

Summer, 2021

THE STEWARD

Trustworthy Insurance Insights for Churches and Ministries

***“Behold, Children are a heritage from the Lord”
Psalm 127:3***

- Importance of an Abuse Prevention Policy
- Third Party Youth Groups: How to Protect Your Ministry
- 2021 Summer Youth Ministries
- Safe Electronic Communications with Youth
- Vaccine Considerations



INSURANCE BOARD
Partners in Protection

Abuse Prevention Policies:

The Foundation of a Safe Environment

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Setting a policy that your organization has zero tolerance for abuse establishes a cornerstone for abuse prevention practices. By their nature, policies are defined standards that establish the foundational framework of what your organization believes in. By developing clear, comprehensive policies that define what is and is not appropriate, your organization can enable employees and volunteers to look for red flag behaviors and be more empowered to prevent a suspicious or inappropriate situation from escalating to abuse.

Policies must be CLEAR. To effectively manage this risk and prevent abuse, organizations need a solid policy foundation. We often see pieces of these policies get buried in dense employee manuals or spread across multiple sections of somewhat related policy areas, making them lose their meaning and impact. Spotlighting abuse prevention and response expectations conveys their significance and enables everyone to be on the same page and to recognize when individuals step outside of it.

Polices to prevent abuse must clearly define **acceptable and unacceptable behaviors** in a concrete way, for example:



<i>Appropriate Electronic Communication</i>	<i>Inappropriate Electronic Communication</i>
<ul style="list-style-type: none">• Sending and replying to emails and text messages from youths ONLY when copying in a supervisor or the youth’s parent• Communicating through “organization group pages” on Facebook or other approved public forums• “Private” profiles for staff and volunteers which youths cannot access	<ul style="list-style-type: none">• Private messages between staff and volunteers with youths• “Friending” participants on social networking sites• Harsh, coercive, threatening, intimidating, shaming, derogatory, demeaning or humiliating comments• Sexually oriented conversations• Posting pictures of organization participants on social media sites• Posting inappropriate comments on photos



In addition to behavioral guidelines, abuse prevention policies should include specific operational procedures for managing **high-risk activities** such as transportation, bathrooms/locker rooms, overnight activities, playgrounds, and pools, for example:

Bathroom Supervision Policy

Most incidents of youth-to-youth abuse occur in the bathrooms. Therefore, the following guidelines are recommended: When supervising restroom use, adult staff members should first quickly scan the bathroom before allowing youths to enter.

A. For group bathroom breaks:

- Require staff to take groups of two or more youths to the bathroom – following the “rule of three” or more.
- If there is only one stall, only one youth should enter the restroom while the others wait outside with the staff.
- If there are multiple stalls, only send in as many youths as there are stalls.
- Minimize youths of different ages using the bathroom at the same time.
- Require staff to stand outside the bathroom door but remain within earshot.

B. For single use restrooms:

- Require youths to ask permission to use the bathroom.
- Require all staff to frequently check bathrooms

C. Prohibit staff from using the bathroom at the same time as youths.

D. If assisting young youths in the stalls, the staff should keep the door to the stall open.

These examples provide concrete guidelines to keep all staff within the same bandwidth of acceptable behavior and following the organization’s internal standards consistently. When staff understand the rationale of a policy, they are more likely to follow it; when they can point to a specific policy to express a concern about a colleague or a youth, they are more likely to say something.

However, policies must also be ENFORCED. Some organizations have museum-quality policies that no one knows or follows. On the other hand, individuals may know policies but make exceptions without consequence. An example of this (and a scenario we see far too often) is not following protocols for supervising youths in bathrooms. Praesidium offers a Helpline service where authorized users from a range of organizations may call to ask questions specific to abuse or related situations they aren’t quite sure how to handle. We track the types of scenarios that callers bring us and monitor them for trends to help determine

where resources may be needed. Consistently, our data show that youth-to-youth incidents are very common, and many of these incidents are happening in bathrooms. Staff often explain that they have a protocol for supervising their bathrooms, but they were short-staffed that day, or that one of the youths involved had slipped away from the group, or that there was situation with another youth that staff had to attend to. If employees cut corners and get away with it, sometime in the future their failure may contribute to a life changing catastrophe. Insurance Board partners with Praesidium to offer an abuse prevention helpline for all Insurance Board participants: 866.607.SAFE (7233).

Communicating policies regularly through training, employee supervision, and other established channels helps keep them fresh and relevant. Organizations should expect drift and mitigate it to the extent possible, even through employee discipline if necessary. Building and maintaining systems of accountability reinforces commitment and keeps adherence high.

