

## States That Allow Employees to Refuse Flu Vaccines for any Reason

Many states allow employees to decline flu vaccine **for any reason** including California, Illinois, Kentucky, Maine, Maryland, Massachusetts, Nebraska, New York, North Carolina, Oklahoma, Oregon, Texas and Utah.

### California:

For California requirements, see Cal. Health & Safety Code § 1288.7 (2007), providing that by July 1, 2007, the department shall require that each general acute care hospital, in accordance with the Centers for Disease Control guidelines, take all of the following actions: (a) Annually offer onsite influenza vaccinations, if available, to all hospital employees at no cost to the employee. Each general acute care hospital shall require its employees to be vaccinated, or **if the employee elects not to be vaccinated, to declare in writing that he or she has declined the vaccination**. See also Cal. Code Regs. tit. 8, § 5199, relating to “aerosol transmissible diseases”. Cal. Code Regs. tit. 8, § 5199(h)(10) requires employers to make seasonal influenza vaccine available to all employees with occupational exposure, and to ensure that each employee who declines to accept the seasonal influenza vaccine signs an influenza vaccine declination statement. Cal. Code Regs. tit. 8, § 5199 applies to hospitals, skilled nursing facilities, clinics, medical offices and other outpatient medical facilities, among others. Outpatient medical facilities whose policy is not to diagnose or treat aerosol transmissible diseases are not required to comply with this standard if they meet certain other conditions.

[http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=1288.7&lawCode=HSC](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1288.7&lawCode=HSC)

1288.7. By July 1, 2007, the department shall require that each general acute care hospital, in accordance with the Centers for Disease Control guidelines, take all of the following actions:

(a) Annually offer onsite influenza vaccinations, if available, to all hospital employees at no cost to the employee. Each general acute care hospital shall require its employees to be vaccinated, or **if the employee elects not to be vaccinated, to declare in writing that he or she has declined the vaccination.**

## **Illinois:**

For Illinois requirements, see Ill. Admin. Code tit. 77, § 956.30 relating to “influenza vaccination”. Ill. Admin. Code tit. 77, § 956.30 provides that beginning with the 2010 to 2011 influenza season, each health care setting shall ensure that all health care employees are offered the opportunity to receive seasonal, novel, and pandemic influenza vaccine during the influenza seasons (between September 1 and March 1 of each year), unless the vaccine is unavailable. **Healthcare employees who decline vaccination for any reason shall sign a statement declining vaccination and certifying that he or she received education about the benefits of influenza vaccine.** Ill. Admin. Code tit. 77, § 956.10 defines a “health care setting” as including, among others, hospitals as defined in the Hospital Licensing Act.

<http://www.ilga.gov/commission/jcar/admincode/077/077009560000300R.html>

**TITLE 77: PUBLIC HEALTH  
CHAPTER I: DEPARTMENT OF PUBLIC HEALTH  
SUBCHAPTER II: MISCELLANEOUS PROGRAMS AND SERVICES  
PART 956 HEALTH CARE EMPLOYEE VACCINATION CODE  
SECTION 956.30 INFLUENZA VACCINATION**

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### **Section 956.30 Influenza Vaccination**

Beginning with the 2010 to 2011 influenza season, each health care setting shall ensure that all health care employees are provided education on influenza and are offered the opportunity to receive seasonal, novel and pandemic influenza vaccine, in accordance with this Section, during the influenza season (between September 1 and March 1 of each year), unless the vaccine is unavailable (see subsection (e)).

- a) Each health care setting shall notify all health care employees of the influenza vaccination provisions of this Part and shall provide or arrange for vaccination of all health care employees who accept the offer of vaccination. Each health care setting shall provide all health care employees with education about the benefits of influenza vaccine and potential consequences of influenza illness. Information provided shall include the epidemiology, modes of transmission, diagnosis, treatment and non-vaccine infection control strategies.

- b) Each health care setting shall develop and implement a program that includes the following:
- 1) A plan to offer seasonal, pandemic or any other influenza vaccine;
  - 2) The time frame within which health care employees will be offered vaccination; and
  - 3) Any required documentation relating to the health care employee vaccination requirement of this Part.
- c) Declination of Vaccine
- 1) Health care employees may decline to accept the offer of vaccination for reasons including the following:
    - A) The vaccine is medically contraindicated, which means that administration of influenza vaccine to that person would likely be detrimental to the person's health;
    - B) Vaccination is against the person's religious beliefs;
    - C) The person has already been vaccinated; or
    - D) For any other reasons documented by the person as the basis of the refusal.
  - 2) Health care employees who decline vaccination for any reason indicated in subsection (c)(1) shall sign a statement declining vaccination and certifying that he or she received education about the benefits of influenza vaccine.
- d) Unavailability of Vaccine. A health care setting shall not be required to offer influenza vaccination when the vaccine is unavailable for purchase, shipment or administration by a third party, or when complying with an order of the Department that restricts the use of the vaccine. A health care setting shall offer to provide or arrange for

influenza vaccination for health care employees as soon as the vaccine becomes available.

