



NHMA Guidance on Mandating Vaccinations for Local Government Employees

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The newly enacted Medical Freedom in Immunizations law, [RSA 141-C:1-a](#) prohibits counties, cities, towns, village districts and school districts from requiring a person to receive an immunization for COVID-19 in order to “secure, receive, or access any public facility, any public benefit, or any public service.”

NHMA does not believe that the language in RSA 141-C:1-a, I, prohibiting government entities from requiring a vaccine to "access [to] any public facility, any public benefit, or any public service" applies to public employment. No one who is employed by the state or a municipality would reasonably refer to his or her job as "access[ing] any . . . public benefit, or any public service." Instead, that language is more reasonably understood from a “customer” perspective. A customer of the municipality who is seeking to access a public benefit or public service may not be denied access based on immunization status.

The legislature could easily have added the words "public employment," and we think the absence of those words suggests that the legislature did not intend to prohibit municipalities from requiring immunizations for employees. Indeed, the language in the original bill that explicitly prohibited public employers from mandating vaccines had been removed before final passage of the legislation. Thus, we do not believe RSA 141-C:1-a prevents municipal employers from requiring Covid-19 vaccinations for their employees.

However, based upon discussions with our municipal partners, and after thoroughly reviewing the legislative record, NHMA understands that there is a difference in interpretation regarding the language of RSA 141-C:1-a, and that the legislative history may leave room for doubt. Consequently, caution must be exercised before imposing a vaccination mandate on local government employees, and NHMA urges municipalities to consult with their regular legal counsel before imposing a vaccination mandate on government employees.

The answer is clearer with respect to municipal employees who provide medical services. RSA 141-C:1-a, II(e) states that the prohibition on requiring immunizations does not apply to nursing homes, the state hospital, “or any other medical facility or provider operated by the state of New Hampshire or any political subdivision.” Thus, there is no doubt that municipal employees providing medical services, such as emergency medical technicians and paramedics, may be required to receive an immunization. Nevertheless, we encourage consultation with legal counsel before imposing such a requirement.

In addition, municipalities should be aware that under the Americans with Disabilities Act (ADA), the Rehabilitation Act and Title VII of the Civil Rights Act of 1964 there are limitations on mandating Covid-19 vaccinations for employees. The Equal Employment Opportunity Commission guidance supports mandating Covid-19 vaccinations by employers for employees, provided the employer offers

a reasonable accommodation for employees with a disability or sincerely held religious belief, practice, or observance, unless providing an accommodation would pose an undue hardship on the operation of the employer's business. See; <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws#K>. Municipalities seeking to impose a vaccination mandate should also discuss the impact of the ADA, the Rehabilitation Act and Title VII of the Civil Rights Act of 1964 on any proposed mandate with their regular legal counsel.