Your Partner in Abuse Prevention

We're your partner.

Online:

Visit InsuranceBoard.org for more information and resources to help you prevent the disruptive impact of a loss.

By Phone:

Call **800.437.8830, option 6** to connect with an Insurance Board team member who can assist you.

Email:

Please email any questions to:

LossControl@InsuranceBoard.org.

Your Agent:

Your agent's information can be found on our website. Visit InsuranceBoard.org.

As the only non-profit insurance program exclusively serving six denominations, we operate as a financial ministry. This unique distinction sets us apart from any other property-liability insurance provider. As your ecumenical partner, we understand your ministry; we know your stories, we visit your ministries, and we walk with you during a claim.

Insurance Board is committed to providing superior property, casualty risk, and insurance management services. For 35 years, Insurance Board has been committed to ensuring your ministry receives superior coverage and top tier service.

At Insurance Board, reducing risk and claims directly translates to lowering the cost of insurance for all churches.



PROTECT YOUR MOST VULNERABLE CONGREGANTS

Failure to discover a sex offender can affect those in your care, your reputation, financial stability, and trust within the community.

Insurance Board has partnered with Praesidium to provide access to expert knowledge and targeted solutions to help you strengthen your abuse prevention efforts.

DID YOU KNOW?

Sexual Abuse of Minors is the number 1 reason churches end up in court.*

1 in 4 girls, 25% experience abuse

1 in 7 boys, 14% experience abuse

10% of school children experience abuse

40-50% of child molestations are committed by juveniles

80% of abuse is not reported

* According to a recent report in *Church Law & Tax* (posted February 10, 2021) which cited Richard Hammar's study of church litigations since 1980.

Abuse Prevention at Insurance Board

THE SAFECONDUCT™ WORKBENCH

<https://www.insuranceboard.org/safety-central/safeconduct-abuse-prevention/>

Our comprehensive toolkit assists ministries in developing a strong abuse prevention program including proper guidelines and policies, background checks, and state of the art online abuse prevention training.



BACKGROUND SCREENING SERVICES

Discounted background screening services to help keep your most vulnerable safe. Industry best practices recommend that ministries conduct background screenings of any employee/volunteer (including parents) who have access to children and vulnerable adults. Failure to discover a known offender can affect those in your care, your reputation, financial stability, and trust within the community.



CREATING A SAFE ENVIRONMENT (C.A.S.E.)

Exclusive for Insurance Board participants, C.A.S.E. is a state of the art, research based, facilitator-led, video-based training that provides practical solutions to navigating the many “gray areas” that can emerge day-to-day. A facilitator within your ministry will learn to lead guided training programs for others within your ministry to help prevent abuse, including peer-on-peer abuse.



SAFECONDUCT™ POLICY

A strong policy is the foundation for a safe environment. This sample template can help save you many hours of debate and drafting. It includes guidance and essential content missing from many policies.



KNOW YOUR SCORE (KYS!)

Praesidium's Know Your Score (KYS!) is built on the foundation of The Praesidium Safety Equation®, which establishes standards for abuse prevention in eight critical operations. Your KYS! Report is a tool created for your eyes only, and provides information and links to relevant resources that can help you build an action plan and close any risk gaps.



ONLINE TRAINING

At the core of the Praesidium Academy is a continually expanding library of engaging courses, each with clearly defined outcomes. Courses include research-based content, highly interactive multimedia activities, application scenarios, and a content mastery quiz. The Academy is a comprehensive system based on learning theory and best practices of adult learning.

Insurance Board Participants have access to:

- Praesidium Academy
- C.A.S.E. Through Armatus
- Background Screenings (50% subsidy)
- Know Your Score! (KYS!) Online Self-Assessment
- Tip of the Month Email

Third Party Youth Groups:



Ministry to children and teens is an important part of the outreach programs for our participants. These ministries can range from daycare and afterschool programs to youth group outings and camps. Because they involve interaction with children, churches engaged in programs such as these have a responsibility to protect the lives of those entrusted to them. Media coverage involving the Catholic Church and the recent lawsuits against Boy Scouts of America (BSA), as well as legislation designed to bring justice for victims of sexual abuse have brought increased scrutiny into the activities of any organization that interacts with children and youth. According to the Centers for Disease Control (CDC), the physical and emotional pain on the victims of sexual assault can last a lifetime. It isn't surprising, therefore, that the financial liability on an organization held responsible can be enormous.