e) Documentation

1) Each health care setting shall maintain a system to track the offer of vaccination to health care employees. The system shall include documentation that each person either accepted the offer or declined the offer by signing a declination statement pursuant to subsection (c)(2).

2) If a health care setting is unable to provide or arrange for influenza vaccination for health care employees who wish to be vaccinated, the reasons why the vaccination could not be provided or arranged for shall be documented.

3) Individual declination statements should be handled in a manner that ensures individual confidentiality.

4) Documentation shall be maintained for at least three years.

f) Health care settings may choose to develop and implement more stringent influenza vaccination policies, strategies or programs designed to improve health care employee vaccination rates than those required by this Part and that are consistent with existing law and regulation.

**Kentucky:**

Kentucky 209.552 Immunization against pneumococcal disease and influenza --  
Documentation -- Immunization of employees.

<http://www.lrc.ky.gov/Statutes/statute.aspx?id=8207>

- (5) The provisions of this section shall not apply if:
- (a) The vaccine is medically contraindicated;
  - (b) The employee, resident, or resident's legal guardian objects to the immunizations due to religious beliefs; or
  - (c) The employee or resident refuses the vaccine after being fully informed of the health risks.

## Maine:

For Maine requirements, see Code Me. R. § 10-144-264(2), relating to “Designated Healthcare Facilities.” Code Me. R. § 10-144-264(2) provides that Designated Healthcare Facilities shall adopt a policy that recommends and offers annual immunizations against influenza to all personnel who provide direct care for residents of the facility. “Designated Healthcare Facilities” are defined in Code Me. R. § 10-144-264(1) as a licensed nursing facility, residential care facility, intermediate care facility for the mentally retarded, multi-level health care facility, hospital, or home health agency.

<http://www.maine.gov/sos/cec/rules/10/chaps10.htm#144>

**10-144 DEPARTMENT OF HEALTH AND HUMAN SERVICES  
MAINE CENTER FOR DISEASE CONTROL AND PREVENTION  
Chapter 264: IMMUNIZATION REQUIREMENTS FOR HEALTHCARE  
WORKERS ([www.maine.gov/sos/cec/rules/10/144/144c264.doc](http://www.maine.gov/sos/cec/rules/10/144/144c264.doc))**

### **3. Exceptions and Declinations**

#### **An employee who does not meet the immunization/immunity requirement may be permitted to attend work under the following conditions:**

A. The employee presents to the designated healthcare facility a physician's written statement that immunization against one or more of these diseases is medically inadvisable. If the statement does not include all diseases, the employee must meet the immunization/immunity requirements for any diseases not covered by the statement.

B. **The employee states in writing an opposition to immunization because of a sincere religious belief or for philosophical reasons.**

C. Declination for Hepatitis B pursuant to OSHA Regulations: An exemption is available to an employee who declines Hepatitis B vaccination in accordance with the applicable regulations established by the Occupational Safety and Health Administration.

## Massachusetts:

For Massachusetts requirements, see Mass. Regs. Code tit. 105, § 130.325, relating to requirements that hospital personnel be vaccinated against influenza. Mass. Regs. Code tit. 105, § 130.325(B) provides that each hospital shall ensure that all personnel are vaccinated with seasonal influenza vaccine unless an individual declines vaccination in accordance with Mass. Regs. Code tit. 105, § 130.325(F). Mass. Regs. Code tit. 105, § 130.325(A) defines personnel as individuals employed by or affiliated with the hospital, whether directly, by contract with another entity, or as an independent contractor, paid or unpaid, including but not limited to employees, members of the medical staff, contract employees or staff, students, and volunteers who either work at or come to the licensed hospital site, whether or not such individual(s) provide direct patient care.

<http://www.mass.gov/eohhs/docs/dph/regs/105cmr130.pdf>

130.325: continued

(B) Each hospital shall ensure that all personnel are vaccinated with seasonal influenza vaccine **unless an individual declines vaccination in accordance with 105 CMR 130.325(F)**. When feasible, and consistent with any guidelines of the Commissioner of Public Health or his/her designee, each hospital shall ensure that all personnel are vaccinated with seasonal influenza vaccine no later than December 15, 2009 and annually thereafter.

