



LAW UPDATE LABOR AND EMPLOYMENT

PHONE: (661) 636-4830 • FAX: (661) 636-4843
E-mail: sls@kern.org • www.schoolslegalservice.org

July 7, 2016

SB 792 and You: Are Your Day Care Center Employees Appropriately Vaccinated?

Pursuant to Senate Bill 792 (Mendoza 2015), Fact Sheet attached, strict requirements for immunizations of employees and volunteers at day care centers will go into effect **September 1, 2016**. Commencing that date, subject to certain exemptions detailed below, individuals may not be employed or permitted to volunteer at a day care center, as defined, unless he or she has been immunized against influenza (flu), pertussis (whooping cough), and measles. Frequently asked questions and answers regarding this new legislation are below.

Why Did the Legislature Impose These New Requirements?

According to the author of SB 792:

"This bill will protect children in day care by requiring those who care for them to maintain immunity. Some diseases, such as the flu, cause only a relative inconvenience to healthy adults. However, this same disease can require hospitalization and perhaps even be fatal in an infant or an individual with a suppressed immune system. Other diseases in the ACIP schedule include very serious conditions, formerly under control, that have resurfaced in recent years, including pertussis and measles. By requiring vaccination for pre-school workers, vulnerable children will be 'cocooned' from potentially serious illness, and day care centers will be a safe and healthy place for our little ones to learn and play."

What are SB 792's Vaccination and Record Keeping Requirements?

As stated above, California Health and Safety Code section 1596.7995 now requires that commencing September 1, 2016, "a person shall not be employed or volunteer at a day care center if he or she has not been immunized against influenza, pertussis, and measles." Further, each employee and volunteer "shall receive an influenza vaccination between August 1 and December 1 of each year." If an individual meets all other requirements for employment or volunteering, but needs extra time to obtain and provide immunization records, the person can be conditionally employed or permitted to volunteer for a maximum of 30 days after signing and submitting a written statement attesting that he or she has been immunized as required.

Individuals are exempt from these vaccination requirements under the following circumstances:

1. The person submits a written statement from a licensed physician declaring that due to a physical condition or medical circumstances, immunization is not safe.
2. The person submits a written statement from a licensed physician providing that the person has evidence of current immunity to influenza, pertussis, and measles.
3. The person submits a written declaration that he or she has declined the influenza vaccination. (The ability to decline a vaccination only applies to the influenza vaccine.)
4. The person was hired after December 1 of the previous year and before August 1 of the current year (outside the normal influenza vaccine window). (This exemption only applies to the influenza vaccine during the first year of employment or volunteering.)

The day care center must maintain documentation of the required immunizations or exemptions from immunization in the person's personnel record maintained by the day care center.

Which LEA Employees and Volunteers must be Vaccinated?

The California Child Day Care Facilities Act (the Act)¹ provides for the licensure and regulation of day care centers by the State Department of Social Services. Health and Safety Code section 1596.76 defines a "day care center" as any "child day care facility other than a family day care home, and includes infant centers, preschools, extended day care facilities, and school age child care centers." According to section 1596.792, several arrangements and facilities are excluded from the Act, including public recreation programs as defined in subparagraph (g), extended day care programs operated by public or private schools, and any program that provides activities for children of an instructional nature in a classroom-like setting as defined in subparagraph (l).

This means that employees and any non-employees who provide care and supervision to children at day care centers, preschool programs, and before and after school care programs may fall under SB 792 requirements. If the State Department of Social Services licenses and regulates a local education agency's center, facility, or program for childcare, this legislation and its immunization requirements likely apply to the employees employed at the center, facility, or program.

As stated above, the requirements of SB 792 go into effect September 1, 2016. Do not delay in evaluating your agency's day care centers, preschool programs, and before and after school

¹ The Act is found at Health and Safety Code section 1596.70 et seq., and is accompanied by regulations at California Code of Regulations, Title 22, section 101151 et seq.

care programs to determine the applicability of these provisions to your agency's employees and volunteers. Should you determine SB 792 vaccination requirements impact your employees, proceed ahead to notify all current employees of the requirements and to ensure your current and newly hired employees are compliant by September 1, 2016. The vaccination requirements are a condition of employment and should be treated like the traditional tuberculosis risk assessment for purposes such as payment of costs attributed to securing the vaccinations.

If you have any questions concerning this or related issues, do not hesitate to contact our office.

— *Melissa H. Brown*

Education Law Updates are intended to alert clients to developments in legislation, opinions of courts and administrative bodies and related matters. They are not intended as legal advice in any specific situation. Please consult legal counsel as to how the issue presented may affect your particular circumstances.