Churches, therefore, need to implement important measures to help prevent abuse and to reduce liability exposure if abuse occurs on their premises. This is especially true when dealing with outside organizations that wish to use church space for child and youth activities. Churches have mistakenly allowed organizations to hold events on church property without any type of contractual agreement offering protection from the additional liability. This unfortunately places all the exposure on the church with little risk to the outside organization conducting the activity.

A contract that will shield the church from the additional exposure is a necessity in these situations. An effective contract is one that:

1. contains an agreement that transfers the risk of any claim associated with that event to the outside organization (referred to as a Hold Harmless clause);
2. requires the outside organization to provide insurance coverage with the necessary amount of coverage limits (often referred to as a Certificate of Insurance or COI) and;
3. requires that the church be added as an additional insured on the outside organization's insurance policy.

A Hold Harmless clause requires the outside organization to assume all risks associated with the event(s). This clause will often include, for example, words such as *indemnify, defend and hold harmless*. This helps make sure the outside organization rightfully assumes the risks associated with the activity.

Next, the contract should contain a section explaining insurance requirements including the need for a COI. A COI is necessary because it shows that the outside organization has commercial liability insurance. Moreover, it provides details regarding coverages and limits associated with that organization's insurance policy. This will enable the church to verify whether the outside organization has sufficient liability limits to cover costs associated with claims that may arise from the event.

Next, the contract should require that the church is included as an additional insured on the outside organization's insurance policy for that event. This ensures that the outside organization's liability coverage will extend to the church to cover the additional exposure created by the outside organization's use of the church premises.

How to Protect Your Ministry

Requiring a Tenants' and Users' Liability Insurance Policy (TULIP) from an outside organization is another excellent way a church can make sure organizations have a commercial liability policy in place to cover youth events. These policies are designed to provide short-term liability coverage for an organization using church space for an event. Because a TULIP policy is event-specific and relatively inexpensive, it is especially useful for outside organizations that don't carry their own liability insurance. As these policies also contain exclusions for certain activities, church leaders should always review closely the language in a TULIP policy to make sure the event is covered.

The following claims scenarios further demonstrate the importance for churches to incorporate these loss prevention measures.

One claim involved a youth leader who had assaulted a teen over a three-year period. The assaults allegedly began during a boy scout session at a church attended by the youth leader. The church, insured with another carrier, did not have a contractual agreement with the BSA as a charter organization, which at the time this suit was filed could have shielded it from some of the financial liability.

The church did have procedures governing the behavior of youth leaders as well as requirements for background checks that were in place when the assaults occurred. However, since those policies and procedures were never updated, they were shown to be insufficient according to current standards.

The case against the church eventually went to trial and resulted in a multi-million-dollar verdict against the church, most of which was paid by the church's insurance carrier.

Another claim involved a child who was sexually assaulted during church-sponsored after-school program. The family's attorney alleged negligence on the church for failing to "conduct a thorough background check" on the administrator of the program who had a history of assault. Had the church utilized effective measures for vetting school employees, there is a good chance this incident would have been prevented. The church also failed to properly supervise the activities of young children when they interacted with older teens and adults.

Although not every person who commits sexual assault will show up on a background check, it is imperative that churches still have effective procedures in place. Those procedures should include guidelines for supervision and interaction with children and teens. It is equally important that those procedures are kept current and are regularly enforced. If a lawsuit is ever filed, one of the most damaging pieces of information that can arise during discovery is that a church never conducted a background check on the assailant and/or it didn't have procedures governing the conduct of those who supervise and interact with children.

Churches should always consult qualified legal counsel before agreeing to host activities for outside youth organizations.

In many of our claims involving sexual assault we have seen that plaintiff attorneys will accuse churches of being negligent in three areas:

- 1. supervising children/teens;*
- 2. background checks for adult volunteers and leaders; and*
- 3. having the appropriate procedures/policies for interactions with youth/children.*

2021 Summer Youth Ministries

As ministries plan for summer youth activities, we recognize how stressful and challenging it is to do so during a pandemic. Churches across America are tasked with following state, local, and CDC guidance to make sure they are operating as safely as possible. Unfortunately, there is no “one size fits all” plan that can be applied in every situation. While there is much to consider, we find the most unique challenges exist surrounding housing/grouping, restroom use, food service, screening, and requiring vaccines.

