

All foreign national employees must provide proof of COVID-19 vaccination effective October 1, 2021

The Centers for Disease Control (“CDC”) recently issued an Order that affects foreign nationals that will enter the United States of America to work for American employers. Effective October 1, 2021, United States Citizenship and Immigration Services (“USCIS”) and the U.S. Department of State will require applicants for lawful permanent resident status (“LPR” or “green card”) to be fully vaccinated for COVID-19, with limited exceptions. Here is what employers of foreign workers need to know.

BACKGROUND

If USCIS approves a petition for a foreign national to obtain an employment-based green card, they must also adjust their status. Applications for an adjustment of status usually require the completion of a medical exam and the provision of certain documentation, including proof of particular mandatory vaccines.

The CDC requires these medical screenings to ensure that noncitizens entering the US do not pose a threat to the overall public health. The Advisory Committee for Immunization Practices (ACIP), which advises the Department of Health and Human Services (HHS) and the CDC, recommends immunizations for the general U.S. population.

The CDC assesses whether a specific vaccine should be required for immigration purposes on a regular or as-needed basis according to its criteria based on recommendations from the ACIP. The ACIP formally recommended COVID-19 vaccinations for the age-appropriate, general US population, which consequently prompted the CDC to establish new requirements for foreign nationals entering the country for employment-related purposes.

THE BASICS

On or after October 1, 2021, foreign national employees must present proof of full COVID-19 vaccination to obtain their green cards.

- Foreign nationals that are applying for an adjustment of status, and specifically completing the required I-693 medical screening on or after October 1, 2021, must be vaccinated or otherwise risk being denied LPR status.
- Foreign nationals that are applying for an immigrant visa at a U.S. consulate abroad and are undergoing a physical examination with a designated equivalent to a USCIS civil surgeon on or after October 1, 2021 must be vaccinated.
- If the medical screening is completed before October 1, 2021, and the exam results are within the validity period, which is typically 2 years with limited exceptions, COVID-19 vaccination is not required.

- All available COVID-19 vaccinations can be administered without regard to the timing of other vaccinations required for adjustment of status.
- All applicants are required to receive the vaccination regardless of evidence of immunity or prior COVID-19 infection.
- Self-reported vaccination without written documentation is not acceptable.

The CDC recognizes, as with all vaccinations, that there are specific blanket waivers that cover reasons why an applicant may not receive a required vaccination. The relevant COVID-19 vaccination waivers are defined below.

- Not age-appropriate: The appropriate age for COVID-19 vaccines differs by formulation. If the applicant is younger than the lowest age limit for the formulations in use (less than 12 years of age as of 9/1/2021), this blanket waiver should be documented.
- Contraindication: Where an applicant has a contraindication or precaution to the COVID-19 vaccine formulation available to them, the applicant should document the “Contraindicated” reason, and the vaccine should not be administered. If the applicant experiences a severe reaction to the first dose that is considered a contraindication to receiving a second dose, if applicable, the first dose should also be documented. Applicants can be directed to [Interim Clinical Considerations for Use of COVID-19 Vaccines Currently Authorized in the United States](#) for COVID-19 specific information about contraindications and precautions.
- Not routinely available: If no COVID-19 vaccine option is routinely available in the state where the civil surgeon examining the applicant practices, the “Not routinely available” reason should be documented. Another situation where the vaccine may be considered “Not routinely available” is if vaccine is available to the applicant, but due to limited supply, it would cause significant delay for the applicant to receive their vaccination.

An applicant may also request a waiver due to religious or moral convictions. If an applicant refuses the COVID-19 vaccination in part or entirety where it is medically appropriate and the available waivers are inapplicable, the civil surgeon will record such refusal and mark the vaccination requirements as incomplete. Upon considering that applicant’s petition for adjustment of status, USCIS would determine the applicant is inadmissible to the US.

WHAT SHOULD EMPLOYERS DO?

The failure to pass the medical exam or to provide sufficient document can result in denial of the adjustment of status, which will result in loss of time, money, resources, delays, operational interruptions, and staffing issues. Employers, therefore, should consider taking the following steps:

- Inquiring into foreign nationals’ vaccination status to determine if they are or will be compliant;
- Ensuring that foreign nationals have sufficient documentation of their status to demonstrate that they are in compliance;
- Requiring foreign nationals for whom they have petitioned or will petition for a green card to be vaccinated;

- Managing the timing of the adjustment of status process so that employees will have completed the requisite vaccination before the medical exam;
- Collaborating with foreign nationals who may not be able to be vaccinated because of medical or religious reasons; e.g., drafting an explanatory letter and to obtain supporting documentation; and
- Examining their policies and practices with respect to vaccination to ensure that there is internal consistency.



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