

Frequently Asked Questions About the COVID-19 Vaccine Mandate for Personnel and Students in the Higher Ed Setting

Webinar
August 31, 2021

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Frequently Asked Questions About the COVID-19 Vaccine Mandate for Personnel and Students in the Higher Ed Setting

Presented by Joseph J. Perkoski, Frank B. Garrett III, Dennis L. Weedman and Catherine R. Locallo

August 31, 2021

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Introduction



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Although the information contained herein is considered accurate, it is not, nor should it be construed to be legal advice. If you have an individual problem or incident that involves a topic covered in this document, please seek a legal opinion that is based upon the facts of your particular case.

Introduction

On August 26, 2021, Governor Pritzker announced a vaccine mandate for certain workers and entities

Rationale for Mandate: Increased COVID-19 cases and hospitalizations and to lower the number of breakthrough cases that require hospital admission, the majority of whom are 65 and over or immunocompromised.

Unions “welcome” a vaccine mandate (IFT and IEA).

Short deadline for compliance.

Emergency rulemaking is forthcoming.

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Introduction

- The wording of the Governor’s Executive Order requires vaccination for all higher education personnel and students unless one can opt out for medical or “sincerely held” religious belief reasons.
 - However, statements from the Governor’s Office and perhaps ICCB indicate that higher education institutions may decide to require weekly testing in lieu of vaccinations for higher education personnel and students even if there is no religious or medical opt out reason.
 - In other words, colleges/universities can decide to require vaccinations for all employees and students unless there is a medical or religious opt out or they can take a less restrictive approach of requiring weekly testing for anyone who is not vaccinated.

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Sticking Points of the Vaccine Mandate





LOADING...

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Sticking Points of the Vaccine Mandate

-  Who is subject to the Governor's COVID-19 vaccine mandate?
-  How is the term "higher education personnel" defined?
How is the term "higher education" student defined?

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Sticking Points of the Vaccine Mandate

- How should a higher education institution treat students taking courses exclusively remotely?
- How should a higher education institution treat students taking courses exclusively remotely, but who may be on campus to use the library, computer lab or for extracurriculars?

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Sticking Points of the Vaccine Mandate

- When does the vaccine mandate take effect?
- Are there any exemptions to the vaccine mandate?

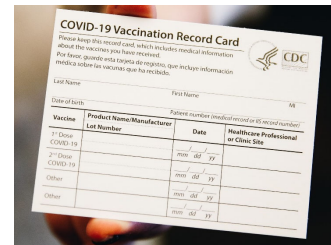


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Sticking Points of the Vaccine Mandate

- Can a colleges/universities require proof of COVID-19 vaccination?
- What type of documentation is acceptable?
- How should documentation be maintained?



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Sticking Points of the Vaccine Mandate

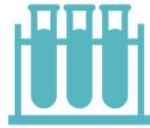
- Is there an alternative to vaccination?

EXEMPT

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Sticking Points of the Vaccine Mandate



Is anyone else subject to testing?



How often must routine testing occur?

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Sticking Points of the Vaccine Mandate

- What type of test is acceptable?
- Who should receive test results?
- How should they be maintained?



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Sticking Points of the Vaccine Mandate

- If an individual is vaccinated, does this preclude a college/university from also mandating routine testing?

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Sticking Points of the Vaccine Mandate

- Our college/university plans to provide testing onsite for staff and students, are consent forms required?



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Sticking Points of the Vaccine Mandate

- What happens if an employee refuses to get vaccinated or tested?
- What happens if a student refuses to get vaccinated or tested?



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Sticking Points of the Vaccine Mandate

- How should a college/university respond if a student refuses to get vaccinated, refuses to get tested and will not withdraw or transfer to an online format?

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Sticking Points of the Vaccine Mandate

- How should a college/university respond to an employee who refuses to get vaccinated and refuses to test?
- Does the college/university have to offer a remote work option?
 - Off any other alternative?

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Vaccine Mandate Implementation Considerations



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Vaccine Mandate Implementation Considerations

- This is a large undertaking, who within a college/university should be responsible for compliance?
- How should a college/university approach compliance?