Fact Sheet for Day Care Centers and Family Day Care Homes
SB 792 (Mendoza) Vaccines for Day Care Workers

What is Required

Under SB 792, day care centers and family day care homes, as part of their licensure requirements, will have to maintain vaccination records for their employees and volunteers for influenza, pertussis, and measles as outlined below. Failure to maintain accurate records will be treated like any other violation of licensure requirements.

Cost to Employees

All the vaccines required in SB 792 are covered **at no cost** by insurance plans under the Affordable Care Act. Insured employees and volunteers can contact their primary care physician to receive the vaccine with no co-pay, regardless of any minimums or maximums in their plans. Uninsured employees should contact Covered California to sign up for the plan that works for them.

Employees can be vaccinated a variety of ways:

- Contact their primary care physician
- Contact their local health department:
<http://www.cdph.ca.gov/programs/immunize/pages/californialocalhealthdepartments.aspx>
- Find private providers offering vaccines to the public:
<http://www.vaccines.gov/getting/where/>

Grace Period

SB 792 does not go into effect until September 1, 2016. This will give day care centers a year from the time of its signing to the time of its implementation. It also allows local health departments to include day care workers in their annual summer vaccination campaigns.

SB 792 also allows a 30-day period of conditional employment. In other words, a person has 30 days after they begin working or volunteering to gather appropriation immunization records.

Vaccinations Required

Influenza

Reasoning: According to the California Department of Public Health (CDPH), “the flu can be a serious disease that can lead to hospitalization and sometimes even death. Anyone can get sick from the flu.” Furthermore, “children younger than 5, but especially younger than 2 years old” are at serious risk of complications from the flu. “Since 2004-2005, flu-related deaths in children reported to CDC during regular influenza seasons have ranged from 35 deaths (during

2011-2012) to over 150 deaths (during 2012-2013). However, during the 2009 H1N1 influenza pandemic, (April 15, 2009 to October 2, 2010), 348 pediatric deaths were reported to CDC.” Death and illness from the flu is preventable. Individuals with the flu can be contagious for 24 hours before showing signs of symptoms, which is why vaccination is important – it is not enough simply to refrain from working while ill.

Annual Requirement: Flu viruses change each year, which is why an annual vaccine is required. The vaccine is usually available in the fall, and early vaccination is recommended in order to prevent the spread of the flu. Under this bill, employees and volunteers will need to show that they have been vaccinated between August 1 and December 1 of each year.

Opting out: Employees may decline to receive the influenza vaccine.

Record Keeping: Employers must have **ONE** of the following records for each employee/volunteer:

- A copy of an immunization record for influenza dated between August 1 and December 1 of each year
- A statement from the employee’s physician that there is a medical reason not to vaccinate the employee
- A statement from the employee’s physician that the employee is already immune to influenza
- A signed statement from the employee stating that they have declined to be vaccinated against the flu

Cost to employee: Insured employees can receive the flu vaccine for free from their primary care physician. Uninsured employees have a variety of options. Influenza vaccines cost \$15 at Costco.

Pertussis (Whooping Cough)

Reasoning: According to CDPH, there were 11,114 reported cases of whooping cough with three infant deaths in 2014. Infants receive their first pertussis immunization at two months of age, but they are not fully immunized until they have received several doses. Infants too young to be immunized rely on those around them to maintain their immunity.

Record Keeping: Employers must have **ONE** of the following records for each employee and volunteer:

- A copy of an immunization record for pertussis
- A statement from the employee’s physician that there is a medical reason not to vaccinate the employee
- A statement from the employee’s physician that the employee is already immune to pertussis

Cost to employee: Insured employees can receive the pertussis vaccine for free from their primary care physician. Uninsured employees have a variety of options. Pertussis vaccines cost \$49 at Costco or \$55 at WalMart.

Measles

Reasoning: According to the CDC, "Measles can cause serious health complications, such as pneumonia or encephalitis, and even death. Children younger than 5 years of age and adults older than 20 years of age are at high risk of getting a serious case of measles. About 1 in 4 unvaccinated people in the U.S. who get measles will be hospitalized; 1 out of every 1,000 people with measles will develop brain swelling (encephalitis); 1 or 2 out of 1,000 people with measles will die, even with the best care."

Record Keeping: Employers must have **ONE** of the following records for each employee and volunteer:

- A copy of an immunization record for measles
- A statement from the employee's physician that there is a medical reason not to vaccinate the employee
- A statement from the employee's physician that the employee is already immune to measles
- Proof that the employee was born before 1957 (according to the Advisory Council on Immunization Practices, "adults born before 1957 are generally considered immune to measles and mumps.")

Cost to employee: Insured employees can receive the measles vaccine for free from their primary care physician. Uninsured employees have a variety of options. Measles vaccines cost \$79 at WalMart.