part, the answer is "yes."
Attachments: SOG Blog - Requiring COVID-19 Vaccination - January 4, 2021.pdf

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From: Eddie Caldwell <ecaldwell@ncsheriffs.net>
Sent: Monday, January 25, 2021 8:00 AM
To: NCSA List --- Sheriffs and Sheriffs' Personnel <sheriffs-and-sheriffs-personnel@list.ncsheriffs.net>
Subject: May a Public Employer Require Vaccination Against COVID-19? For the most part, the answer is "yes."

To: All Sheriffs

We have been asked whether a sheriff can require sheriff's office employees to take the vaccination against COVID-19.

That question is addressed thoroughly in the blog post attached to this email written by Diane M. Juffras. Ms. Juffras is the Albert and Gladys Hall Coates Distinguished Term Professor of Public Law and Government at the School of Government of The University of North Carolina at Chapel Hill. She may be reached at 919-843-4926 and at juffras@soq.unc.edu

If you have questions or need additional information on this topic, please contact Ms. Juffras directly.

Thanks.....Eddie C.



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North Carolina Sheriffs' Association
Proudly Serving the Sheriffs and Citizens of North Carolina since 1922



Coates' Canons Blog: May a Public Employer Require Vaccination Against COVID-19?

By Diane Juffras

Article: <https://canons.sog.unc.edu/may-a-public-employer-require-vaccination-against-covid-19/>

This entry was posted on December 20, 2020 and is filed under Discipline & Discharge, Employment, Featured Posts Related To COVID-19, General Local Government (Miscellaneous), Medical Inquiries & Medical Testing, Miscellaneous

UPDATED JANUARY 4, 2021

Every year many employers choose to require employees to undergo vaccination against seasonal influenza (flu). This year, however, a different decision will confront employers: whether to require employees to undergo vaccination against COVID-19.

The flu vaccine has been around for a long time and its side effects and efficacy are well understood. The COVID-19 vaccines—two already in use, others on the way—are new. Several of them use new methods. Government employers and employees want to know: may a public employer require employees to be vaccinated against COVID-19?

For the most part, the answer is “yes.”

Background

The Development and Approval of COVID-19 Vaccines

In the United States, vaccines must be approved by the Food and Drug Administration (FDA) before they can be marketed and distributed. This is normally a lengthy process. In extraordinary circumstances, a vaccine that has not yet been formally approved by FDA can be granted emergency use authorization (EUA), allowing an otherwise unapproved product to be used and distributed during a public health or other emergency. The FDA decides whether to issue an EUA for a vaccine based on data about safety and effectiveness from completed or ongoing clinical trials in volunteers. It evaluates whether the known and potential benefits outweigh the known and potential risks of the vaccine. Manufacturers of vaccines are required to continue their clinical trials in volunteers and to monitor the vaccine for safety and effectiveness after an EUA is granted. For an explanation of how an EUA differs from a regular FDA approval, see [here](#), [here](#) and [here](#).

The Advisory Committee on Immunization Practices (ACIP) of the federal Centers for Disease Control and Prevention (CDC) also performs a separate analysis of vaccine candidates and makes recommendations for their use. Among other things, ACIP makes recommendations about who should receive a particular vaccination, and identifies any medical contraindications to the vaccine. .

At the time of this writing, two COVID-19 vaccines have received EUAs from the FDA and have been recommended for use by ACIP. Clinical trials of additional vaccines are underway and it appears likely that more authorizations will be issued in the coming months.

Public Employers May Require Vaccination Against COVID-19

Nothing prohibits a North Carolina public employer from requiring some or all of its employees to be vaccinated against particular illnesses, including COVID-19. So long as a vaccine has been authorized for use by the FDA, ***an employer may require all of its employees to be vaccinated as a condition of employment, subject only to medical exceptions required by the ADA and religious exceptions required by Title VII of the Civil Rights Act of 1964.***

Mandatory Vaccinations Do Not Violate the U.S. Constitution.

Governmental employers often face significant restrictions that private employers do not face, because governmental employers are directly subject to the requirements of the Constitution.



A decision from more than a century ago, however, indicates that mandatory vaccinations in a public health emergency do not violate the Constitution. That decision came in the 1905 case of *Jacobson v Massachusetts*, 197 U.S. 11. The U.S. Supreme Court upheld a Massachusetts law that permitted municipalities to order vaccination of all residents. That law, the Court held, did not violate the Fourteenth Amendment to the U.S. Constitution. The Court found that during a public health emergency, the government's police power allows it to restrain a citizen's rights in order to promote the common good, so long as the restraints are not imposed in an "arbitrary, unreasonable manner," and do not "go so far beyond what was reasonably required for the safety of the public." The *Jacobson* court did say that courts would be obliged to find an exception to a mandatory vaccination regulation for a person who had a condition that could result in serious injury to health or death from the vaccine—in modern words, a person with a medical contraindication. In the decades since, the courts have applied *Jacobson's* broad endorsement of the government's right to take measures to protect public health to a wide variety of situations. Recently, in the context of the COVID-19 pandemic, a few lower courts have found that *Jacobson's* rationale cannot be used to justify particular restraints on free speech and freedom of worship. But when it comes to vaccines, *Jacobson* is still good law.

Does It Matter That the COVID-19 Vaccines Have Only an EUA and Not a Regular Approval?

The vaccinations available at the time of this writing are being administered under an Emergency Use Authorization (EUA) from the federal Food and Drug Administration. There is nothing to suggest that this fact changes the analysis that a government and therefore, a government employer, may require vaccination against COVID-19. The section of the federal Food, Drug and Cosmetic Act that governs the issuance of an EUA [21 U.S.C. § 360bbb-3(e)(A)(ii)(III)] says that any person who is going to take the vaccine must be told that they have the option to accept or refuse the vaccine and the consequences, if any, of refusing. They must also be told of any alternatives to the vaccine that are available and of their benefits and risks.

In other words, no employer, health care provider or pharmacist can take another person by physical force and vaccinate them. The person must be willing to receive the vaccine. But that doesn't prohibit an employer from requiring vaccination against COVID-19 as a condition of employment. It doesn't prevent discipline or even discharge as a consequence of refusing to be vaccinated against COVID-19.

What Does the EEOC Say About Mandatory COVID-19 Vaccinations?

Most employers, public and private, are subject to the Americans With Disabilities Act and to Title VII of the Civil Rights Act of 1964. Those statutes, in their prohibitions against discrimination, may affect an employer's ability to require that a particular employee submit to a COVID-19 vaccination.

The federal Equal Employment Opportunity Commission (EEOC) administers the ADA and Title VII. It recently updated its online guidance *What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws* to add a new section (Section K) about vaccination. This is an excellent and comprehensive discussion of how employee vaccination requirements interact with anti-discrimination laws. It should be consulted by employers looking for a detailed discussion. In brief, here's what the EEOC has to say about mandatory employee vaccination against COVID-19:

- First, while the ADA and Title VII continue to apply during the COVID-19 pandemic, they do not interfere with or prevent employers from following the guidelines and suggestions made by the Centers for Disease Control and Prevention (CDC) and state and local public health authorities about steps employers should take regarding the spread of this disease. The EEOC has updated its comprehensive publication *Pandemic Preparedness in the Workplace and the Americans With Disabilities Act* to include discussion of COVID-19.
- A vaccination is not a medical examination. Thus, it is not subject to the ADA's regulation of medical examinations of employees.
- According to the CDC, health care providers should ask certain questions before administering a vaccine to ensure that there is no medical reason that would prevent the person from receiving the vaccination. *But pre-vaccination medical screening questions are likely to elicit information about a disability and therefore could fall under the ADA's regulation of medical examinations of employees.* As the next two bullet points show, how the vaccination is administered may determine how the ADA applies to the pre-vaccination screening.



- In the first situation, the pre-vaccination questions are simply not subject to the ADA's regulation of medical inquiries. When an employee is vaccinated by an independent entity that is not acting on the employer's behalf, such as the employee's personal physician, an independent medical clinic, a retail pharmacist, or a local health department that is not sharing information with the employer, pre-vaccination screening questions are **not** disability-related inquiries restricted by the ADA. *This would be true even where the employer has required the employee to receive a COVID-19 vaccine.*
 - In the other situation, however, pre-vaccination medical questions **are** subject to the ADA's medical-inquiry regulations, but are unlikely to violate them. When the pre-vaccination questions *are asked by the employer or by a third-party contractor brought in to administer vaccinations on the employer's behalf*, they do fall under the ADA. For such questions to be lawful, the employer must show that these inquiries are "job-related and consistent with business necessity." In the case of vaccination against COVID-19, to show that the pre-vaccination screening is job-related and consistent with business necessity, an employer would have to have a reasonable belief that employees who did not answer the questions and, therefore, did not receive a vaccination, would pose a direct threat to the health or safety of themselves or others. **The EEOC has expressly recognized that COVID-19 satisfies the direct threat standard.** See *Pandemic Preparedness in the Workplace*, under Part II (Relevant ADA Requirements and Standards), Section B (Direct Threat). So, even when the employer is administering the vaccination itself (or directing its administration) and asking pre-vaccination questions, there is no violation of the ADA.
- **An employer may require proof that an employee has received a COVID-19 vaccination.** This is not a disability-related inquiry because there are many reasons why an employee may not have been vaccinated, which may or may not be disability-related.
 - The ADA requires employers to keep any employee medical information obtained in the course of the vaccination program confidential.
 - Under the ADA, an employer must accommodate an employee who has a medical condition that makes it inadvisable for that employee to receive a COVID-19 vaccine unless accommodating the employees poses an undue hardship on the employer.
 - Under Title VII, an employer must accommodate an employee whose sincerely held religious beliefs are incompatible with COVID-19 vaccination.