The CDC recently updated guidelines regarding masks, social distancing, and vaccinations. We encourage churches to visit [their website](#) for the most current guidelines, but also consider what is required by federal, state, and local laws, rules, and regulations. CDC guidance includes various types of day and overnight camp activities for youth, and outlines strategies for youth programs to maintain healthy environments and operations, lower the risk of COVID-19 spread in their programs, and prepare when someone is sick. We encourage you to visit the CDC website as well as the [American Camp Association](#) website for guidance as you plan. Some takeaways to help get you start down your planning path:

Cohorting: Consider “cohorting” or “family grouping” in your program. Cohorts (or “pods”) are small groups of campers and staff who stay together throughout the day/stay to minimize exposure to others. The use of cohorts can limit the spread of COVID-19 between small groups but should not replace other prevention measures within each group. Cohorts can be used for sleeping arrangements, meals and all activities. Remember cohorts include staff; do not rotate staff. Consider scheduling and planning activities to allow for proper maintenance between groupings whenever possible (for example, cleaning equipment after a cohort’s use) and still maintain distance between cohorts during activities.



Restrooms: For restroom/shower use, high touch surfaces including toilets, showers, and restrooms should be cleaned and disinfected between users, if that is not possible, several times per day and always after heavy use. Avoid sharing common bathroom supplies (towels, soap, toothpaste, etc.). Keep soap, toilet paper, and paper towels in the bathroom stocked and place a trash can (with a foot-actuated lid or no lid) near the exit of the restrooms to make it easier to discard items. Also consider creating a staggered bathroom schedule to limit the number of people using the facilities at one time. Instruct campers to wash hands with soap and water for 20 seconds before and after activities and provide alcohol-based hand sanitizer containing at least 60% alcohol before and after activities.

Meals: Although COVID-19 is not foodborne, food service workers who are infected can transmit the virus to coworkers or diners. Staff should use clean utensils, such as tongs, spoons, etc., instead of gloved hands to prepare food. Avoid buffet style, self-service, table, counter food service, and other configurations that require diners to use shared utensils. Prioritize use of “grab-n-go” services (i.e., boxed meals), in which meals are packaged or assembled on a tray for diners to retrieve. Dining in the cohorts is considered the best practice and remember to clean and disinfect the area

and surfaces and high touched items between cohorts.

Screening and Vaccines: Best practice for avoiding an outbreak during day camp/vacation bible school (VBS)/ etc. is to ensure staff and campers come to camp healthy. The effectiveness of COVID-19 symptom screening in a school setting (VBS) is not well known. According to the CDC: “A recent study found that symptom screening that evaluated for all known COVID-19 symptoms and was conducted by health professionals in a hospital setting failed to identify nearly half (45%) of all pediatric patients infected with the virus that causes COVID-19, and 40% of those with COVID-19 symptoms did not have the virus that causes it⁽¹⁾.” Because of the limitations and challenges with symptom screening in children, the CDC does not currently recommend routine (such as daily) COVID-19 symptom screening of all students. However, students should not attend when they are sick. The CDC recommends “schools still need to implement other mitigation strategies to reduce the spread of the virus that causes COVID-19 (such as those described in

[Operating Schools during COVID-19](#)) even if symptom screening is used.” We recommend churches research the [CDC guidelines](#) concerning vaccines and discuss the direction they want to go with regard to staff and campers.

With so much to consider this summer, we enlisted the assistance of camp leaders across the country to share strategies on how they navigated their outdoor ministries and youth activities in 2020, including changes they are making for 2021. If you are offering programming for youth this summer, we highly encourage you to [view our recent webcast](#), that can be found on Insurance Board’s Online Learning Page.

Ministries should be sure to review CDC, ACA, and Insurance Board resources offering options for consideration. With careful deliberation and God’s guidance, youth programs can thrive once again.

[1] Poline J, Gaschignard J, Leblanc C, Madhi F, Foucaud E, Nattes E, Faye A, Bonacorsi S, Mariani P, Varon E, Smati-Lafarge M. “Systematic SARS-CoV-2 screening at hospital admission in children: a French prospective multicenter study.” *Clinical Infectious Diseases* (2020).



Electronic Communications With Youth

Youth Ministries have spent countless hours discussing how to safely gather again. Staff and volunteers have worked tirelessly to write new policies and procedures surrounding social distancing, masking, and integrating members of the congregation who are vaccinated and non-vaccinated. It's enough to make anyone feel overwhelmed.

Covid-19 mandates in most states restricted or extremely limited face to face interactions. As such, ministries have transitioned from policies discouraging or prohibiting electronic communication with youth to relying on it in order to stay connected. Ministries were challenged with how to remain connected

virtually with youth while also maintaining safe and healthy boundaries.