(C) Each hospital also shall ensure that all personnel are vaccinated against other pandemic or novel influenza virus(es) as specified in guidelines of the Commissioner or his/her designee, unless an individual declines vaccination in accordance with 105 CMR 130.325(F). Such guidelines may specify:

- (1) the categories of personnel that shall be vaccinated and the order of priority of vaccination of personnel, with priority for personnel with responsibility for direct patient care;
  - (2) the influenza vaccine(s) to be administered;
  - (3) the dates by which personnel must be vaccinated; and
  - (4) any required reporting and data collection relating to the personnel vaccination requirement of 105 CMR 130.325(C).
- (D) Each hospital shall provide all personnel with information about the risks and benefits of influenza vaccine.

**(F) Exceptions.**

(1) A hospital shall not require an individual to receive an influenza vaccine pursuant to 105 CMR 130.325(B) or (C) if:

(a) the vaccine is medically contraindicated, which means that administration of influenza vaccine to that individual would likely be detrimental to the individual's health;

**(b) vaccination is against the individual's religious beliefs; or**

**(c) the individual declines the vaccine.**

**(2) An individual who declines vaccination for any reason shall sign a statement declining vaccination and certifying that he or she received information about the risks and benefits of influenza vaccine.**

**Maryland:**

For Maryland requirements, see MD. Regs. Code tit. 10, § 07.01.34 relating to "infection prevention and control program". MD. Regs. Code tit. 10, § 07.01.34 provides that hospitals shall establish processes and programs to prevent the spread of communicable diseases and infections. Immunizations for influenza shall be offered to staff and licensed independent practitioners, and **reasons for refusal of the influenza vaccine by an employee shall be documented by the infection control or employee health program.**

<http://www.dsd.state.md.us/comar/comarhtml/10/10.07.02.21.htm>

**10.07.02.21-1 Employee Health Program.**

A. The facility's infection control program shall monitor the relevant health status of all employees, as it relates to infection control. The following guidelines shall aid the facility in implementing its employee health program:

(7) The facility shall request that each employee receive immunization from influenza virus in accordance with Health-General Article, §18-404, Annotated Code of Maryland. The facility shall make information available to all employees concerning other conditions in which pneumococcal vaccine may be of benefit for certain other underlying medical conditions. **The facility shall document refusals and shall conduct surveillance of nonimmune employees during the recognized influenza season.**

## **Nebraska:**

For Nebraska requirements, see Neb. Rev. Stat. §71-467, pertaining to “general acute hospital; employees; influenza vaccinations; duties; record”. Neb. Rev. Stat. §71-467 states that each general acute hospital shall annually offer onsite influenza vaccination to all hospital employees when no national vaccine shortage exists.

<http://nebraskalegislature.gov/laws/statutes.php?statute=71-467>

Nebraska Revised Statute 71-467:

71-467. General acute hospital; employees; influenza vaccinations; duties; record.

(1) Each general acute hospital shall take all of the following actions in accordance with the guidelines of the Centers for Disease Control and Prevention of the United States Public Health Service of the United States Department of Health and Human Services as the guidelines existed on January 1, 2011:

(a) Annually offer onsite influenza vaccinations to all hospital employees when no national vaccine shortage exists; and

(b) Require all hospital employees to be vaccinated against influenza, **except that an employee may elect not to be vaccinated.**

(2) The hospital shall keep a record of which employees receive the annual vaccination against influenza and which employees do not receive such vaccination.

## **New York:**

[http://www.health.ny.gov/prevention/immunization/ltc\\_act/docs/article21.pdf](http://www.health.ny.gov/prevention/immunization/ltc_act/docs/article21.pdf)

§ 2195. Exceptions. No individual shall be required to receive either an influenza vaccine or pneumococcal vaccine if the vaccine is medically contraindicated, or if it is against his or her religious beliefs, or **if he or she refuses the vaccine after being fully informed of the health risks of such action.**

**North Carolina:**

[http://www.ncleg.net/EnactedLegislation/Statutes/HTML/ByChapter/Chapter\\_131D.html](http://www.ncleg.net/EnactedLegislation/Statutes/HTML/ByChapter/Chapter_131D.html)

§ 131D-9.