Medical Exemptions from a Mandatory Vaccination Requirement

An employee may have a disability that prevents him or her from taking a vaccine generally, or a particular vaccine such as a COVID-19 vaccine (because, for example, they are allergic to an ingredient used in the making of the vaccine). The employer must make a reasonable accommodation for that employee. This is an ADA requirement, but it is also a constitutional requirement under *Jacobson v. Massachusetts*, discussed above. Such an accommodation may result in the employee being exempt from the vaccination requirement and it may not.

As with all requests for accommodation because of a disability, an employer is entitled to documentation from the employee's health care provider about the nature of the medical condition and how the condition makes it unsafe for the employee to receive any or all of the COVID-19 vaccines.



Employers must, as with all situations of reasonable accommodation, engage in an interactive process with employees whose medical condition makes them unable to take the vaccine to try to find a suitable accommodation. The EEOC has said that it generally considers exemption from a vaccine requirement to be a reasonable accommodation in such cases. But as with all ADA accommodations, an employer is not required to accommodate an employee's disability where to do so would cause an undue hardship. What is an undue hardship in the COVID-19 context? As with all matters involving the ADA, every situation must be evaluated on its own merits, even in the context of COVID-19. Here, one of the most important considerations will be whether the individual employee will pose a direct threat if they remain in the workplace without being vaccinated. In other words, will this employee expose co-workers or the public to the COVID-19 virus? Given the nature of local government employment, the answer to this question will often be "yes."

In some cases, however, an employer will be able to accommodate an employee who cannot be vaccinated by allowing the employee to work remotely for the duration of the pandemic emergency. But not all work can be done remotely. Some jobs involve working out in the community. Others involve providing direct, in-person service to the public from the local government employer's offices. Some jobs require in-person collaboration with others. See 29 CFR § 1630.2(p).

For employees whose work cannot be performed remotely and whose presence at work could expose others to the virus, *an employer may prohibit that employee from continuing to work*. As noted above, the EEOC has said that COVID-19 may be considered a direct threat to others in the workplace or to members of the public who interact with the employer's workforce. In such a situation, an employer may exclude that person from the workplace. The employer might put the employee on an indefinite, unpaid leave (or allow the employee to use any accrued paid leave or accrued comp time). But it is possible that the employer will find that the only alternative is termination of employment.

Religious Exemptions from a Mandatory Vaccination Requirement

An employee may have a sincerely held religious belief, practice, or observance that forbids taking a COVID-19 vaccination. Once an employer gets notice of this situation, the employer must, as under the ADA, provide a reasonable accommodation unless it would pose an undue hardship. But it is easier for an employer to meet the test for undue hardship under Title VII than under the ADA. Nonetheless, an employer will likely want to apply the same analysis to an employee's request for a religious accommodation from a COVID-19 vaccination requirement as it does for requests for an ADA accommodation.

For a more detailed discussion of exemption from vaccination as a reasonable accommodation of a religious belief under Title VII, see my publication, *Are You Prepared? Legal Issues Facing North Carolina Public Employers in Disasters and Other Emergencies*.

What Does OSHA Say About Mandatory COVID-19 Vaccinations?

To date, neither the federal Occupational Safety and Health Administration (OSHA) nor the Occupational Safety and Health Division of the North Carolina Department of Labor (NC OSH) have issued any formal or informal guidance or opinions that specifically address COVID-19 vaccination (NC OSH has an enforcement agreement with OSHA and generally adopts OSHA's standards and guidance). OSHA has addressed the question of whether an employer may require vaccination against seasonal flu, however. In a 2009 opinion letter posted on the OSHA website, the acting assistant secretary of labor said,

. . . {A}lthough OSHA does not specifically require employees to take the vaccines, an employer may do so. In that case, an employee who refuses vaccination because of a reasonable belief that he or she has a medical condition that creates a real danger of serious illness or death (such as serious reaction to the vaccine) may be protected under Section 11(c) of the Occupational Safety and Health Act of 1970 pertaining to whistle blower rights.

So it seems reasonable to conclude that OSHA, like the EEOC, will allow employers to require COVID-19 vaccination provided that it makes an exception in the case of those employees for whom this vaccine is contraindicated for medical reasons.

What If an Employee Refuses But Has No Medical or Religious Excuse?



Employees who refuse to take a mandatory vaccination without medical documentation and without pointing to a sincerely held religious belief may be disciplined or terminated from employment. Perhaps the employee simply does not wish to be vaccinated, or thinks vaccinations bring on other illnesses, or does not trust the federal government or the CDC. In these circumstances, the employee does not have a legal basis for refusing. Refusal to be vaccinated is a form of failure to abide by the terms and conditions of employment and of insubordination. Employers must, of course, follow any procedures set forth in their personnel policies in administering any discipline or in terminating employment.

Another Consideration in Deciding Whether to Require COVID-19 Vaccination: Distribution of the Vaccine

COVID-19 vaccinations will not be immediately available to all takers. The North Carolina Department of Health and Human Services (NC DHHS) has considered the recommendations of the CDC's Advisory Committee on Immunization Practices and the North Carolina Vaccine Advisory Committee and has devised a vaccine distribution plan (the "NC Plan"). The NC Plan calls for the vaccine to be distributed in phases based on a combination of high risk of exposure to the virus and high risk of severe illness from the virus. This means that employers who require their employees to receive the COVID-19 vaccination will not be able to have all their employees vaccinated at the same time. You can see a representation of the NC Plan on the second page of NC DHHS's vaccine flyer [here](#).

The NC Plan aligns closely with the CDC's recommendations about the priority different groups should be given. It calls for approximately 140,000 – 161,000 people to be vaccinated during the first phase, known as Phase 1A. Persons vaccinated during Phase 1A will be limited to health care workers and COVID responders at high risk for exposure based on work duties or who are vital to the initial COVID vaccine response. As of the date of publication, this includes those who care for COVID-19 patients, as well as those providing cleaning services in areas where COVID-19 patients are treated; EMTs and paramedics; health care workers performing intubations or CPR; those administering intranasal COVID-tests; and those administering the COVID-19 vaccine. See the NC DHHS Fact Sheet, *Deeper Dive: Phase 1A*. This list clearly includes a number of local government positions both in public safety departments and in local health departments, including those providing janitorial services in a health department clinical areas.

Some, but not all of the NC Plan's phases are further divided into priority groups. Phase 1B, for example, is further divided into three groups. Phase 1B Group 1, therefore, will be eligible for vaccination before those in Phase 1B Groups 2 and 3. Here are the Phase 1B Groups as set forth in the NC DHHS Fact Sheet, *Deeper Dive: Phase 1B*:

Phase 1B, Group 1: Anyone 75 years of age and older. There is no requirement that a person have conditions that make them more at risk for complications from COVID-19.

Phase 1B, Group 2: Any health care workers not vaccinated in Phase 1A who provide direct patient care or who work in areas where in-person patient care occurs, as well as essential front line workers and over age 50. There is no requirement that a person have conditions that make them more at risk for complications from COVID-19.

Phase 1B, Group 3: All other health care workers providing direct patient care who were not vaccinated in Phase 1A and front line essential workers of any age. Again, there is no requirement that a person have conditions that make them more at risk for complications from COVID-19.

Of the groups eligible for vaccination during **Phase 1B**, those most relevant to public employers include those providing behavioral health services, community health workers, dentists and dental hygienists in public health clinics, environmental services staff, home health workers, laboratory and phlebotomy staff, pharmacists, respiratory techs, front-office administrative staff of health clinics, and emergency management employees, as well as doctors, nurses, nursing aides and assistants and EMTs and paramedics who have not been vaccinated in Phase 1A.

Public employee essential workers who are eligible to be vaccinated in **Phase 1B, Groups 2 and 3** include firefighters and law enforcement officers, educators and support staff, day care employees, jail and corrections staff and public transit employees.

Phase 2 will expand the pool of those eligible for vaccination to include all adults at high risk of exposure and at increased risk of severe illness from COVID-19. Phase 2 includes 4 sub-groups. They are, in order of priority,:



Phase 2, Group 1: Anyone 65-74 years old, regardless of health status.

Phase 2, Group 2: Anyone 16-64 years old with high-risk medical conditions such as cancer, chronic kidney disease, COPD, being immunosuppressed from an organ transplant, obesity, serious heart condition, sickle cell disease and type 2 diabetes, among others.

