



Vaccine Mandates

President Biden's new vaccine requirements have generated much discussion about mandates - why they are being instituted, what they mean, are they legal, etc. The application of these requirements to Tribal Nations has still yet to be completely clarified¹, but, as sovereign nations, many Tribes are already beginning to require vaccinations in certain situations to protect their people and communities.

We wanted to share with you some of the history of vaccine mandates in the United States and answer questions you might have about their legality and why and when they are put in place.

What is a vaccine “mandate”? Can I be forced to be vaccinated?

No, the government or other authorities cannot physically force you to be vaccinated.²

Vaccine mandates are laws that say you must be vaccinated to do certain things, like working, traveling, going to school, or even attending a concert. With a mandate in place, if you choose not to be vaccinated, you can be denied access to these activities and others can legally stop you from using their services or entering a building if they choose to.³

The history of vaccine mandates in the United States.

There is a long history of vaccine mandates to protect public health in the United States. In 1809, the first US state law mandating vaccinations, if “necessary for the public health or safety”, was passed. This law was upheld by the U.S. Supreme Court in its landmark 1905 ruling, *Jacobson v. Massachusetts*. In this decision, the Court held that individual liberty is not absolute in the face of “the common good,” and that “real liberty for all” depends on restraining individual exercises of liberty that harm others.⁴

While supporting the need to protect “the common good”, the Court also protected individual rights by putting limits on when governments can issue vaccine mandates and safeguarded the freedom over one's body by allowing for medical exemptions.

In 1922, the Supreme Court upheld school mandates and all courts have since then have recognized the states' authority to mandate fully approved vaccines. Vaccinations are also required for legal immigration and international travel.



When and why are vaccine mandates put into place?

Most vaccine mandates are enacted when there is a high possibility of disease transmission from person to person in group settings – schools, work places, hospitals, congregate care facilities, etc.

The decision to enact vaccine mandates is done after careful consideration of the balance between protecting public health and individual rights. They are not arbitrary and are most often considered only after other public health measures, such as masking and physical distancing, have failed to control an epidemic or pandemic.

¹ <https://www.yahoo.com/news/vaccine-rules-effect-tribes-still-224600775.html>

² <https://www.wpr.org/what-does-law-actually-say-about-vaccine-mandates>

³ <https://www.webmd.com/vaccines/covid-19-vaccine/vaccine-mandates#1-2>

⁴ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1449223/>

Who can legally require COVID-19 vaccines?

- **The Federal government:** The emergency provisions of the Occupational Safety and Health Act (OSHA) allow the President to put safety measures in place if there is significant danger to workers.⁵ It is this authority the President has used to issue the current mandates. However, the President of the United States does not have the power to issue universal vaccine mandates.
- **Tribal governments:** It is not clear, yet, how the new federal vaccine mandates might affect Tribes, but, as sovereign nations, Tribes “absolutely have the authority to make a mandate”, according to Mary Pavel (Skokomish), a tribal affairs attorney in Washington, D.C., and former chief counsel for the Senate Committee on Indian Affairs.⁶
- **Businesses:** may “lawfully require workers to get a COVID-19 vaccine as a condition of coming to the workplace. The private sector has wide discretion in setting conditions for workers and customers, and businesses have a legal and ethical duty to keep the workplace safe.”⁷
- **State and city governments:** As long as they don’t single out one demographic group in a way that’s discriminatory, these governments have the legal authority to issue vaccine mandates.
- **K–12 schools:** In 1922, the Supreme Court upheld the right of schools to issue vaccine mandates.
- **Institutions of higher education (IHEs):** The authority of IHEs to institute vaccine mandates is similar to businesses. IHEs act in loco parentis (in place of parents) and thus have a duty to care for the safety and security of students on campus.⁸

Some organizations may require you to show proof of COVID-19 vaccination or have employees complete weekly submissions of a COVID-19 test. This is legal and does not violate the Health Insurance and Portability Accountability Act (HIPAA) rules.⁹

What about exemptions to vaccine mandates?

Exemptions to vaccine mandates generally fall into two categories – medical, or religious and philosophical. Since the 1905 *Jacobson v. Massachusetts* decision, all vaccine mandates include exemptions for valid medical reasons but there is no constitutional right to religious exemptions. Schools do not have to allow religious exemptions but most states do allow them and some also allow philosophical exemptions.¹⁰

Besides medical exemptions, civil rights rules require employers to provide reasonable accommodations for workers who have sincerely held religious beliefs, unless the accommodation poses an undue hardship to the business. However, these accommodations aren’t necessary if the employer determines something is a direct threat to other employees and the business itself.¹¹ Guidelines for applying religious or philosophical exemptions generally fall to the organization requiring a mandate. For information about Faith-based support for vaccines please see: [Faith Based Support for Vaccines](#)

What if You Decide not to be vaccinated?

If you decline to get the COVID-19 vaccination for reasons other than an approved medical or religious/philosophical exemption, your company can choose to no longer employ you or you may not be able to attend activities where a vaccine is required such as school.

From the *Jacobson v. Massachusetts* decision:

When thinking about mandates, it is important to remember why the Supreme Court has supported them since 1905:

“The liberty secured by the Constitution of the United States to every person within its jurisdiction does not import an absolute right in each person to be, at all times and in all circumstances, wholly freed from restraint. There are manifold restraints to which every person is necessarily subject for the common good. On any other basis organized society could not exist with safety to its members”¹²

⁵ <https://www.nytimes.com/2021/09/10/us/politics/biden-vaccines.html>

⁶ <https://indiancountrytoday.com/news/tribal-governments-adopting-vaccine-mandates-amid-covid-19-surges>

⁷ <https://www.scientificamerican.com/article/vaccine-mandates-are-lawful-effective-and-based-on-rock-solid-science/>

⁸ <https://www.scientificamerican.com/article/vaccine-mandates-are-lawful-effective-and-based-on-rock-solid-science/>

⁹ <https://www.hipaajournal.com/is-it-a-hipaa-violation-to-ask-for-proof-of-vaccine-status/>

¹⁰ https://www.edc.gov/vaccines/imz-managers/guides-pubs/downloads/vacc_mandates_chptr13.pdf

¹¹ <https://www.npr.org/2021/09/27/1040983237/religious-exemptions-to-vaccine-mandates-present-a-dilemma-for-employers>

¹² *Jacobson v. Massachusetts*, 197 U.S. 11, 25 S.Ct. 358 (1905).