

TO: MSC Members
FROM: Nancy Savage Marcus; Tyler Costello
DATE: November 1, 2021
RE: Mandatory Vaccination Policies: Campers

IMPORTANT REMINDER: This information is being provided for your general educational purposes only. You should always consult your attorney or other advisors for advice on how these laws apply to specifics at your camp.

As camps begin to open enrollment for the summer 2022 camp season, we offer the following guidance to help camps navigate the issue of whether to adopt a mandatory COVID-19 vaccination policy for campers, as we have had several clients ask about this issue. The laws and guidance surrounding mandatory vaccination policies is continuing to evolve. Our research and recommendations are therefore based upon the current threat of COVID-19 in the community and the legal landscape and policy recommendations that exist today.

Questions Presented:

1. Can camps require campers to arrive fully vaccinated?

Short Answer: Generally, yes, although there are exceptions discussed below. Camps can adopt a mandatory COVID-19 vaccination policy for campers who are eligible for the vaccine. In addition, as discussed below, camps are lawfully permitted to ask for a camper's vaccination status prior to arrival and exclude those who are unwilling to comply with the camp's policy.

2. Is the camp required to provide accommodations to a camper who requests an exemption due to a disability or sincerely held religious belief?

Short Answer: Yes. Under the Americans with Disabilities Act ("ADA") and Maine Human Rights Act ("MHRA") camps are required to provide reasonable accommodations to those who request an exemption to the camp's mandatory vaccination policy due to a disability that prevents them from safely receiving the COVID-19 vaccine. Furthermore, under the MHRA and Title II of the Civil Rights Act of 1964, camps are also required to provide reasonable accommodations to campers who object due to a sincerely held religious belief.

Discussion:

I. If a camp implements a mandatory COVID-19 vaccination policy, the camp is required to respond to a camper who requests an exemption due to a disability.

As a threshold matter, a camp is lawfully permitted to ask for proof of a camper's vaccination status. Camps should not request any further information as part of this inquiry, such as why a camper did not receive the COVID-19 vaccine. The ADA prohibits "unnecessary inquiries" about a disability. Each piece of information the camp requests from a camper must be necessary to insure safe participation in camp activities. Furthermore, the camper's vaccination status should be treated as confidential medical information along with any other medical documentation obtained as part of the enrollment process. If a camper fails to provide proof of receipt of the COVID-19 vaccine, the camp is lawfully permitted to exclude that individual from participation unless that camper (or their parent) requests an exemption and accommodations due to a disability that prevents them from safely receiving the vaccine.

Under the ADA, summer camps, like private schools, day care centers and restaurants, are considered "places of public accommodation." The ADA makes it unlawful for a place of public accommodation to deny an individual with a disability the equal right to use and enjoy the goods, services, or facilities without first considering whether reasonable accommodations or a modification to their policy, practice, or procedure is available.¹ The one exception is that a place of public accommodation can exclude an individual with a disability if that individual poses a "direct threat" to the health or safety of others, which is defined as "a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices or procedures." 5 M.R.S. § 4592.

Currently, COVID-19 (specifically an unvaccinated individual) arguably poses a "direct threat" to campers, staff, and the public. This is the first analysis a camp must make if it receives a request for accommodation. The factors to consider are (1) the duration of the risk; (2) the nature and severity of the potential harm; and (3) the likelihood that the potential harm will occur. As more people and age groups become vaccinated, overcoming this threshold inquiry to exclude someone may be more difficult. When COVID-19 no longer poses a direct threat (based on CDC guidance), camps will have to admit the unvaccinated camper with a medical exemption without accommodations.

If a camper requests an exemption to the camp's mandatory vaccination policy due to a medical condition or disability that prevents them from safely receiving the COVID-19 vaccine and COVID is a "direct threat", the camp must assess (i) whether the disability or medical

¹ 42 U.S.C. § 12182(a); 5 M.R.S. § 4592. Specifically, Maine law provides:

It is unlawful public accommodations discrimination for "any public accommodation or any person who is the owner, lessor, lessee, proprietor, operator, manager, superintendent, agent or employee of any place of public accommodation to directly or indirectly refuse, discriminate against or in any manner withhold from or deny the full and equal enjoyment to any person, on account of race or color, sex, sexual orientation, physical or mental disability, religion, ancestry or national origin, any of the accommodations, advantages, facilities, goods, services or privileges of public accommodation, or in any manner discriminate against any person in the price, terms or conditions upon which access to accommodation, advantages, facilities, goods, services and privileges may depend.

condition qualifies for an accommodation; and (ii) whether accommodations are available that wouldn't impose an "undue burden" on the camp (defined as "significant difficulty or expense"). It's important to remember that each request for accommodation must be evaluated on a case-by-case basis.

While there isn't a per-se disability that would qualify an individual for accommodations, camps can ask for a doctor's note confirming that the camper has a disability or medical condition that prevents them from safely receiving a COVID-19 vaccine. Upon confirmation of the medical disability, the next question is whether accommodating the camper will put a significant burden on the camp. Requiring the camper to wear a mask or submit to routine testing are generally not considered a significant burden. These accommodations (which should be tailored to the most recent CDC guidance) are intended to reduce the "direct threat" associated with permitting an unvaccinated camper to attend camp.

II. Is the camp required to provide accommodations to a camper who requests accommodations due to a sincerely held religious belief?

For now, yes. The right to request a religious exemption to a camp's or other place of public accommodation's mandatory vaccination policy likely stems from Title II of the Civil Rights Act of 1964 and the MHRA which declare that it is a civil right for every individual to have "equal access" to places of public accommodation without discrimination because of religion. 5 M.R.S. § 4591; 42 U.S.C. § 2000a. While there have been some recent changes to Maine law that prohibit one's ability to claim a religious exemption, these laws are not applicable to places of public accommodation.²

Accordingly, while Maine is among a few states that has begun to draw a distinction between medical exemptions and religious exemptions, the current guidance and interpretation of these laws suggest a camp is obligated to provide accommodations to a camper who refuses to receive the COVID-19 vaccine due to a sincerely held religious belief. The law does not protect an individual's political philosophies or personal preferences.

The accommodations available under the ADA are likely the same accommodations that are available to a camper who requests a religious exemption. These accommodations ensure the unvaccinated camper is still afforded "equal access" to camp. Note, however, that unlike the camp's inquiry under the ADA, there is no "direct threat" analysis for religious accommodations. In other words, a camp is obligated to provide reasonable accommodations to ensure the camper claiming a religious exemption is afforded equal access to and enjoyment of camp. With larger companies and governments leading the way in terms of vaccination mandates, the religious exemption will likely be tested in the courts in the near future.

² Maine's newly enacted law, 22 M.R.S. § 802(4-B), removes the right of healthcare workers to object to their employer's mandatory COVID-19 vaccination policy based upon religious or philosophical beliefs. A similar law was enacted removing the religious exemption for vaccines in public and private schools, however COVID-19 is not yet listed as a mandatory vaccine for school students.

III. Conclusion

To summarize, camps are obligated to provide reasonable accommodations to a camper who requests an exemption to a camp's mandatory vaccination policy due to a disability or medical condition that prevents them from safely receiving the COVID-19 vaccine. Furthermore, camps are likely required to provide reasonable accommodations to an individual who requests an exemption due to a sincerely held religious belief. That said, if a camper does not request accommodations due to a disability or sincerely held religious belief, and intends to remain unvaccinated, the camp is lawfully permitted to exclude that individual from participation. If a camp does adopt a mandatory vaccination policy, it's important to apply the policy consistently.