As many programs are finding their way back to a "new normal," Insurance Board encourages youth ministries to think about what this looks like for their youth ministries as they move forward. Leadership is encouraged to reflect and revisit their electronic communication policies with youth post pandemic. Prayerful decisions should be made to help protect your most vulnerable congregants.

Insurance Board partners with Praesidium, the nation's leader in abuse prevention resources to help our ministries navigate some of the gray areas.

Praesidium offers the following considerations regarding electronic communication:

- Send and reply to text messages with youth in group messages, preferably with a supervisor or another staff member copied in
 - At minimum, ensure a supervisor and the youth's parent/caregiver are consistently aware that text messages are being exchanged between youth and the adult staff member
 - To the extent possible, utilize corporate or agency-issued mobile phones OR utilize services like Google Voice that allow for connection through cell phones without necessarily giving away one's personal cell phone number
 - Communicate with youth through designated or authorized organizational "group pages" or "group profiles" on social media platforms (Facebook, What's App, etc.)
 - Ensure that staff designate their personal social media profiles to "private" so youth cannot befriend or access staff's personal information
 - When using video conferencing apps, ensure both staff and youth are aware of their background surroundings and personal appearance or attire in order to maintain professionalism and privacy
 - Use electronic communication strategically to communicate with youth by keeping conversations focused on curriculum/projects, goal attainment, and safety tips, rather than personal details
 - When providing general encouragement or support to youth at this challenging time, keep in mind the necessity to maintain consistent and professional boundaries to protect oneself from false allegations
 - Ensure any conversation that may be misinterpreted as inappropriate is immediately brought to a supervisor's attention
- Also, remember:
- Do not engage in any derogatory, demeaning, or humiliating conversations with youth
 - Do not engage with youth in sexually oriented conversations, memes or posts
 - Do not post inappropriate or suggestive comments or pictures/videos on youths' profiles

Vaccination Considerations

Provided by: Dean A. Rocco, Wilson Elser Moskowitz Edelman & Dicker LLP

Many questions surround the COVID-19 vaccination with regard to employment considerations.

Attorney Dean A. Rocco, offers the following considerations and resources for ministries:

EEOC (U.S. Equal Employment Opportunity Commission)

The main source of authority surrounding employer mandates at this point is the EEOC's Guidance Document: [What You Should Know About COVID-19 and the ADA, the Rehabilitation Act and Other EEO Laws](#).

Section K on Vaccinations makes clear the EEOC does not consider an employer-provided vaccine to be a medical examination triggering scrutiny under the ADA. However, screening questions asked before administering a vaccination (i.e. to determine if there are medically related counter-indications) would likely be medical examinations. As such, employers directly providing a mandated vaccine need to be ready to defend those inquiries and the practice by demonstrating the inquiries are job-related and consistent with business necessity. Where an employer simply mandates vaccines, and the vaccines are to be administered by a third party not under contract with the employer, the third-party's screening questions would not be subject to scrutiny.

The EEOC Guidance does not expressly "authorize" employer vaccine mandates. However, its wording assumes mandates can exist. It recognizes employers can impose a safety-based qualification standard like a vaccination mandate – even if it tends to screen out individuals with disabilities – if unvaccinated employees would pose a direct threat to the health or safety of others. On that question, the Guidance requires employers to consider:

1. the duration of the risk;
2. the nature and severity of the potential harm;
3. the likelihood that the potential harm will occur; and
4. the imminence of the potential harm.

If an employer determines an individual who cannot be vaccinated due to a disability poses a direct threat, they

cannot exclude or terminate that person from work unless and until they engage in the interactive process and determine there is no reasonable accommodation that would eliminate this risk (e.g. transfer to more remote/socially distanced work, face mask wearing, isolation, remote work, etc.). In considering reasonable accommodations, the Guidance tells employers they can rely on guidance from the CDC in setting up effective accommodations. Before determining whether offering a particular accommodation would cause the employer an undue hardship, the EEOC suggests the employer consider the prevalence of other workers who are already vaccinated and the amount of contact a particular worker will have with others as important considerations. Notably, the CDC's current [FAQ on Vaccines & Immunizations](#) does not yet identify any specific health conditions preventing an individual from getting the vaccine (including immunocompromised individuals or pregnant women); however, it suggests individuals with severe allergic reactions to the first dose or ingredients in the vaccine may not be appropriate candidates to receive the vaccine.

