

A Primer for Students Seeking Exemptions From Vaccine Mandates¹

A. The General Rule: Mandates are Constitutional

A claim that mandatory student vaccination mandates are, as a general rule, unconstitutional is bound to fail. The near unanimous authority of courts that have considered the issue is that such mandates do not generally violate the constitution. *See, e.g., Workman v. Mingo County Board of Education*, 419 F. App'x 348 (2011). In July 2021 the United States Court of Appeals for the Seventh Circuit applied the general rule when it upheld the University of Indiana's covid vaccine mandate. *See Klaassen v. Trustees of Indiana Univ.*, 7 F.4th 592 (7th Cir. 2021). Title VII of the Civil Rights Act of 1964 requires employers to accommodate their employees' sincerely held religious beliefs. Students do not have a similar statutory protection. In summary, the federal constitution and federal statutory law do not prohibit mandatory student vaccine mandates.

B. Possible Grounds for Exemption

There may be possible grounds for a student to seek an exemption from a vaccine mandate even if an exemption is not compelled by federal law. These grounds include:

1. State Statutory Exemptions

Most states grant religious exemptions from mandatory school vaccines. The National Conference of State Legislatures has developed a resource summarizing state exemptions laws. [See https://www.ncsl.org/research/health/school-immunization-exemption-state-laws.aspx](https://www.ncsl.org/research/health/school-immunization-exemption-state-laws.aspx). Students are advised to check the vaccine exemption statute in their state to determine whether it applies in their situation.

2. Possible Free Exercise Challenge

In *Klaassen v. Trustees of Indiana Univ.*, the court upheld the vaccine mandate under rational basis review, because the mandate was neutral and generally applicable without regard to religious belief. Though the Free Exercise challenge failed in that case, this does not mean that a Free Exercise challenge will always fail. If the governmental mandate is not neutral or generally applicable, it will be subject to strict scrutiny under the principles set forth in *Church of the Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520 (1993). This might be the case if the mandate has secular exceptions and not religious exceptions. A Free Exercise challenge might also be brought in those states that have state-level RFRA (religious freedom restoration acts). In either case, the court would review the mandate under strict scrutiny and not rational review. That a mandate is subject to strict scrutiny review does not necessarily mean it will be overturned.

¹ The guidance set forth in the paper is a summary of legal principles for general informational purposes. It is not comprehensive, and it should not be construed as legal advice in any particular case. Anyone seeking an exemption is advised to consult counsel to determine how the law applies to their particular circumstances.

Courts have held that vaccine mandates serve a compelling governmental interest. Each case should be reviewed on its own merits to determine (1) if a Free Exercise claim is viable; (2) if so does the mandate serve a compelling governmental interest; and (3) if so is the mandate narrowly tailored to serve that interest by the least restrictive means. In this regard, consideration should be given to whether masks or testing would achieve the state's goal through a less restrictive means.

3. Voluntary Exemptions

Though schools are not required to provide religious exemptions, some do. A student should review their school's mandate to determine whether it has voluntarily offered an exemption.

C. Procedure for Requesting Exemption

If a student does have grounds to seek a religious accommodation, most if not all of the considerations set forth for employees requesting Title VII religious accommodations from their employers would also apply to a student's request. Students are directed to our *A Primer for Seeking Exemptions From Vaccine Mandates in the Employment Context* for a discussion of these considerations.

D. If you are Denied an Exemption Request

If you are denied an exemption request, you should see if the school has an appeal process and exhaust all your remedies there. If there is no appeal, or if you lose in the appeal process, unfortunately you are left with only a couple of choices: 1) sue the school or 2) change schools.

VaccineExemption.com Legal Team

Note: This document is not meant to be legal advice but is provided for informational purposes only. We recommend that you seek the advice of an attorney in your state for legal advice.