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Vaccine Mandate Implementation Considerations

- Can a college/university continue to offer an incentive for staff to get vaccinated now that vaccination is required?

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Vaccine Mandate Implementation Considerations

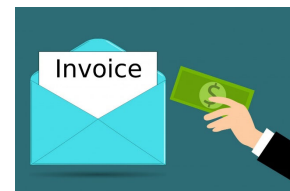
- Is a college/university required to pay for the vaccine?
- Provide paid time off to get the vaccine?
- Provide paid time off if someone does not feel well following vaccination or has a reaction to the vaccine?

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Vaccine Mandate Implementation Considerations

- Is a college/university required to pay for testing?
- Provide paid time off to get tested?



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Vaccine Mandate Implementation Considerations

- What happens if there is a vaccine shortage in our area and staff or students do not have the ability to get vaccinated by the deadlines set by the Governor?

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Vaccine Mandate Implementation Considerations



- Significant increased testing may result in burden being placed on testing facilities again.
- What happens if an employee or student is unable to get a COVID-19 test?
- What should a college/university do if it is taking multiple days for an employee or student to receive test results?
 - Can an employee still report to work?
 - Can a student still report to an in-person class?

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Vaccine Mandate Implementation Considerations

- How should a college/university respond if a member of the community or other staff member requests proof of vaccination status for an employee or student?

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Setting the Table for Bargaining



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Setting the Table for Bargaining

- If the IFT and IEA unions fully support the Governor's mandate, do we have to bargain with our unionized staff over the Governor's mandate? If so, why?
- Does a college/university have to bargain the decision to mandate the COVID-19 vaccine or just the impact of enforcing the Governor's vaccine mandate?
- Does bargaining have to be completed before the mandate can be implemented?

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Setting the Table for Bargaining

- What types of proposals might a college/university expect to receive from the union?



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Setting the Table for Bargaining

- What types of proposals or considerations *may* a college/university wish to consider in bargaining?

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Let's Talk More About the Students



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Let's Talk More About the Students

- What options should a college/university consider for students taking in-person classes or accessing campus?

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Let's Talk More About the Students


- Testing costs money and many students may not have insurance or disposable income to get tested, what options does a college/university have?



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Questions?



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Thank you!



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As managing partner, Joseph Perkoski represents educational institutions and public sector employers with a focus on board and executive leadership. Joseph also represents his clients on a broad range of labor and employment issues including collective bargaining, grievance arbitration and contract interpretation. Joseph has defended employers in unfair labor practice charges before the Illinois Education Labor Relations Board, the Illinois State and Local Labor Relations Boards and the National Labor Relations Board. In addition, Joseph has litigated on behalf of management claims involving civil rights, discrimination, wrongful discharge, and harassment issues.

AWARDS

Illinois Super Lawyers, 2008-2020

RECENT PUBLICATIONS

Contributing author, "Labor Issues in the Transactional Side of the Project," *Construction Law: Transactional Considerations*, IICLE (2017)

Contribution author, "Labor Relations: Contract Administration Including Unfair Labor Practices," *Illinois School Law: Personnel and Student Issues*, IICLE (2010, 2012, and 2015)

"Finding a New Way: Subcontracting Revisited," *UPDATE Magazine*, Illinois ASBO (2011)

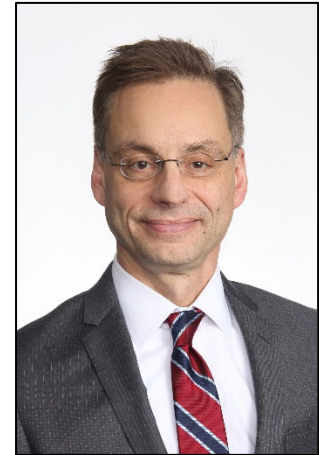
Contributing author, "Labor Issues in the Transactional Side of the Project," *Construction Law – Transaction Practice*, IICLE (2010)