Phase 2, Group 3: Anyone who is incarcerated or living in other close group living settings who is not already vaccinated due to age, medical condition or job function.

Phase 2, Group 4: Other essential workers not yet vaccinated. This group includes employees in water and wastewater systems, information technology, public works and traffic engineers and public health workers not vaccinated earlier.

As of yet, NC DHHS has yet to issue Deeper Dive Fact Sheets for Phase 2.

In **Phase 3**, college and university students and K-12 students over the age of 16 will be eligible for vaccination.

Phase 4 covers everyone else.

This is *not* a complete and exhaustive list of those eligible for priority vaccination, but only highlights those categories most relevant for public employers and employees.

As NC DHHS Issues more guidance, it should become relatively easy for public employers to identify those employees whose job duties qualify for vaccination during Phases 1A, 1B and 2. Only those in Phase 2, Group 2 have their eligibility for vaccination conditioned on the existence of a chronic medical condition – Phase 2, Group 2 is anyone ages 16-64 with medical conditions that put them at high risk for severe COVID-19 disease. *Asking employees who have those chronic conditions identified by the CDC as qualifying them for priority vaccination to identify themselves is allowed under the ADA because the EEOC has identified COVID-19 as pandemic and COVID-19 in the workplace as a direct threat, as discussed above.*

Conclusion

Recent surveys indicate that perhaps 40% of the population is unlikely to take a COVID-19 vaccine. Employers may, therefore, face significant resistance to a COVID-19 vaccine requirement. Nonetheless, mandatory vaccination is lawful, with the limitations discussed above.

Public employers should ask their local health departments for material and assistance in educating their workforces about the safety and efficacy of the different COVID vaccines to overcome any hesitation that may be based on misinformation. The North Carolina Department of Health and Human Services has prepared material that health departments and employers may use to encourage people to get vaccinated. Here are some of them:

- Fact Sheet – COVID-19 Vaccine Update (December 14, 2020)
- Flyer – COVID-19 Vaccines: Your best shot against COVID-19
- Infographic – Vaccine Development Process
- Infographic – Vaccination Rollout Plan
- Link – Frequently Asked Questions
- Presentation – COVID-19 Vaccination Overview
- Videos on Vaccine Rollout
 - NCDHHS Secretary Mandy Cohen shares information on the COVID-19 vaccine rollout plan (45-second, 30-second)
 - NCDHHS Deputy Secretary Ben Money shares information on the COVID-19 vaccine rollout plan (link)

DHHS will continue to update its vaccines page – <https://covid19.ncdhhs.gov/vaccines> — with new material. So check back there frequently.



Links

- www.fda.gov/vaccines-blood-biologics/vaccines/emergency-use-authorization-vaccines-explained
- www.fda.gov/consumers/consumer-updates/understanding-regulatory-terminology-potential-preventions-and-treatments-covid-19
- www.jhsph.edu/covid-19/articles/what-is-emergency-use-authorization.html
- supreme.justia.com/cases/federal/us/197/11/#tab-opinion-1921099
- www.law.cornell.edu/uscode/text/21/360bbb-3
- www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws?utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=
- www.eeoc.gov/laws/guidance/pandemic-preparedness-workplace-and-americans-disabilities-act
- www.law.cornell.edu/cfr/text/29/1630.2
- www.sog.unc.edu/publications/books/are-you-prepared-legal-issues-facing-north-carolina-public-employers-disasters-and-other-emergencies
- www.osha.gov/laws-regs/standardinterpretations/2009-11-09
- files.nc.gov/covid/documents/vaccines/NCDHHS-Vaccines-Flyer.pdf
- files.nc.gov/covid/documents/vaccines/Deeper-Dive-Phase-1a.pdf
- files.nc.gov/covid/documents/vaccines/Deeper-Dive-Phase-1b.pdf
- fivethirtyeight.com/features/many-black-americans-republicans-women-arent-sure-about-taking-a-covid-19-vaccine/
- files.nc.gov/covid/documents/COVID-19-Vaccine-Update.pdf
- files.nc.gov/covid/documents/Vaccine-Timeline.pdf
- files.nc.gov/covid/documents/vaccines/NCDHHS-Vaccine-Infographic.pdf
- [urldefense.com/v3/__https://covid19.ncdhhs.gov/vaccines/frequently-asked-questions__;!!HYmSToolJncWrlUWKOG7S2PnErGSn1uBQWLKfOS0YwltQfAKoTucA1kKB26kDsfl_OAzfpAkQVS_CsvFn\\$](https://urldefense.com/v3/__https://covid19.ncdhhs.gov/vaccines/frequently-asked-questions__;!!HYmSToolJncWrlUWKOG7S2PnErGSn1uBQWLKfOS0YwltQfAKoTucA1kKB26kDsfl_OAzfpAkQVS_CsvFn$)
- files.nc.gov/covid/documents/COVID19-Vaccine-101-Deck-Final.pdf
- [urldefense.com/v3/__https://youtu.be/AqURGYSEiDU__;!!HYmSToolJncWrlUWKOG7S2PnErGSn1uBQWLKfOS0YwltQfAKoTucA1kKB26kDsfl_OAzfpAkQdwKBodl\\$](https://urldefense.com/v3/__https://youtu.be/AqURGYSEiDU__;!!HYmSToolJncWrlUWKOG7S2PnErGSn1uBQWLKfOS0YwltQfAKoTucA1kKB26kDsfl_OAzfpAkQdwKBodl$)
- [urldefense.com/v3/__https://youtu.be/ngCO-qsrRiY__;!!HYmSToolJncWrlUWKOG7S2PnErGSn1uBQWLKfOS0YwltQfAKoTucA1kKB26kDsfl_OAzfpAkQcw7vKVG\\$](https://urldefense.com/v3/__https://youtu.be/ngCO-qsrRiY__;!!HYmSToolJncWrlUWKOG7S2PnErGSn1uBQWLKfOS0YwltQfAKoTucA1kKB26kDsfl_OAzfpAkQcw7vKVG$)
- covid19.ncdhhs.gov/vaccines

Diane Regester

From: John Armeno <jarmeno@optonline.net>
Sent: Thursday, March 11, 2021 2:55 PM
To: Anthony Basantis; Anthony Cureton ; Armando Fontoura (Armando Fontoura); Bob Nolan; Carmel Morina (Carmel Morina); Chuck Miller ; Darring Russo; Eric Scheffler; Frank Schillari; Fred Brown; Gilbert Wilson; James J. McDonald; James M. Gannon; John Kemler; Michael Mastronardy; Michael Strada; Mildred.scott@co.middlesex.nj.us'; Peter Corvelli; Richard Berdnik; Robert Austino; Shaun Golden
Subject: FW: Increased Indoor Capacity, American Rescue Plan, & Mandatory Vaccinations
Attachments: Executive Order No. 230 Increased Capacity Limits.pdf; American Rescue Plan NACo Analysis 031121.pdf; Mandatory Vaccination Hannon Neals 031021 .pptx

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From: John Donnadio <jdonnadio@njac.org>
Sent: Thursday, March 11, 2021 12:03 PM
Subject: Increased Indoor Capacity, American Rescue Plan, & Mandatory Vaccinations

Good morning. I hope all is well. We have several matters for your consideration this morning. The first is Executive Order No. 230, which increases the indoor capacity limits for indoor dining and both indoor and outdoor gatherings. The second is an updated county-related summary of the American Rescue Plan from our friends at the National Association of Counties (NACo). President Biden is expected to sign the measure into law any minute now. Finally, thank you again to Joe Hannon with Genova Burns and Bergen County Administrator/Counsel Julien Neals for yesterday's outstanding attached power point presentation on mandatory COVID-19 vaccinations at work. I hope you find this information helpful and that you take a very long walk outside at lunch today to enjoy the sunshine.

