

## LEGAL SERVICES ADVISORY

### NJEA Vaccine FAQ

The information in this Q&A is based on the information made publicly available by the New Jersey Department of Health (DOH), the Centers for Disease Control and Prevention (CDC), and the Equal Employment Opportunity Commission (EEOC) at the time of publishing, January 14, 2021.

#### Who is eligible to receive the vaccine in New Jersey?

The NJ DOH Vaccination Plan for the COVID-19 virus is intended to provide fair, equitable, and ethical access to all who live, work, and/or are educated in New Jersey. The DOH has prioritized the availability of the vaccine by differentiating categories of individuals' occupations and risk factors into Phases 1A, 1B, 1C, and 2 of the vaccine rollout.

#### When will education employees be eligible to receive a COVID-19 vaccine?

Educational employees, including teachers and staff, are included in Phase 1B of the vaccine priority groups according to the DOH's COVID-19 Vaccination Plan, page 36, available here <https://nj.gov/health/legal/covid19/NJ%20Interim%20COVID-19%20Vaccination%20Plan%20-%20Revised%202012-15-20.pdf>. Currently, Phase 1A and some Phase 1B subgroups (first responders and high-risk populations) are eligible for the vaccine; continue to check the DOH website as the DOH continues to announce more subgroups that become open for eligibility. Visit <https://covid19.nj.gov/pages/vaccine>.

#### Are school nurses eligible to receive a COVID-19 vaccine with other health care workers?

Yes, school nurses are health care workers and are eligible to receive the vaccine in Phase 1A.

#### Am I included in a higher priority phase based on my age and/or my health condition that puts me at high risk for serious illness if I contract COVID-19?

Possibly. Effective January 14, 2021, individuals 65 and older and individuals ages 16-64 with medical conditions who have been identified by the CDC as increasing the risk of severe illness from the virus, are eligible for vac-

ination. Further information, including a list of the high risk conditions, is available here: <https://covid19.nj.gov/faqs/nj-information/slowing-the-spread/who-is-eligible-for-vaccination-in-new-jersey-who-is-included-in-the-vaccination-phases>

#### Will I need to provide proof that I am eligible to be included in a certain phase?

At the time of this writing, the DOH is not requiring professional or medical documentation – individuals will self-identify as meeting the eligibility requirements of the phase they are registering for. Of course, those registering should be honest about their eligibility.

#### Will students be able to receive the vaccine?

The Pfizer vaccine is currently approved by the FDA for individuals who are 16 or older, and the Moderna vaccine for those 18 and over.

#### When will vaccinations begin?

Phase 1A of vaccinations began in NJ on December 15, 2020. Phase 1B began on January 7, 2021 for the first responder subgroup only. The next subgroup of Phase 1B individuals, those over 65 and individuals with medical conditions that put them at high risk of severe illness if they contract the virus, are eligible beginning January 14, 2021. This information is subject to change by the DOH; for the most up to date information on the vaccine timeline, visit <https://covid19.nj.gov/pages/vaccine>.

#### How do the vaccination phases work? Can I still get the vaccine even if they have moved onto the next phase?

Those individuals who fall into in earlier phase category will still be eligible to receive the vaccine even if the

next phase has been opened. Not all individuals in one phase will be vaccinated before the next phase is opened, and not all groups within a specific phase will be eligible to receive the vaccine at one time.

For example, at the time of this writing, Phase 1B is open for first responders and high-risk groups, but the rest of Phase 1B groups are not yet eligible, and Phase 1A individuals are still being vaccinated. For the most up to date information on the vaccine timeline, visit <https://covid19.nj.gov/pages/vaccine>.

### **What do I have to do to get the vaccine?**

Currently, you can preregister for the vaccine by visiting <https://covidvaccine.nj.gov/>. There will likely be other avenues for preregistration or registration as the vaccination rollout continues.

### **Where can I receive the vaccine?**

The vaccine will be available at hospitals, urgent care centers, pharmacies, primary care sites, large state-coordinated mega sites, and smaller and mid-sized local and county sites throughout the state. If you have pre-registered for the vaccine, you should receive an email when you are able to schedule an appointment, or you can call a vaccine location for an appointment once you are eligible to receive the vaccine. For the current full list of vaccine locations open to eligible individuals, visit <https://covid19.nj.gov/pages/healthcare-worker-covid-19-vaccine-locations>.

### **Will vaccinations be available at worksites?**

Possibly. Working with local boards of health, some school districts may be used as vaccination sites for staff. If vaccines will be distributed at the worksite, local association leadership, with the support of their NJEA UniServ field representative, should contact their district administration for more information and to demand bargaining of any negotiable impact.

### **How much does the vaccine cost?**

The vaccine is free of cost, although your insurance provider may be billed by the state to offset some of the costs associated with the vaccination roll out.

### **Will I still have to wear a face covering, abide by social distancing, and follow other safety measures after I am vaccinated?**

For the foreseeable future, yes. While the vaccine protects the vaccinated individual from illness, it is possible that vaccinated individuals can still contract the virus and transmit it to others. Therefore, these safety measures will still be necessary to reduce community spread and protect those who are not yet eligible or unable to be vaccinated.