The EEOC Guidance also discusses the Genetic Information Nondiscrimination Act ("GINA"). Some previously noted the first two vaccines' use of mRNA technology and questioned whether the vaccines modify a recipient's genetic make-up. The EEOC's guidance cites CDC publications clarifying the first two vaccines do not interact with our DNA "in any way;" therefore mandating the vaccine would not violate GINA's prohibitions on using, acquiring or disclosing genetic information. Beyond this clarification, the EEOC Guidance cautions employers to not roll out programs that solicit genetic information from employees in violation of GINA.

The EEOC Guidance also reminds employers that they must accommodate persons with a sincerely held religious belief, practice or observance preventing them from receiving a vaccine. Like persons with disabilities, an employer cannot exclude or ultimately terminate such persons unless they can show there is no reasonable accommodation that would eliminate the direct threat caused by the person.

In sum, the EEOC Guidance recognizes an employer's ability to mandate vaccines but requires certain protections be installed in any mandate program to protect employees from discrimination based upon disability or religious belief, to avoid violations of GINA and to protect employees' privacy interests.



A few other points from the EEOC Guidance:

- Any medical information obtained in the course of a vaccination program must be kept confidential;
- Simply asking for proof of a vaccine is not a disability-related inquiry subject to scrutiny. The EEOC recommends telling employees not to provide medical information in such documentation.

If an employer asks an employee why they refused to get a vaccine, it may elicit information about a disability, which would be subject to the ADA standard that the inquiry be job related and consistent with business necessity. Such discussions with employees must be handled carefully.

CDC (Centers for Disease Control)

The CDC published a [Fact Sheet on Workplace Vaccination Programs](#). The Fact Sheet provides information on a number of topics, including how employers can inform and encourage employees to get vaccinated and plan for on-site vaccinations (an employer providing vaccinations on-site should also consult with OSHA's publications, including [Keeping Workers Safe at COVID-19 Vaccination Sites](#)). However, when it turned to the subject of employer mandates, the Fact Sheet seemingly skipped over the EEOC Guidance noted above (which was published in December 2020).

The Fact Sheet points out the emergency use authorization (“EUA”) for the COVID-19 vaccine does not mandate it be taken; it suggests whether an employer may require a vaccination or require proof of a vaccination is a matter of “state or other applicable law;” it discusses the EEOC’s *former* guidance around H1N1 vaccines and suggests it “may” be applicable to the COVID-19 vaccine; and it then points to the EEOC’s statements on mandates within its FAQ entitled [Pandemic Preparedness in the Workplace and the ADA](#) (which was drafted *before* the COVID-19 vaccines were authorized). While the EEOC’s Guidance is seemingly more on point, the Fact Sheet’s citation to this FAQ is instructive. There, consistent with its newer Guidance, the EEOC reminded employers that an employee with a disability may be entitled to an exemption from a mandatory vaccination requirement. In the FAQ, the EEOC also made the statement that “Generally, ADA-covered employers should consider simply encouraging employees to get the influenza vaccine rather than requiring them to take it.”

OSHA (Occupational Safety and Health Administration)

While OSHA has provided information on workplace standards applicable to employers who provide vaccinations on-site, it has not specifically weighed in on employer mandates for COVID-19 vaccinations. Its publication [Protecting Workers: Guidance on Mitigating and Preventing the Spread of COVID-19 in the Workplace](#) suggests employers should make vaccines available at no cost or provide information and training on their benefits, but it does not weigh in on mandates. Notably, in 2009, it issued a [Standard Interpretations Re: Mandatory Flu Shots](#) in which it noted OSHA does not mandate influenza vaccines but “an employer may do so.”

“As the prospect of a COVID-19 vaccination became realized, several states launched related legislation.”



State Law

Even before the pandemic, every state had some law on the books relating to mandatory immunizations in the context of healthcare, daycare or school entry. As the prospect of a COVID-19 vaccination became realized, several states launched related legislation. Such legislation generally does not prohibit employers from launching mandates (a dead bill in Minnesota would have). Most provide protections for employees against discrimination based upon their immunized status or otherwise provide protections for a broader group of employees than currently exists under federal or state discrimination laws – e.g. an anti-vaxxer who currently cannot claim an exemption because they are not disabled nor are asserting a religious objection would be protected against termination for refusing to be vaccinated. Most of these laws have not yet passed

or are already dead. At last check, only Oregon's existing law was on the books, and it only prohibits certain healthcare employers from requiring vaccines as a condition of employment.