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EXECUTIVE ORDER NO. 230

WHEREAS, in light of the dangers posed by Coronavirus disease 2019 ("COVID-19"), I issued Executive Order No. 103 on March 9, 2020, the facts and circumstances of which are adopted by reference herein, which declared both a Public Health Emergency and State of Emergency; and

WHEREAS, through Executive Order Nos. 119, 138, 151, 162, 171, 180, 186, 191, 200, 210, and 215, issued on April 7, 2020, May 6, 2020, June 4, 2020, July 2, 2020, August 1, 2020, August 27, 2020, September 25, 2020, October 24, 2020, November 22, 2020, December 21, 2020, January 19, 2021, and February 17, 2021, respectively, the facts and circumstances of which are adopted by reference herein, I declared that the COVID-19 Public Health Emergency continued to exist and declared that all Executive Orders and Administrative Orders adopted in whole or in part in response to the COVID-19 Public Health Emergency remained in full force and effect; and

WHEREAS, in accordance with N.J.S.A. App. A:9-34 and -51, I reserve the right to utilize and employ all available resources of State government to protect against the emergency created by COVID-19; and

WHEREAS, as COVID-19 has continued to spread across New Jersey, I have issued a series of Executive Orders pursuant to my authority under the New Jersey Civilian Defense and Disaster Control Act and the Emergency Health Powers Act, to protect the public health, safety, and welfare against the emergency created by COVID-19, including Executive Order Nos. 104-133, Nos. 135-138, Nos. 140-166, Nos. 168-173, No. 175, Nos. 177-181, No. 183, Nos. 186-187, Nos. 189-198, No. 200, Nos. 203-204, No. 207, and Nos. 210-211 (2020) and Nos. 214-216, Nos. 219-220, Nos. 222-223,

No. 225, and Nos. 228-229 (2021), the facts and circumstances of which are all adopted by reference herein; and

WHEREAS, to limit community spread from person-to-person contact through use of social mitigation measures, Executive Order No. 107 (2020) closed all recreational and entertainment businesses, and limited all restaurants, dining establishments, and food courts, with or without a liquor license, all bars, and all other holders of a liquor license with retail consumption privileges, to offering food delivery and/or take-out services only; and

WHEREAS, after consultation with officials from the Department of Health ("DOH"), I announced a multi-stage New Jersey's Road Back Plan for the methodical and strategic reopening of businesses and activities based on scientific data and metrics concerning the level of disease transmission risk and essential classification; and

WHEREAS, because of the progress we had made in our fight against the COVID-19 pandemic in New Jersey, on Monday, June 22, 2020, I announced that indoor dining would be able to resume under strict limits as of Thursday, July 2, 2020, and that decision was formalized in Executive Order No. 157 (2020); and

WHEREAS, while Executive Order No. 157 (2020) announced the limited resumption of indoor dining, this step was put on hold in Executive Order No. 158 (2020), in light of COVID-19 spikes in states around the nation which state officials and other experts had attributed, at least in part, to activities in indoor food and beverage establishments; and

WHEREAS, indoor dining was permitted to resume on September 4, 2020, pursuant to Executive Order No. 183, with strict health and safety protocols in place, including limiting the number

of patrons to 25 percent of the establishment's stated maximum capacity; and

WHEREAS, Executive Order No. 157 (2020) permitted certain recreation and entertainment businesses to open their indoor premises subject to their compliance with specified health and safety protocols, including the same 25 percent capacity limitation; and

WHEREAS, Executive Order No. 157 (2020) permitted casinos and racetracks to resume operations conditioned on their compliance with requirements imposed by the Division of Gaming Enforcement and New Jersey Racing Commission; and

WHEREAS, Executive Order No. 181, issued August 27, 2020, permitted gyms, fitness centers, and health clubs to open their indoor spaces to the public at 25 percent of the facility's stated maximum capacity; and

WHEREAS, personal care service facilities were permitted to reopen their premises to the public pursuant to Paragraph 2 of Executive Order No. 157 (2020); and

WHEREAS, Executive Order No. 194 (2020) clarified that premises of indoor facilities providing personal care services are limited to 25 percent of the stated maximum capacity; and

WHEREAS, the current gatherings limits are set at 10 individuals indoors and 25 individuals outdoors; and

WHEREAS, Executive Order No. 196, issued November 16, 2020, declared that athletic practices and competitions, including professional and collegiate events, conducted indoors were subject to the indoor gathering limit of 10 persons, but permitted those events to exceed the gathering limits so long as no individuals were present who were not necessary for the event, though still at

levels no greater than 25 percent of the room's capacity or 150 persons, whichever is lower; and

WHEREAS, Executive Order No. 219, issued February 3, 2021, most recently increased the indoor limit for religious services to no greater than 35 percent of the room's capacity, but maintained the overall cap of 150 persons in place since September of 2020; and

WHEREAS, Executive Order No. 219 (2021) also increased the indoor limit for sporting events to no greater than 35 percent of the room's capacity, up to a maximum of 150 persons, where the event is limited to necessary persons; and

WHEREAS, that Order further increased indoor capacity limits for numerous businesses, including the indoor premises of food and beverage establishments, to 35 percent; and

WHEREAS, Executive Order No. 225 (2021) then increased the indoor capacity limit for gatherings that are religious services or celebrations to 50 percent of the capacity of the room in which they take place; and

WHEREAS, Executive Order No. 204 (2020) stated that outdoor athletic practices and competitions were subject to the outdoor gathering limit of 25 persons, but permitted those events to exceed the gathering limits so long as no individuals were present who were not necessary for the event; and

WHEREAS, Executive Order No. 222 (2021) explicitly permitted a limited number of parents and guardians to attend indoor and outdoor non-collegiate, non-professional sporting events; and

WHEREAS, Executive Order No. 225 (2021) subsequently clarified that a limited number of parents and guardians could also attend collegiate sporting events; and

WHEREAS, that Order also permitted certain larger venues, including sporting venues, to host events at 10 percent capacity indoors and 15 percent capacity outdoors; and

WHEREAS, in the past twelve months, we have gained critical knowledge regarding COVID-19, including a better understanding of the risks associated with certain activities, the activities that are most conducive to spread of the virus, and the safeguards that can be implemented to mitigate those risks; and

WHEREAS, this information, together with expanded access to testing, personal protective equipment, and other materials necessary to protect individuals from spread of the virus, as well as the ongoing COVID-19 Vaccination Plan ("Plan") discussed below, allows for certain activities to continue subject to more limited restrictions; and

WHEREAS, the number of hospitalized patients, patients in intensive care, and ventilators in use has decreased drastically over the past two months, and has remained stable during the last several weeks; and

WHEREAS, given the decrease in these key statistics, the State can take cautious, incremental steps to lift certain restrictions that were designed to limit person-to-person contact, including the indoor and outdoor gatherings limits and capacity restrictions on businesses; and

WHEREAS, certain gatherings, including religious services and political activity, are constitutionally protected activities, and restrictions on these gatherings should be less aggressive than restrictions on other gatherings; and

WHEREAS, courts both in New Jersey and across the nation have also recognized the propriety of accommodating religious services during the pandemic; and

WHEREAS, legislative and judicial proceedings are particularly important to the functioning of the State, the latter of which implicates constitutional rights and foundational privileges, and so should also proceed with less restrictive limits; and

WHEREAS, addiction group counseling services are a critical social and mental health service that necessitate robust group participation, particularly during the pandemic, which has heightened feelings of stress and social isolation, and thus can exceed the general gathering limit while following health and safety protocols; and

WHEREAS, certain events such as wedding ceremonies, funerals, and memorial services, which typically happen once in a lifetime, provide benefits to the well-being of the participants such that they can be treated differently from casual social gatherings such as house parties and birthday parties, which occur on a more frequent basis and typically do not present the same compelling need; and

WHEREAS, the current 35 percent capacity limit on the indoor premises of the above referenced establishments and on the indoor gathering limit for certain activities can safely be raised to 50 percent, as long as face covering and social distancing requirements are strictly observed; and

WHEREAS, 50 percent capacity is a limit that will continue to restrict congregation of large numbers of individuals in indoor settings; and

WHEREAS, as part of the State's response to COVID-19, DOH has created a comprehensive Plan to manage the receipt, administration, and tracking of the vaccines developed to

inoculate the State's residents and workforce against COVID-19;
and

WHEREAS, the State has thus far administered over 2.7 million doses of COVID-19 vaccines to individuals that live, work, and are educated in New Jersey and fit into specified high-risk categories, including healthcare workers and residents and staff of congregate care facilities that are at greater risk of exposure to COVID-19, frontline first responders including sworn law enforcement officers, individuals over the age of 65, individuals aged 16 to 64 years who are more inclined to severe illness as the result of exposure to COVID-19, and certain educators and child care workers;
and

WHEREAS, the process of vaccinating the population to levels sufficient to establish community immunity is expected to take several months; and

WHEREAS, while New Jersey is rapidly expanding its capacity to vaccinate large numbers of individuals each day, it is still appropriate to maintain mitigation protocols, including overall limits on capacity in establishments open to the public, to ensure spread is limited while dissemination of the vaccine continues;
and

WHEREAS, it is critical that individuals continue to follow social distancing, masking, and other infection control protocols while vaccine administration is ongoing in the State; and

WHEREAS, the Constitution and statutes of the State of New Jersey, particularly the provisions of N.J.S.A. 26:13-1 et seq., N.J.S.A. App. A: 9-33 et seq., N.J.S.A. 38A:3-6.1, and N.J.S.A. 38A:24 and all amendments and supplements thereto, confer upon the Governor of the State of New Jersey certain emergency powers, which I have invoked;

NOW, THEREFORE, I, PHILIP D. MURPHY, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. Paragraph 1 of Executive Order No. 196 (2020) is hereby rescinded and the number of individuals at indoor gatherings that are not religious services or celebrations, political activities, wedding ceremonies, funerals, or memorial services shall be limited to 25 persons. While the numerical limits on indoor gatherings in Paragraph 1 of Executive Order No. 196 (2020) are rescinded, all other requirements for indoor gatherings outlined in Paragraphs 5 and 6 of Executive Order No. 183 (2020), including those provisions that incorporate by reference the requirements of Paragraph 1 of Executive Order No. 152 (2020), shall remain in effect.