RECENT PRESENTATIONS

Legislative Update: A Review of New Laws Affecting Illinois Community Colleges, Illinois Council of Community College Presidents Retreat (September 2019)

Court Cases and Other Legal Updates for the Higher Education Workplace, Illinois CUPA-HR Spring Conference (May 2019)

Legal Update, ICCCFD Spring Conference (April 2019)



PRACTICE AREAS

Education Law
Employee Benefits
Labor & Employment
Litigation
Municipal Law
Student Discipline

EDUCATION

J.D., The Ohio State
University, The Mortiz
College of Law

M.A., The Ohio State
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B.A., *with honors*, The
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ADMITTED TO PRACTICE

U.S. Court of Appeals for
the Seventh Circuit

U.S. District Court for the
Northern District of Illinois

U.S. District Court for the
Eastern District of
Wisconsin

U.S. District Court for the
Western District of
Wisconsin

Supreme Court of Illinois

Supreme Court of
Wisconsin

Superior Court for the
District of Columbia

ORGANIZATIONS

American Bar Association

Associated Colleges of
Illinois, Trustee

Council of School
Attorneys

Federal Bar Association

Illinois Association of
School Business Officials

Illinois Bar Association

National School Boards
Association

Wisconsin Bar Association

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Frank B. Garrett III represents school districts, community colleges, local governmental bodies and public and private companies in all aspects of employment law, including complaints and charges of unlawful discrimination, wrongful termination, sexual harassment, civil rights violations, employee discipline and termination. Frank also counsels and provides training to employers in the following areas: ADA and FMLA compliance, avoiding claims of unlawful discrimination and harassment in the workplace: evaluation and discipline of employees, and diversity in the workplace.

Frank represents and defends clients in both state and federal courts, at the trial and appellate levels. He also practices before various administrative agencies such as the Illinois Educational Labor Relations Board, the Illinois Human Rights Commission and the Equal Employment Opportunity Commission. Frank is a regular speaker on employment law topics at both the state and national level.

Frank is approved by the Illinois State Board of Education to provide school board member training. He is an active member of the American Bar Association and Illinois Council of School Attorneys.

AWARDS

Illinois Leading Lawyer, Government and Regulatory-Related
Illinois Leading Lawyer, Employment and School Law
Illinois Super Lawyers

RECENT PUBLICATIONS

"Extended Medical Leave Under ADA Soundly Rejected by 7th Circuit,"
Chicago Daily Law Bulletin (2017)

"First Amendment Protections Get Broader for Government Employees,"
Chicago Daily Law Bulletin (2016)

"Big-box Employee's Attempt to 'Scam' Company Undercuts FMLA Claims,"
Chicago Daily Law Bulletin (2015)

Employers Must Rethink Employee 'Look' Policies After High Court Decision,"
Chicago Daily Law Bulletin (2015)



PRACTICE AREAS

Education Law
Labor & Employment
Litigation

EDUCATION

J.D., DePaul University
College of Law

B.A., Oberlin College

ADMITTED TO PRACTICE

Supreme Court of the
United States

U.S. Court of Appeals for
the Seventh Circuit

Trial Bar of the U.S.
District Court for the
Northern District of Illinois

U.S. District Court for the
Northern District of Illinois

U.S. District Court for the
Central District of Illinois

U.S. District Court for the
Southern District of Illinois

Supreme Court of Illinois

"Using Social Network Screening as Part of the Hiring Process: Employers Should Proceed with Caution," *Inquiry & Analysis*, National School Boards Association's Council of School Attorneys (2013)

Contributing author, "Employment Discrimination," *ILLINOIS SCHOOL LAW*, IICLE (1996, 1999, Supp. 2001, 2005, 2010 and 2012)

RECENT PRESENTATIONS

Debunking Some Common Employee FMLA Leave Myths, IASPA Annual Conference (January 2020)

Legislative Update: A Review of New Laws Affecting Illinois Community Colleges, Illinois Council of Community College Presidents Retreat (September 2019)

Understanding New Changes to the Minimum Wage Law and Other Wage-Related Statutes, Illinois GFOA Annual Conference (September 2019)

ORGANIZATIONS

American Bar Association,
Section on Labor and
Employment

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Cook County Bar
Association

Illinois Council of School
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Catherine Locallo's practice focuses on labor and employment law and board governance matters. She counsels employers in all aspects of employment law including hiring, employment contracts, employee discipline issues, terminations and reductions in force, collective bargaining and labor relations, nonimmigrant worker visas and employment discrimination matters. She also counsels public bodies on compliance with Illinois' Freedom of Information Act and Open Meetings Act. Catherine has extensive experience representing clients in court and administrative agency proceedings involving discrimination, retaliation, and harassment claims.