### **Where can I find out more information about the safety of the vaccine and the side effects of the vaccine?**

For information about safety and side effects, visit the following resources:

<https://covid19.nj.gov/index.html>

<https://www.cdc.gov/vaccinesafety/index.html>

<https://coronavirus.jhu.edu/vaccines>

<https://www.chop.edu/centers-programs/vaccine-education-center>

### **Are there any governmental mandates requiring people to receive a COVID-19 vaccine?**

No, there are no federal or state mandates requiring individuals to receive the COVID-19 vaccine.

### **Can an employer mandate its employees receive a COVID-19 vaccine when it becomes available?**

Employers are legally permitted to mandate that employees receive the vaccine. However, employees may be entitled to a reasonable accommodation under the Americans with Disabilities Act (ADA) and/or New Jersey's Law Against Discrimination (NJLAD) for those with a qualifying disability, as defined by law, that would prevent them from taking the vaccine, such as an underlying health condition that would make it contraindicated to receive a vaccine or a possible risk of a severe allergic reaction.

A religious accommodation may be required under a federal civil rights law known as Title VII and/or the NJLAD if the employee can demonstrate a sincerely held religious belief, practice or observance that would preclude vaccination.

### **What happens if my employer mandates the vaccine, but I don't want to receive it for religious or medical reasons?**

If you are not receiving the vaccine for religious or medical reasons, with the support of your local leadership and/or your NJEA UniServ field rep., you should request a reasonable accommodation, such as wearing a mask or remote work, and engage in the interactive process with your employer. An employer can deny a request for an accommodation if the accommodation poses an undue hardship, which in the case of a disability means significant difficulty or expense and in the case of a religious request, only requires some cost or burden to the employer. An employer is not required to provide an accommodation and can exclude an employee from the worksite if it can demonstrate that the unvaccinated employee would pose a direct threat due to a significant

risk of substantial harm to the health and safety of that individual or others that cannot be eliminated or reduced by reasonable accommodation. Whether an employer can deny an accommodation request for reasons of “undue hardship” or due to a “direct threat” will be a fact sensitive, individualized inquiry.

### **What happens if my employer mandates the vaccine, but I refuse the vaccine without having an accommodation?**

If an employee refuses the vaccine, and they do not have an accommodation based on religion or disability, the employer and employee can voluntarily agree on an alternative, such as mask wearing. If the employer’s policy requires a vaccine, and no accommodation is available, an employee can be disciplined for refusal to receive the vaccine, up to and including termination of employment. Any adverse action taken against the employee would be subject to any applicable tenure laws, the new just cause arbitration law for non-tenured educational support professionals, and protections contained in collective bargaining agreements.

### **Are employer mandates to be vaccinated subject to collective bargaining?**

Absent collective bargaining agreement language that limits bargaining rights, yes, a vaccine mandate and related changes to the terms and conditions of employment are subject to collective bargaining. If an employer announces it will mandate vaccination, local leadership should work with their NJEA UniServ field representative on the demand to bargain and subsequent bargaining.

### **Is there data or guidance about whether the COVID-19 vaccine is safe for people who are immunocompromised, pregnant, or breastfeeding?**

The CDC has stated that while COVID-19 mRNA vaccines are unlikely to pose a risk during pregnancy as they are not a live virus vaccine and do not interact with genetic material DNA, “the potential risks of mRNA vaccines to the pregnant person and her fetus are unknown because these vaccines have not been studied in pregnant women.” CDC, Vaccination Considerations for People who are Pregnant or Breastfeeding (Dec. 15, 2020), available at <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/recommendations/pregnancy.html>. Therefore, the

CDC recommends that pregnant people be offered the vaccine but that the decision to vaccinate be a personal choice for people who are pregnant and can be discussed with the pregnant person’s care team.

For those who are breastfeeding, the CDC has stated that mRNA vaccines are not thought to be a risk for breastfeeding infants and that those who are breastfeeding may choose to be vaccinated.

For immunocompromised individuals, the CDC has stated that they may receive the vaccine but should be informed that it may not be as effective. CDC, Interim Clinical Considerations for Use of mRNA COVID-19 Vaccines Currently Authorized in the United States, available at <https://www.cdc.gov/vaccines/covid-19/info-by-product/clinical-considerations.html>.

### **Are school nurses protected from liability if they are administering the vaccine in their role as school nurses?**

Yes, they are protected from liability for any claims of injury arising from administering the vaccine, if they administer the vaccine in accordance with the vaccine’s directions and do not provide it to groups not approved to receive the vaccine. They are not protected from liability for willful misconduct.

### **Do I have any recourse against the school district or college if I am harmed by the vaccine or the vaccination process?**

Generally, no. If a school district or college is involved in administering the vaccine, either directly or by way of mandating that its employees receive the vaccine, it is protected from liability from claims of injury, so long as the vaccine is administered according to directions and is not provided to groups not approved to receive it. Employers are not protected from liability for willful misconduct. Workers compensation claims are not included in liability protections and remain a possible avenue for redress of injury.

### **Where can I get weekly updates about the distribution of the vaccine in NJ?**

Sign up for weekly newsletter updates from the NJ DOH by visiting <https://www.state.nj.us/health/cd/topics/vmsignup.shtml>.