2. The number of individuals at indoor gatherings that are political activities, wedding ceremonies, funerals, or memorial services shall be limited to 35 percent of the capacity of the room in which it takes place, but regardless of the capacity of the room, such limit shall never be larger than 150 persons or smaller than 25 persons, excluding staff of the gathering venue. For purposes of this Order, any private residence or residential unit shall be treated as a single "room." Paragraph 3 of Executive Order No. 219 (2021) is hereby rescinded to the extent that it conflicts with the provisions of this Order. Legislative proceedings of State, county, or local government, including local Boards of Education, and State and local judicial proceedings are not subject to the capacity limits on gatherings in this or any other applicable Executive Order.

3. The number of individuals at indoor gatherings that are religious services or celebrations, including wedding ceremonies, funerals, and memorial services that involve religious services, shall be limited to 50 percent of the capacity of the room in which it takes place, excluding staff of the gathering venue, but regardless of the capacity of the room, such limit shall never be smaller than 25 persons. Paragraph 1 of Executive Order No. 225 (2021) is hereby rescinded to the extent that it conflicts with the provisions of this Order.

4. The number of individuals at an indoor gathering that involves an Alcoholics Anonymous meeting, Narcotics Anonymous meeting, or similar meeting of an addiction support group shall be limited to 35 percent of the capacity of the room in which it takes place, but regardless of the capacity of the room, such limit shall never be larger than 150 persons or smaller than 25 persons.

5. The number of individuals at an indoor gathering that is a wedding reception shall be limited to 35 percent of the capacity of the room in which it takes place, but regardless of the capacity of the room, such limit shall never be smaller than 25 persons or larger than 150 persons, excluding the reception venue's staff. Paragraph 1 of Executive Order No. 228 (2021) is hereby rescinded to the extent that it conflicts with the provisions of this Order.

6. It is hereby restated that entertainment centers where performances are viewed or given, including movie theaters, performing arts centers, and other concert venues, that have opened their indoor spaces to the public, must limit the number of patrons in any indoor room where a performance is viewed or given to 35 percent of the stated maximum capacity, if applicable, at one time, but regardless of the capacity of the room, such limit shall never be larger than 150 persons, excluding the entertainment center's

employees. The other requirements outlined in Paragraph 2 of Executive Order No. 183 (2020) continue to apply. Such indoor entertainment centers may host a performance in an adjacent outdoor area with a maximum capacity equivalent to the facility's indoor capacity permitted under this Paragraph.

7. Any requirements in any Executive Order, Administrative Order, or agency directive that incorporated by reference the gatherings limits in Executive Order Nos. 107, 142, 148, 152, 156, 161, 173, 183, 196, or 204 (2020), or No. 219 (2021) are amended to reflect the rules on gatherings stated in this Order.

8. Paragraph 4 of Executive Order No. 204 (2020) is hereby rescinded and the number of individuals at outdoor gatherings shall be limited to 50 persons or fewer. An outdoor gathering that is a religious service or celebration, political activity, wedding ceremony, funeral, memorial service, meeting of an addiction support group, legislative proceeding of State, county, or local government, including local Boards of Education, or State or local judicial proceeding is not required to comply with the numerical limit on persons. All other requirements for outdoor gatherings contained in Paragraph 1 of Executive Order No. 161 (2020), including the requirements of Paragraph 2 of Executive Order No. 152 (2020) incorporated by reference therein, shall remain in effect. Paragraph 2 of Executive Order No. 228 (2021) remains in effect.

9. Outdoor entertainment centers where performances are viewed or given, including movie theaters, performing arts centers, and other concert venues, must continue to limit the number of patrons in any outdoor area where a performance is viewed or given to a number that ensures that all individuals can remain six feet apart, but such limit shall never be larger than 150

persons, as previously stated in Paragraph 8 of Executive Order No. 196 (2020).

10. Restaurants, cafeterias, dining establishments, including private, non-profit clubs, and food courts, with or without a liquor license, bars, and all other holders of a liquor license with retail consumption privileges, collectively referred to as "food or beverage establishments," that are open to the public shall limit the number of patrons in indoor areas to 50 percent of the food and beverage establishment's indoor capacity, excluding the food or beverage establishment's employees. Paragraph 1 of Executive Order No. 219 (2021) is hereby rescinded to the extent that it conflicts with the provisions of this Order.

11. Personal care services authorized to reopen their indoor facilities to the public pursuant to Paragraph 2 of Executive Order No. 157 (2020) shall limit occupancy of any indoor premises to 50 percent of the stated maximum capacity at one time, excluding the facility's employees. Paragraph 4 of Executive Order No. 219 (2021) is hereby rescinded to the extent that it conflicts with the provisions of this Order.

12. "Health clubs," as defined by N.J.S.A. 56:8-39, which include gyms and fitness centers, as well as amusement and water parks, authorized to reopen their indoor facilities to the public pursuant to Paragraph 1 of Executive Order No. 181 (2020) shall limit occupancy of any indoor premises to 50 percent of the stated maximum capacity at one time, excluding the facility's employees. Paragraph 5 of Executive Order No. 219 (2021) is hereby rescinded to the extent that it conflicts with the provisions of this Order.

13. Recreational and entertainment businesses that were permitted to reopen their indoor facilities to the public pursuant to Paragraph 7 of Executive Order No. 157 (2020) shall limit

occupancy of any indoor premises to 50 percent of the stated maximum capacity at one time, excluding the recreational or entertainment business's employees. Paragraph 6 of Executive Order No. 219 (2021) is hereby rescinded to the extent that it conflicts with the provisions of this Order.

14. Casinos, including casino gaming floors and retail sports wagering lounges, that have opened their indoor premises to the public shall limit occupancy of any indoor premises to 50 percent of the stated maximum capacity at one time, excluding the facility's employees. Paragraph 7 of Executive Order No. 219 (2021) is hereby rescinded to the extent that it conflicts with the provisions of this Order.

15. Collegiate athletic competitions that are conducted indoors are subject to the current indoor gathering limit of 25 persons. Athletes, coaches, referees, and trainers, and other individuals who are necessary for the collegiate sporting event are not included in the number of individuals present at a gathering for purposes of the limits on gatherings. Operators of such sports activities may permit up to two parents or guardians per athlete participating in the practice or competition to attend the event. Such parents and guardians shall also be considered necessary for the practice or competition. The number of individuals present inside a room where an indoor collegiate athletic practice or competition is taking place may not exceed 35 percent of the capacity of the room, and such limit may not exceed 150 persons, except that individuals necessary for the collegiate sporting event may exceed the 150-person limit. In no case shall the number of persons, inclusive of parents and guardians, exceed 35 percent of the capacity of the room. The provisions of Paragraph 1 of Administrative Order No. 2020-22 regarding indoor

gatherings shall continue to apply. Paragraph 4 of Executive Order No. 225 (2021) is hereby rescinded to the extent that it conflicts with the provisions of this Order.

16. Collegiate athletic practices and competitions that are conducted outdoors are subject to the outdoor gathering limit of 50 persons. Athletes, coaches, referees, trainers, and other individuals who are necessary for the competitive collegiate sporting event are not included in the number of individuals present at a gathering for purposes of the limits on gatherings. Operators of such sports activities may permit up to two parents or guardians per athlete participating in the practice or competition to attend. Such parents and guardians shall be considered necessary for the practice or competition. Paragraph 5 of Executive Order No. 225 (2021) is hereby rescinded to the extent that it conflicts with the provisions of this Order.

17. Professional athletic competitions that are conducted indoors are subject to the current indoor gathering limit of 25 persons. Athletes, coaches, referees, and trainers, and other individuals who are necessary for the competitive professional or collegiate sporting event are not included in the number of individuals present at a gathering for purposes of the limits on gatherings. The number of individuals present inside facilities where indoor professional or collegiate athletic competitions are taking place may not exceed 35 percent of the capacity of the room in which it takes place, and such limit may not exceed 150 persons. The provisions of Paragraph 1 of Administrative Order No. 2020-22 regarding indoor gatherings shall continue to apply. Paragraph 9 of Executive Order No. 219 (2021) is hereby rescinded to the extent that it conflicts with the provisions of this Order.

18. Professional athletic competitions that are conducted outdoors are subject to an outdoor gathering limit of 50 persons. Athletes, coaches, referees, and trainers, and other individuals who are necessary for the competitive professional or collegiate sporting event are not included in the number of individuals present at a gathering for purposes of the limits on gatherings. The provisions of Paragraph 1 of Administrative Order No. 2020-22 regarding outdoor gatherings shall continue to apply. Paragraph 5 and Executive Order No. 204 (2020) is hereby rescinded to the extent that it conflicts with the provisions of this Order.