Catherine is approved by the Illinois State Board of Education to provide school board member training.

AWARDS

Illinois "Rising Star," Employment & Labor Law (2015-2018)

RECENT PUBLICATIONS

"Illinois Committed to Restrictive Covenant Reform Through Passage of Senate Bill 672," *Employment and Labor Law Flashpoints*, IICLE (2021)

"Plaintiff's Cat's Paw Theory of Liability Failed To Scratch Surface," *Employment and Labor Law Flashpoints*, IICLE (2021)

"Walmart Need Not Change Shift Rotation Practice To Accommodate Religious Beliefs" *Employment and Labor Law Flashpoints*, IICLE (2021)

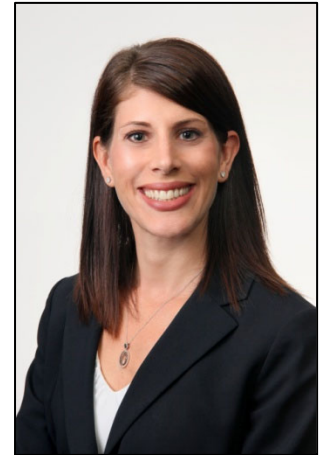
"CBA Provision Clearly Rebutted At-Will Employment Presumption for IT Employee," *Employment and Labor Law Flashpoints*, IICLE (2021)

"Employer's Judgment and Job Description Defeat Failure To Accommodate Claim," *Employment and Labor Law Flashpoints*, IICLE (2021)

"Recent Department of Labor Opinion Letters: Pay for Training and Travel," *Employment and Labor Law Flashpoints*, IICLE (2021)

"Sexual Harassment Prevention Training Compliance Required Before New Year," *Employment and Labor Law Flashpoints*, IICLE (2020)

"Will 'Scabby the Rat' Live To Fight Another Day?" *Employment and Labor Law Flashpoints*, IICLE (2020)



PRACTICE AREAS

Education Law
Labor & Employment
Litigation

EDUCATION

J.D., *cum laude*, The John
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Order of John Marshall

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U.S. Court of Appeals for
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U.S. District Court for the
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U.S. District Court for the
Northern District of Illinois

Supreme Court of Illinois

“Superintendent’s Police Report is Protected Speech” *Employment and Labor Law Flashpoints*, IICLE (2020)

“Changing the Landscape: Abusive Conduct Not Protected Under NLRA” *Employment and Labor Law Flashpoints*, IICLE (2020)

“COVID-19 Changes to Claims for Unemployment Benefits in Illinois” *Employment and Labor Law Flashpoints*, IICLE (2020)

“Seventh Circuit: Jury, Not Judges, Must Decide Coach’s Sex Discrimination Claim” *Employment and Labor Law Flashpoints*, IICLE (2020)

“Examining DOL Rule on New Employee Leave Rights” *Employment and Labor Law Flashpoints*, IICLE (2020)

“Better Safe Than Sued – Issuing Timely FMLA Notices” *Employment and Labor Law Flashpoints*, IICLE (2020)

“Unions Strike Back Through Amendments to Illinois Public Labor Acts” *Employment and Labor Law Flashpoints*, IICLE (2020)

“First Amendment Protections Get Broader for Government Employees,” *Chicago Daily Law Bulletin* (2016)

"Regulatory Changes to the Illinois Wage Payment and Collection Act," *Justinian Society Newsletter* (2015)

"New FOIA Amendments to Ease Burden on Public Bodies," *Justinian Society Newsletter* (2015)