[Some have recently argued](#) an employer cannot ever mandate employees take an EUA vaccine. They point out that, when issuing an EUA, the FDA must attach certain conditions to the authorization. One of those conditions requires drug manufacturers and stakeholders to inform recipients about the vaccine's risks and the fact that receiving it is *voluntary*. They suggest this means employers cannot mandate a vaccine. This argument seemingly conflates two unrelated issues. It would seem the FDA can require vaccine administrators to provide these disclosures, while a private employer can tell its employees they have to get vaccinated before they return to a worksite.

Employee Challenges to Mandates

A New Mexico public employee recently [filed a lawsuit](#) against a municipal employer challenging an employer-mandate. Among other things, the lawsuit asserts the argument an EUA vaccination must remain voluntary. *See Legarreta v. Fernando Macias et al. USDC (Dist of New Mexico – Las Cruces) 2:21-cv-00179-MV-GBW*. The employee's request for a temporary restraining order was denied on procedural grounds, and the parties were ordered to brief the issue. Legarreta subsequently withdrew the request and amended the lawsuit, and the County filed a motion to dismiss it; that motion has not yet been decided. At the same time, a group of employees filed a lawsuit challenging the Los Angeles Unified School District's vaccination mandate for staff on similar grounds; that case also faces a motion to dismiss.

Both of these lawsuits involved employees of public employers challenging vaccination mandates. In May 2021, a group of employees of a private employer in Houston, Texas filed suit in *Bridges et al. v. The Methodist Hospital*. Beyond the arguments espoused in the public employer cases against mandating the use of an EUA vaccination, the employees also claim an employer would commit wrongful termination in violation of public policy by terminating an employee who exercises their right to refuse a vaccination. Like the public employer cases, this case now sits in federal court and faces a motion to dismiss that has yet to be decided.

Additional Thoughts

When considering vaccination mandates, there is no controversy around employers educating employees about mandates or encouraging workers to get vaccinated. However, while there are some environments where it might make sense to consider implementing a mandate program (e.g. healthcare and nursing facilities or schools that traditionally mandate vaccinations in other contexts), a mandate may not be advisable in many workplace settings.



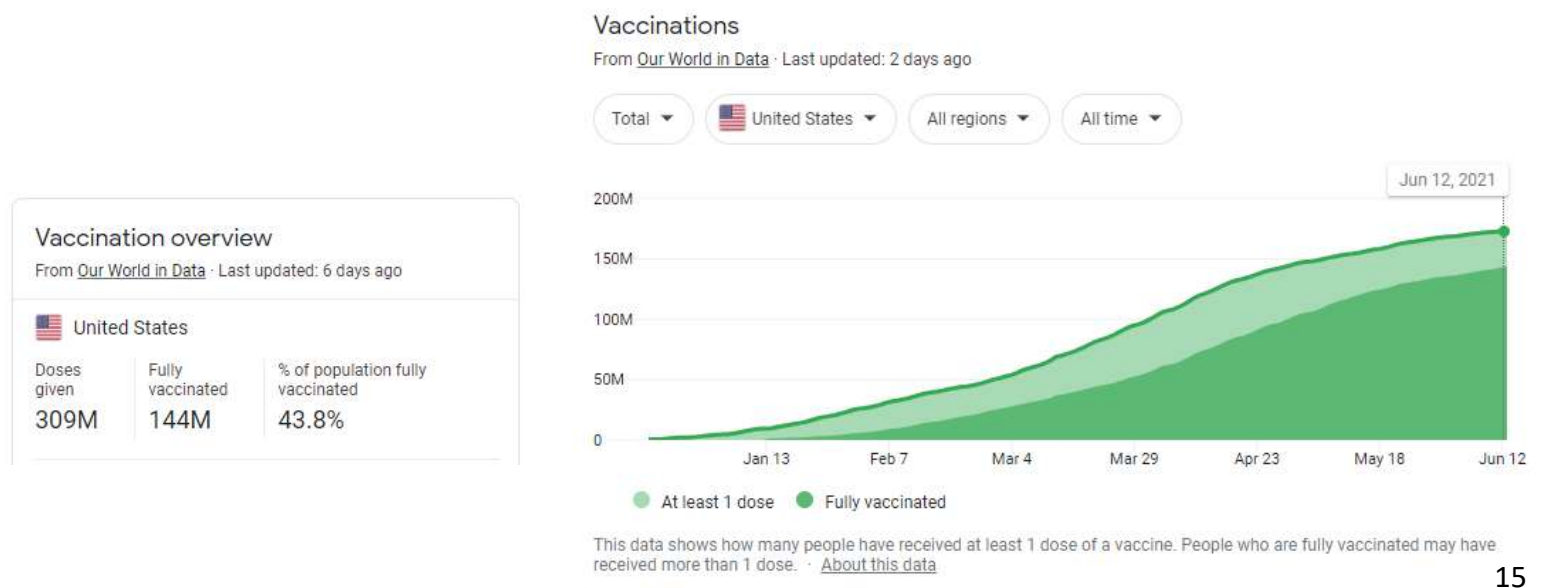
As a starting point, consider that the law generally does not require a business to mandate vaccines. So, not mandating a vaccine is not *per se* negligence and would not fall below the standard of care for most work environments.