19. All non-collegiate and non-professional athletic practices and competitions that are conducted indoors are subject to the current indoor gathering limit, which was most recently set at 25 persons. However, if the number of individuals who are necessary for the practice or competition, such as athletes, coaches, and referees, is greater than 25 persons, such a practice or competition may proceed, as long as no individuals are present who are not necessary for the practice or competition. Operators of such sports activities may permit up to two parents or guardians per athlete under the age of twenty-one participating in the practice or competition to attend the event provided all attendees abide by the applicable requirements in the DOH's "Guidance for Sports Activities." Such parents and guardians shall be considered necessary for the practice or competition. The number of individuals present inside facilities where indoor practices or competitions are taking place, inclusive of all necessary individuals, may not exceed 35 percent of the capacity of the room in which it takes place, and such limit may not exceed 150 persons. Paragraph 1 of Executive Order No. 220 (2021) is hereby rescinded to the extent that it conflicts with the provisions of this Order.

20. All non-collegiate and non-professional athletic practices and competitions that are conducted outdoors are subject to the current outdoor gathering limit of 50 persons. However, if the number of individuals who are necessary for the practice or competition, such as athletes, coaches, and referees, is greater than 50 persons, such a practice or competition may proceed, as long as no individuals are present who are not necessary for the practice or competition. Operators of such sports activities may permit up to two parents or guardians per athlete under the age of twenty-one participating in the practice or competition to attend provided all attendees abide by the applicable requirements in the DOH's "Guidance for Sports Activities." Such parents and guardians shall be considered necessary for the practice or competition. Paragraph 2 of Executive Order No. 220 (2021) is hereby rescinded to the extent that it conflicts with the provisions of this Order.

21. Paragraph 2 of Executive Order No. 225 (2021) shall continue to apply to events, including collegiate, youth and professional sports competitions, that take place in sports and entertainment venues with a fixed seating capacity of 5,000 persons or greater.

22. Paragraph 3 of Executive Order No. 225 (2021) shall continue to apply to events, including collegiate, youth and professional sports competitions, that take place in sports and entertainment venues with a fixed seating capacity of 5,000 persons or greater.

23. The State Director of Emergency Management, who is the Superintendent of State Police, shall have the discretion to make additions, amendments, clarifications, exceptions, and exclusions to the terms of this Order.

24. It shall be the duty of every person or entity in this State or doing business in this State and of the members of the governing body and every official, employee, or agent of every political subdivision in this State and of each member of all other governmental bodies, agencies, and authorities in this State of any nature whatsoever, to cooperate fully in all matters concerning this Order.

25. No municipality, county, or any other agency or political subdivision of this State shall enact or enforce any order, rule, regulation, ordinance, or resolution which will or might in any way conflict with any of the provisions of this Order, or which will or might in any way interfere with or impede its achievement, except as otherwise provided in Executive Order No. 195 (2020).

26. Penalties for violations of this Order may be imposed under, among other statutes, N.J.S.A. App. A:9-49 and -50.

27. This Order shall take effect at 6:00 a.m. on Friday, March 19, 2021, and shall remain in effect until revoked or modified by the Governor, who shall consult with the Commissioner of DOH as appropriate.

GIVEN, under my hand and seal this
11th day of March,
Two Thousand and Twenty-one,
and of the Independence of
the United States, the Two
Hundred and Forty-Fifth.

[seal]

/s/ Philip D. Murphy
Governor

Attest:

/s/ Parimal Garg

Chief Counsel to the Governor

NACo LEGISLATIVE ANALYSIS FOR COUNTIES:
U.S. SENATE'S AMERICAN RESCUE PLAN
CORONAVIRUS STATE & LOCAL FISCAL RECOVERY FUND
UPDATED: MARCH 8, 2021



To find your county's estimated allocation through the U.S. Senate's Coronavirus State and Local Recovery Funds, [click here](#).

SUMMARY

On March 6, the U.S. Senate passed The American Rescue Plan Act of 2021. The amended Senate version moves back to the U.S. House of Representatives on March 10 for final consideration before being sent to the president for his signature.

As part of the overall package, the **Coronavirus State and Local Fiscal Recovery Fund** would provide (1) approximately \$350 billion in new federal fiscal assistance for our nation's states, territories, tribes, counties, and municipalities, (2) \$10 billion for coronavirus capital projects, and (3) \$1.5 billion over two years for revenue sharing counties (i.e. public lands counties).

The measure outlines that states, along with the District of Columbia, would receive \$195.3 billion, distributed mostly upon each state's share of unemployed workers over the three-month period of October-December 2020. Each state and the District of Columbia would be guaranteed a minimum of \$500 million or no less than the state received in total (state plus local) under the CARES Act Coronavirus Relief Fund (CRF). D.C. would also receive a special allocation to compensate for its treatment under the CARES Act last year.

Local governments would receive \$130.2 billion, split evenly between municipalities and counties, **resulting in a direct county allocation based on population of \$65.1 billion. In addition, the final Senate bill added another \$1.5 billion, split evenly over federal FYs 2022 and 2023, for eligible revenue share counties (i.e. public land counties).** These revenue share payments would be available for any governmental purpose other than a lobbying activity.

Tribal governments would receive \$20 billion and U.S. territories would receive \$4.5 billion.

The U.S. Department of Treasury would oversee and administer these payments to state and local governments, and every county would be eligible to receive a direct allocation from Treasury. Municipalities and counties would now receive funds in two tranches – with 50 percent this year and the remaining 50 percent no earlier than 12 months from the first payment. States may receive funding in one or two tranches, at the discretion of Treasury.

DISTRIBUTION FORMULA FOR STATE AND LOCAL RECOVERY FUNDS

Of the approximately \$350 billion in the Senate bill for fiscal relief, 57 percent would be allocated to states and 35 percent to local governments. The distribution formula is as follows:

- **States and District of Columbia: \$195.3 billion**

- \$25.5 billion is equally divided with state minimum of \$500 million.
- \$169 billion based on the state share of unemployed workers over a three-month period from October-December 2020.
- \$1.25 billion in additional aid for the District of Columbia.

- **Local governments: \$130.2 billion divided evenly between non-county municipalities and counties.**

- **COUNTIES: \$65.1 billion in direct federal aid to all counties** (including parishes in Louisiana, boroughs in Alaska, consolidated city-county entities and the District of Columbia) based on the county share of the U.S. population. *Counties that are CDBG recipients would receive the larger share, based on its population or calculated share under the CDBG allocation method.* Treasury shall allocate these resources within 60 days of enactment.
- **NON-COUNTY MUNICIPALITIES: \$65.1 billion to cities and other non-county municipalities.**
 - \$45.57 billion in direct federal aid for municipalities with populations of at least 50,000, using a modified Community Development Block Grant formula.
 - \$19.53 billion for municipalities with populations of less than 50,000 based on each jurisdiction's percentage of the state's population. Amount per jurisdiction may not exceed 75 percent of its most recent budget as of January 27, 2020. Aid is distributed through the states, with the ability for states to request extensions if they are unable to distribute within a maximum of 120 days. Any amounts that are not distributed to non-entitlement municipalities shall be returned to the U.S. Treasury. However, if the state fails to distribute to these local entities, the penalty comes from the state portion of the State and Local Coronavirus Recovery Fund.

- **U.S. Territories: \$4.5 billion.**

- **Tribal governments: \$20 billion** to federally recognized Tribal governments.

ALLOWABLE

The Senate bill outlines that **funds may be used by counties to:**

USES OF RECOVERY FUNDS

1. **Respond to the public health emergency with respect to the COVID-19 or its negative economic impacts**, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality
2. Respond to workers performing essential work during the COVID-19 public health emergency by **providing premium pay to eligible workers of the county** that are performing such essential work, or by providing grants to eligible employers that have eligible workers who perform essential work
3. For the provision of **government services to the extent of the reduction in revenue** (i.e. online, property or income tax) due to the public health emergency relative to revenues collected in the most recent full fiscal year of the county prior to the emergency (i.e. January 20, 2020), or
4. **Make necessary investments** in water, sewer or broadband infrastructure.

It is important to note under #1 that the examples outlined are intended to clarify congressional intent that these activities would be eligible. However, state and local activities would NOT be limited only to these activities.

The Senate bill also outlines that:

- ✦ **States are not allowed to use the funds to either directly or indirectly offset a reduction in the net tax revenue** that results from a change in law, regulation or administrative interpretation during the covered period that reduces any tax. If a state violates this provision, it would be required to repay the amount of the applicable reduction to net tax revenue.
- ✦ **No funds shall be deposited into any pension fund.**
- ✦ **State and local governments are allowed to transfer** to a private nonprofit organization, a public benefit corporation involved in the transportation of passengers or cargo **or a special-purpose unit of State or local government.**
- ✦ Any local government, including counties, that **fail to comply with the federal law and related guidelines shall be required to repay** the federal Treasury.
- ✦ **“Premium pay” means an additional amount up to \$13 per hour** that is paid to an eligible worker for work during the COVID-19 pandemic. The bill imposes a cap of \$25,000 for any single eligible worker.

REPORTING REQUIREMENTS,

The Senate bill would **require state and local governments to fulfill reporting requirements**, such as:

CERTIFICATION & RECOUPMENT

- **States are required to report how funds are used and how their tax revenue was modified** during the time that funds were spent during the covered period (covered period begins on March 3, 2021 and ends on the last day of the fiscal year a state or local government has expended or returned all funds to the U.S. Treasury).
- Local governments would be required to provide “**periodic reports**” providing a detailed accounting of the use of funds.
- If a state, county or municipality does not comply with any provision of this bill, they will be **required to repay the U.S. Treasury** an equal amount to the funds used in violation.