“Illinois Supreme Court Determines Arbitration Award Ordering Reinstatement of a Paraprofessional was Binding Because the Award ‘Drew Its Essence’ from the CBA,” *Justinian Society Newsletter* (2014)

“When the Music Stops, Why Not Require Certain Title VII Plaintiffs to Find a Chair on Which to Rest Their Complaint,” *The John Marshall Law Review*, (2009)

RECENT PRESENTATIONS

Is PERA Dead?? Implementation of a Local Appeals Process for Unsatisfactory Ratings, IASPA Annual Conference (January 2020)

A Workshop on Compliance with the Open Meetings Act and Illinois Freedom of Information Act, LUDA Annual Conference (October 2019)

Community College Trustees Training Session, ICCTA (June 2019)

ORGANIZATIONS

Chicago Bar Association

Illinois Council of School Attorneys

Illinois State Bar Association

National Council of School Attorneys

Treasurer, Justinian Society of Lawyers

Co-Chair, Justinian Society of Lawyers Endowment Fund Scholarship Committee

Member, Oakton Community College Paralegal Advisory Committee

Member, Triton College School of Business Advisory Legal Committee

Member, Board of Directors, Glenview Stars Hockey Association

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Dennis Weedman represents school districts, community colleges, county boards and other units of local government in labor negotiations and employment related matters, including complaints and charges of discrimination, wrongful termination litigation, claims of sexual harassment, civil rights violations and unfair labor practice charges. Dennis also advises clients on the handling of grievances, as well as represents public entities in labor arbitration hearings. He has represented employers in more than 200 arbitration hearings and has handled more than a hundred union organizational cases before the various public sector labor relations boards. Following certification of the bargaining unit, Dennis also serves as a negotiator and advisor for collective bargaining agreements, having negotiated several hundred labor contracts for public employers.

Dennis's area of practice extends well beyond just labor and employment matters. He counsels clients in all areas of personnel management, including employee leave rights, overtime obligations, and employee disciplinary matters, as well as in the areas of board governance, general education law and student rights and responsibilities. Dennis has served on the Illinois State Bar Association's Labor and Employment Section and is a frequent presenter for the Illinois Association of School Boards and at statewide conferences, including the Chicago-Kent School of Law Public Sector Labor Relations Conference.

Dennis has over twenty-eight years of experience representing public entities in labor and employment disputes. Prior to joining Robbins Schwartz, Dennis served as an Administrative Law Judge with the Illinois Labor Relations Board and was Labor Relations Counsel for Governor James Edgar through the Illinois Department of Central Management Services.

Dennis is approved by the Illinois State Board of Education to provide school board member training.

AWARDS

Illinois Leading Lawyer, Employment Law: Management, Labor Law: Management, School Law and Governmental, Municipal, Lobbying & Administrative Law, 2015

RECENT PRESENTATIONS

Collective Bargaining Workshop, Regional IASBO Conference (April 2021)

Legislative and Decisional Law Update, Illinois Community College Presidents' Council (March 2021)



PRACTICE AREAS

Education Law
Labor & Employment
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EDUCATION

J.D., Southern Illinois
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U.S. District Court for the
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Illinois Council of School
Attorneys

Illinois Local Government
Lawyers Association

Illinois State Bar
Association

Collective Bargaining Update, Large Unit District Association (February 2021)

Legal Ethics: Ethical Considerations during the Pandemic, Illinois Kent School of Law 36th Annual Public Sector Labor Relations Conference (December 2020)

Pre-K to Grade 12 Return to School, Southwest Leadership Council (September 2020)

Collective Bargaining Workshop, Regional IASBO Conference (March 2020)

Nuts and Bolts of Grievance Handling and Pre-Arbitrations Strategies, 35th Annual Kent School of Law Public Sector Labor Relations Conference (November 2019)

New College Board of Trustee Member Training, Illinois Community College Board (September 2019)

Managing Creditable Earnings under TRS New 3% Limitation Threshold, Annual and Regional IASBO Conferences (April 2019)