If an unvaccinated worker becomes ill after an alleged workplace transmission, the related claims against an employer would presumptively be subject to worker's compensation jurisdiction. If that employee attempts to move their claim outside the worker's compensation system, or the employer is fighting a presumption of compensability given a Covid-related law, the employer's pandemic prevention efforts would be primary considerations for a Court. Put another way, a Court will likely place more weight on the employer's physical alterations to work spaces, modifications to administrative policies, cleaning protocols and worker protections than the fact it imposed a mandate when determining the compensability of the resulting COVID-19 claim.

What's more, while rolling out a mandate might reduce some potential workplace liabilities surrounding this pandemic, implementing such a mandate also introduces brand risk exposures for employers. For example, as noted above, any vaccination mandate carries with it the prospect of disability and religious practice discrimination and claims under GINA.

And finally, from a practical standpoint, mandates may not really serve an employer's intended purpose for introducing the program in the first place (which is typically some combination of limiting workplace transmissions and generally protecting employees or customers). As vaccines became more readily available, a higher percentage of the population got vaccinated regardless of workplace mandates, those workers at greatest risk to serious adverse health effects from contracting the virus (i.e. those over 50 or with pre-existing health conditions) got vaccinated irrespective of workplace mandates, and community spread and hospitalizations dramatically decreased. All of these factors undercut the need or justification for employer-based mandates in the first place.

Beyond all this, the science remains unsettled around whether vaccinations actually prevent transmissions. The current [CDC Science Brief](#) (updated as of May 27, 2021) states vaccinated people are "less likely" to transmit the virus and data "may indicate reduced transmissibility." However, while the studies can conclude vaccinations are effective in reducing serious outcomes like severe disease, hospitalization and death and lowering the viral load in infected persons, they cannot yet conclusively say vaccinated persons do not transmit the virus. As such, even vaccinated workers may contract COVID-19 from a source outside work and transmit it among vaccinated co-workers.





CEO CORNER

TIMOTHY S. HARRIS, CPCU
PRESIDENT AND CEO

Highlight: Protecting Youth

As society begins to ease restrictions related to the Covid-19 pandemic, it is understandable to experience the enthusiasm that comes with returning to more normalized activities. Such activities include gatherings with friends and family, patronizing restaurants, returning to in-person worship, and resuming social interactions involving summer camping and mission trips for youth. Unquestionably, the disruption created by the pandemic has been especially difficult for school-aged children and teens.

As the Moderator of my home church during the pandemic, I recall that one of the most consequential early decisions made by church Council was to suspend youth events. While the anticipation of resuming these events is normal, it cannot overshadow the due diligence required to ensure that youth ministry events are conducted safely.

In addition to the ongoing Covid-19 provisions required to keep young people safe - recognizing that vaccines are still not available for the youngest populations - youth ministry leaders should review best practices around creating and maintaining safe environments through healthy boundaries, abuse prevention, and screening. And because many youth activities require transport to and from locations where

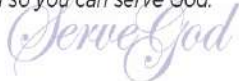
mission activities are performed, transportation safety practices should also be evaluated.

Insurance Board has invested considerable resources in helping to make churches safer places for youth ministry, as highlighted in this edition of ***The Steward*** including:

- Background checking for youth leaders, including staff and volunteers;
- Motor Vehicle Record (MVR) checks;
- Vehicle Use and Driver Selection education;
- SafeConduct Workbench™ with abuse prevention training and self-assessment tools;
- Sample abuse prevention policies;
- Webinars, interactive, and other online educational guidance

Regular and consistent utilization of these materials can greatly enhance the youth ministry experience for all, and mitigate the potential incidence of injury, reputational and financial harm to your ministry.

Our insurance serves you so you can serve God.



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