ADMINISTRATION OF RECOVERY FUNDS

The Senate bill further outlines that **funds would be administered as follows:**

- Funds would be distributed by the U.S. Department of the Treasury.
- **The deadline to spend funds would be December 31, 2024.**
- The **U.S. Treasury is required to pay first tranche to counties not later than 60-days after enactment**, and second payment no earlier than 12 months after the first payment.
- The bill would provide \$77 million for the Government Accountability Office and \$40 million for the Pandemic Response and Accountability Committee **for oversight and to promote transparency and accountability.**

CORONAVIRUS CAPITAL PROJECTS FUND (SEC. 604)

- **\$10 billion for states, territories, and tribal governments to carry out critical capital projects**, until expended, specifically related to enabling work, education, and health monitoring, including remote options, in response to the COVID-19 public health emergency.
- **Each state, the District of Columbia and Puerto Rico would receive a minimum allocation of \$100 million**, plus another \$100 million is divided among other U.S. territories and another \$100 million is designated for tribal governments and Native Hawaiian use.
- **Of the remaining funds, states would receive an additional allocation** based on population (50 percent), number of individuals living in rural areas as a percentage of the U.S. rural population (25 percent), and proportion of the state’s population of households living in poverty.

LOCAL ASSISTANCE AND TRIBAL

- An **additional \$1.5 billion is provided for eligible revenue share counties** (notably public land counties that receive Payment-in-Lieu-of-Taxes (PILT) and Secure Rural School (SRS) payments), with \$750 million allotted each year for federal Fiscal Years 2022 and 2023.

CONSISTENCY FUND (SEC. 605)

- An additional \$500 million is provided, equally divided, over two fiscal years for eligible Tribal governments.
- **U.S. Treasury will be responsible for determining the funding formula**, taking into account the economic conditions of each eligible revenue sharing county, using measurements of poverty rates, household income, land values, and unemployment rates as well as other economic indicators, over the 20-year period ending with Sept. 30, 2021.
- Eligible **counties may use these funds for any governmental purpose other than a lobbying activity**.
- **Counties shall be required to provide periodic reports** with a detailed accounting of the use of funds.
- Failure to submit required reports or **misuse of funds will result in the recoup of funds** by the federal government.

According to a statement for the record by U.S. Senate Finance Chairman Ron Wyden (D-Ore.), "I also fully expect Treasury to consult with others in government who have history in this arena on the creation of this new formula such as the Secretaries of Agriculture and Interior, as well as the **National Association of Counties, state county associations, including the Association of O&C Counties Oregon**, and many other groups with a deep understanding of these impacts across the United States."

RESOURCES

To access NACo's resource hub on the State and Local Coronavirus Recovery Funds, [click here](#). **This resource hub contains a searchable table that contains projected allocations for each county under the U.S. Senate's bill.**

To access the bill text of the U.S. Senate's bill, [click here](#).

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REQUIRING THE COVID-19 VACCINATION AT WORK

PRESENTED BY:

**JOSEPH M. HANNON, ESQ.
GENOVA BURNS, LLC**

AND

**JULIEN NEALS, ESQ.
COUNTY ADMINISTRATOR/COUNTY
COUNSEL, BERGEN COUNTY**

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Can Employers Require The
Of Employment?

- **Emergency Use Authorized
FDA vaccine licensure**
- **Probably Yes, with some caveats**

Can Employers Require The Of Employment?

- **Negotiability**

- Likely Not – leave time, co-pays, religious reasons
- US Supreme Court – government can mandate
- NJ Supreme Court – has approved vaccination
- NJ has not passed a statute or regulations mandating
- Negotiability – (1) intimately and directly affect the of public employees (2) not be preempted by statute or (3) not significantly interfere with governmental policy

Can Employers Require The Of Employment?

- **Emergency Use Authorization**
- FDA must inform vaccine recipients of emergency use authorization, known/unknown and potential benefits and risks of the vaccine, and of any available alternatives
- This information is in a patient fact sheet provided with the vaccine administration - consideration for Employer vaccine on-site.
- See FDA website.

Requiring the COVID-19 Vaccination at Work

Exemptions to Mandatory Vaccination

- Medical consequences of not receiving the vaccine (ADA/LAD)
- Sincerely held religious beliefs and objections (Title VII/LAD)

Requiring the COVID-19 Vaccination at Work

Employer Mandated Vaccination

- The Employer requires the vaccine. *and* a medical exemption.
- The requirement screens out Employees who cannot get vaccinated.
- The Employer must show “that an unvaccinated Employee would pose a direct threat due to a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation.”

Requiring the COVID-19 Vaccination at Work

Employer Mandated Vaccination

- The Employer must conduct an individualized assessment based on any one of four factors to determine if a direct threat exists:
 - the duration of the risk;
 - the nature and severity of the potential harm or harm to others;
 - the likelihood that the potential harm will occur;
 - and the imminence of the potential harm.
- Direct threat means the Employer determined that an unvaccinated Employee will expose coworkers to a significant risk of transmission.

Requiring the COVID-19 Vaccination at Work

Employer Mandated Vaccination

- The Employer cannot exclude the Employee if a reasonable accommodation is available (without undue hardship) to eliminate/reduce the direct threat.
- No automatic termination.
- Other accommodations? Remote work? Leave?
- Other laws? FMLA?

Requiring the COVID-19 Vaccination at Work

Employer Mandated Vaccination

- When considering accommodation hardship, consider:
 - Prevalence in the workforce who are vaccinated
 - CDC recommendations
 - OSHA guidelines.

Requiring the COVID-19 Vaccination at Work

Exemptions to Mandatory Vaccination

- Sincerely held religious beliefs – reasonable accommodation unless the accommodation would pose an undue hardship on the business.
- Undue hardship is more than a de minimis cost.
- EEOC encourages Employers to “assume that an employee’s request for religious accommodation is based on a sincerely held religious belief.”
- If the Employer has an objective basis to question the belief, the Employer may request additional supporting information.

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Requiring the COVID-19 Vaccination at Work

Exemptions to Mandatory Vaccination

- Accommodations
 - Remote work
 - Social Distancing
 - Masking
 - Shift Changes
 - Location Change
 - Unpaid Leave

Requiring the COVID-19 Vaccination at Work

Medical Inquiries – Prescreening

For Employers that mandate the vaccine at work, a third party vendor:

- ADA limits medical inquiries about an Employee's impairments or health.
- The vaccine is not a medical examination.
- Prescreening vaccine questions may be disability related (questions that are likely to elicit health information).
- If the Employer administers the vaccine, it must show that prescreening inquiry is “job-related and consistent with business necessity.”

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Medical Inquiries

- To show that prescreening medical questions are job related and consistent with business necessity, then:
- The Employer must show that it had 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 the Employee or himself or others.

Requiring the COVID-19 Vaccination at Work

Medical Inquiries – Prescreening

- Exceptions to showing that screening questions are consistent with business necessity:
 - If the Employer offers the vaccine on a voluntary basis (employees choose whether to be vaccinated), and the employee voluntarily answers pre-screening questions, the Employer may decide not to ask further questions. No retaliation for failing to answer questions.
 - If the employee receives an Employer required vaccine from a third party that does not have a contract with the Employer (pharmacy or other health care provider).

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Requiring the COVID-19 Vaccination at Work

Prescreening Questions - GINA

- Genetic Information Non-Discrimination Act (GINA) prohibits employers from making employment decisions based on Genetic Information or obtaining Genetic Information.
- Vaccine prescreening questions may not ask about family history and implicate GINA.
- Under Title II of GINA, employers may not request, require, or collect information to make decisions related to hiring, firing, or other conditions, and privileges of employment based on information except in six narrow circumstances. Employers may not disclose genetic information except in six narrow circumstances.

Requiring the COVID-19 Vaccination at Work

Prescreening Questions - GL

- If the prescreening questions reveal a contraindication, then Employers may want to opt out of administering the vaccine themselves
- Inform employees when providing the vaccine not to provide any genetic information

Requiring the COVID-19 Vaccination at Work

Quarantine of Vaccinated

- Vaccinated individuals with exposure to COVID-19 do not require quarantine if:
 - Fully vaccinated – 2 weeks following last dose
 - 2 weeks following vaccination in 1 dose series
 - 3 months within last dose of series
 - Asymptomatic since current COVID-19 exposure and not testing positive for symptoms and if become symptomatic, isolate and get tested

Requiring the COVID-19 Vaccination at Work

Quarantine of Vaccinated

- Recent CDC Guidance
 - Visit other fully vaccinated individuals without masks
 - Visit people from single household without COVID-19 outcomes without masks
 - Refrain from quarantine and testing following asymptomatic, HOWEVER, CDC still recommends guidelines

Requiring the COVID-19 Vaccination at Work

Vaccination Documentation

- Employers can request proof that an Employee is vaccinated.
 - This is not a disability related inquiry; unlike a request for medical information.
 - Tell Employee not to supply medical information.
- Asking why an Employee did not take the vaccine will not trigger an impermissible medical inquiry. This inquiry will be “job-related and consistent with business needs.”