(e) **No individual shall be required to receive vaccine under this section if the vaccine is medically contraindicated, or if the vaccine is against the individual's religious beliefs, or if the individual refuses the vaccine after being fully informed of the health risks of not being immunized.**

## **Oklahoma:**

For Oklahoma requirements, see Okla. Admin. Code § 310:667-5-4, relating to “employee and/or worker health examinations.” Okla. Admin. Code § 310:667-5-4 provides that each hospital shall have an annual influenza vaccination program that shall include (1) the offer of influenza vaccination onsite, at no charge to all employees and/or workers in the hospital or acceptance of documented evidence of current season vaccination from another vaccine source or hospital and (2) documentation of vaccination for each employee and/or worker or **a signed declination statement on record from each individual who refuses the influenza vaccination for other than medical contraindications.**

[http://www.oar.state.ok.us/oar/codedoc02.nsf/frmMain?OpenFrameSet&Frame=Main&Src=\\_75tnm2shfcdnm8pb4dthj0chedppmcbq8dtmmak31ctijujrgcln50ob7ckj42tbkdt374obdcli00](http://www.oar.state.ok.us/oar/codedoc02.nsf/frmMain?OpenFrameSet&Frame=Main&Src=_75tnm2shfcdnm8pb4dthj0chedppmcbq8dtmmak31ctijujrgcln50ob7ckj42tbkdt374obdcli00)

**(e) Annual influenza vaccination program.** Each hospital shall have an annual influenza vaccination program consistent with the recommendations of the Centers for Disease Control and Prevention Advisory Committee on Immunization Practices that shall include at least the following:

- (1) The offer of influenza vaccination onsite, at no charge to all employees and/or workers in the hospital or acceptance of documented evidence of current season vaccination from another vaccine source or hospital;
- (2) Documentation of vaccination for each employee and/or **worker or a signed declination statement on record from each individual who refuses the influenza vaccination for other than medical contraindications;** and
- (3) Education of all employees and/or workers about the following:
  - (A) Influenza vaccination;
  - (B) Non-vaccine influenza control measures; and
  - (C) The symptoms, transmission, and potential impact of influenza.
- (4) Each hospital influenza vaccination program shall conduct an annual evaluation of the program including the reasons for non-participation.
- (5) The requirements to complete vaccinations or declination statements for each employee and/or worker may be suspended by the hospital's medical staff executive in the event of a shortage of vaccine as recognized by the Commissioner of Health.

## **Oregon:**

For Oregon, while no statute or regulation requires any hospital to ensure that any employee is vaccinated with influenza vaccine, note Or. Rev. Stat. § 433.416, providing that an employer of a health care worker at risk of contracting an infectious disease in the course of employment shall provide to the worker preventative immunization for infectious disease if such preventative immunization is available and medically appropriate. Such preventative immunization shall be provided by the employer at no cost to the employee. **A worker shall not be required as a condition of employment to be immunized under this section,** unless such immunization is otherwise required under state or federal law, rule or regulation.

<https://www.oregonlaws.org/ors/433.416>

433.416 When employer to provide preventive immunization. (1) An employer of a health care worker at risk of contracting an infectious disease in the course of employment shall provide to the worker preventive immunization for infectious disease if such preventive immunization is available and is medically appropriate. (2) Such preventive immunization shall be provided by the employer at no cost to the worker. (3) **A worker shall not be required as a condition of work to be immunized under this section,** unless such immunization is otherwise required by federal or state law, rule or regulation. [1989 c.949 §3]

## **Texas:**

[https://texreg.sos.state.tx.us/public/readtac\\$ext.TacPage?sl=R&app=9&p\\_dir=&p\\_rloc=&p\\_tloc=&p\\_ploc=&pg=1&p\\_tac=&ti=25&pt=1&ch=97&rl=202](https://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=25&pt=1&ch=97&rl=202)

(2) Influenza vaccine for residents and employees. The facility must offer influenza vaccination to residents and employees in contact with residents. Vaccination must be completed unless the vaccine is medically contraindicated by a physician or unless the employee or resident has refused the vaccine.

(A) Influenza vaccination for all residents and employees must be completed by November 30 of each year. Employees hired or residents admitted after this date and during the influenza season (through March of each year) must receive influenza vaccinations unless medically contraindicated by a physician or unless the employee or resident has refused the vaccine.

## **Utah:**

<https://rules.utah.gov/publicat/code/r432/r432-040.htm>

R432405. Immunization Offer and Exemptions.

(3) The following are exempt from influenza and pneumococcal immunizations:

- (a) a resident, or the resident's responsible person if the resident is unable to act for himself, who has refused the immunization(s) after having been given the opportunity to be immunized and;
- (b) an employee who has refused the immunization(s) after having been given the opportunity to be immunized;