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Employees Who Object to Mandates and Employee Education

- Dealing with Employees who:
 - Distrust the vaccine
 - Believe they will become ill from the vaccine
 - Claim the vaccine advances a political agenda
 - Claim that the Employer is exerting undue influence over their rights to freedom over their persons/medical decisions

Employees Who Object to Mandates and Employee Education

- Vaccine policy?
- Incentives?
- Training / Education?
- Essential job requirement /
termination?

Incentives

- EEOC Wellness Rules
- Beware if Employer sponsored
 - Given by the Employer or a Contracted by the Employer
 - De minimis value
 - Gift Cards ok

Diane Regester

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October 5, 2021

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Office for State and Local Law Enforcement News and Updates

Secretary Mayorkas Announces New Immigration Enforcement Priorities

WASHINGTON – On September 30, Secretary of Homeland Security Alejandro N. Mayorkas announced new *Guidelines for the Enforcement of Civil Immigration Law* to better focus the Department's resources on the apprehension and removal of noncitizens who are a threat to our national security, public safety, and border security and advance the interests of justice by ensuring a case-by-case assessment of whether an individual poses a threat. In the last six months, Secretary Mayorkas held multiple engagements with the U.S. Immigration and Customs Enforcement (ICE) workforce and leadership across the country, as well as with a range of stakeholders including law enforcement, civic, and community leaders to inform the new guidance. "For the first time, our guidelines will, in the pursuit of public safety, require an assessment of the individual and

discretion, we are guided by the knowledge that there are individuals in our country who have been here for generations and contributed to our country's well-being, including those who have been on the frontline in the battle against COVID, lead congregations of faith, and teach our children. As we strive to provide them with a path to status, we will not work in conflict by spending resources seeking to remove those who do not pose a threat and, in fact, make our Nation stronger."

[Click Here for the Full Article](#)

Operation Allies Welcome Completes Vaccination Campaign for Measles and Varicella for Afghan Evacuees

Release Date: October 4, 2021

WASHINGTON – Operation Allies Welcome (OAW) has completed a historic and nationwide vaccination campaign for measles, mumps, rubella (MMR), and varicella (chickenpox) to Afghan evacuees who are temporarily staying at eight military installations in the United States. As a result of this effort, more than 49,000 Afghan evacuees nationwide are now vaccinated. Evacuees are also receiving vaccinations at staging areas in Europe and the Middle East. OAW flights from staging areas will resume this week.

Arriving eligible Afghans receive the MMR, varicella, polio, COVID-19, and other age appropriate vaccinations, as well as medical exams and health screenings, as a condition of their humanitarian parole. Pursuant to guidance from the Centers for Disease Control and Prevention (CDC), Afghan guests will remain at domestic military installations for at least 21 days after the MMR vaccine is administered. In some cases, persons who have special medical needs may be relocated more quickly, after vaccinations and other medical requirements are completed.

"The success of this vaccination campaign demonstrates our commitment to the health and well-being of arriving Afghan evacuees, the personnel assisting this mission, and the American people," said Dr. Pritesh Gandhi, the DHS Chief Medical Officer and lead medical advisor of OAW. "Operation Allies Welcome reflects the best of our country and this vaccination effort could not have been achieved without the dedication of local health care facilities and partnership between the Departments of Defense, Health and Human Services, State, and

A Proclamation on National Community Policing Week, 2021

Release Date: October 1, 2021

Presidential Actions

President Joseph R. Biden Jr.

Community policing — the practice of law enforcement professionals working side-by-side with members of their communities to keep neighborhoods safe — is a critical and proven tool used by law enforcement agencies across our Nation to improve public safety and forge strong, valuable relationships. During National Community Policing Week, we recommit to building bonds of trust between our law enforcement officers and the communities they serve and encourage community policing practices across our Nation.

America's law enforcement officers play an essential role in protecting our communities and enforcing our laws. Every time an officer pins on their badge and walks out their front door, the loved ones they wave goodbye to are forced to wonder if they will return home safely. This week and every week, we recognize the bravery and dedication of our peace officers who put themselves on the line each and every day to protect and serve their communities.

We also recognize the role that all community members play in advancing public safety. As our country continues to reckon with a long and painful history of systemic racism — as well as the ongoing challenges of social and economic injustice, the COVID-19 pandemic, mental illness, homelessness, and substance abuse — we must think broadly, conscientiously, and creatively about the future of effective policing and how to foster strong police-community partnerships. Evidence and experience tell us that strong neighborhood relationships, the use of problem-solving to address crime systematically, and improvements to policy and training — key tenets of

Homeland Security.”

[Click Here for the Full Article](#)

DHS Releases Guidance to Mitigate Security Risks with the Advancement of Quantum Computing

WASHINGTON - On October 4, the Department of Homeland Security (DHS), in partnership with the Department of Commerce’s National Institute of Standards and Technology (NIST), released a roadmap to help organizations protect their data and systems and to reduce risks related to the advancement of quantum computing technology.

While quantum computing promises unprecedented speed and power in computing, it also poses new risks. As this technology advances over the next decade, it is expected to break some encryption methods that are widely used to protect customer data, complete business transactions, and secure communications. DHS’s new guidance will help organizations prepare for the transition to post-quantum cryptography by identifying, prioritizing, and protecting potentially vulnerable data, algorithms, protocols, and systems.

“Quantum computing will be a scientific breakthrough. It is also expected to pose new data privacy and cybersecurity risks,” said **Secretary Alejandro N. Mayorkas**.

“Now is the time for organizations to assess and mitigate their related risk exposure. As we continue responding to urgent cyber challenges, we must also stay ahead of the curve by focusing on strategic, long-term goals. This new roadmap will help protect our critical infrastructure and increase cybersecurity resilience across the country.”

In March, Secretary Mayorkas [outlined his vision for cybersecurity resilience](#) and identified the transition to post-quantum encryption as a priority. DHS also issued internal policy guidance to drive the Department’s own preparedness efforts and is conducting a macro-level analysis to inform the government’s action and ensure a smooth and equitable transition.

For more information and resources, visit DHS.gov/quantum.

community policing — are all tools that help make our communities safer. My Administration is using programs such as the Department of Justice’s Project Safe Neighborhoods to bring together law enforcement and community stakeholders in an effort to develop local solutions to help prevent violent crime.

[Click Here for the Full Proclamation](#)

CISA Kicks Off Cybersecurity Awareness Month 2021

Join us as we recognize the 18th [Cybersecurity Awareness Month](#). All through the month CISA and the [National Cybersecurity Alliance](#) (NCSA) are asking you to “*Do Your Part. Be Cyber Smart.*” Cybersecurity is important for all Americans, and CISA and NCSA are sharing information and resources to help every one of us recognize and reduce the risk of cybersecurity threats.

Each week in October we will highlight a different aspect of what it takes to “Do Your Part. Be Cyber Smart.”

- **Week 1 (October 4-10): Be Cyber Smart:** Take simple actions to keep our digital lives secure.
- **Week 2 (October 11-17): Phight the Phish!:** Learn how to spot phishing attempts to prevent ransomware and other malware attacks.
- **Week 3 (October 18-24): Explore. Experience. Share.:** During week three of Cybersecurity Awareness Month, we will join the National Initiative for Cybersecurity Education (NICE) to celebrate Cybersecurity Career Awareness Week.
- **Week 4 (October 25-31): Cybersecurity First:** Explore how cybersecurity and staying safe online is increasingly important as our world continues to operate virtually for so much of work and play.

DHS Announces Intention to Issue New Memo Terminating MPP

Release Date: September 30, 2021

The Department of Homeland Security intends to issue in the coming weeks a new memorandum terminating the Migrant Protection Protocols (MPP). Although the Department issued a June 2021

memorandum that terminated MPP, a Texas district court vacated that prior termination determination and issued an injunction that requires the Department to work in good faith to re-start MPP. The Department has appealed that injunction.

A new memorandum terminating MPP will not take effect until the current injunction is lifted by court order. In issuing a new memorandum terminating MPP, the Department intends to address the concerns raised by the courts with respect to the prior memorandum.

In the meantime, while the court injunction remains in effect, the Department has been working in good faith to re-start MPP in compliance with the order, and it will continue to do so. To that end, the Department, working with the Department of State, is engaged in ongoing and high-level diplomatic discussions with Mexico. Simultaneously, the Department has instituted an interagency Task Force to efficiently rebuild the infrastructure and reapportioning the staffing that will be needed to restart MPP once that concurrence has been obtained. Among many other steps, the Task Force is updating policies and procedures to account for COVID-19 and preparing to put in place contracts to rebuild the soft-sided Immigration Hearing Facilities used for court proceedings associated with MPP.

The Department remains committed to building a safe, orderly, and humane immigration system that upholds our laws and values. The Department also continues to process individuals in accordance with U.S. law and our mission.

Links & Resources

► [COVID- 19 Situation Summary](#)

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