

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA

In re:

BANKRUPTCY COURT OPERATIONS UNDER)
THE EXIGENT CIRCUMSTANCES)
CREATED BY THE OUTBREAK OF) STANDING ORDER 21-15
CORONAVIRUS DISEASE 2019 (COVID-19):)
VACCINATION & TESTING POLICY.)
)

ORDER ESTABLISHING VACCINATION AND TESTING POLICY
DUE TO THE OUTBREAK OF CORONAVIRUS DISEASE 2019

The United States Bankruptcy Court for the Eastern District of Virginia has continued to closely monitor the outbreak of Coronavirus Disease 2019 (COVID-19), as well as the developing guidance from the Centers for Disease Control and Prevention (CDC) and state and local health authorities. Notwithstanding a well-established COVID-19 vaccination effort, a significant percentage of adult Americans eligible for vaccination remains unvaccinated, and the COVID-19 Delta variant has caused a dramatic spike in COVID-19 cases and hospitalizations across the United States, Virginia, and this District. On August 13, 2021, the Chief Judge of the United States District Court for the Eastern District of Virginia entered General Order No. 2021-12, which established a vaccination and testing policy for employees and contractors of the United States District Court and United States Probation Office. The District Court’s Order is grounded in available guidance and data and demonstrates considered judgment given the risk posed by the spread of the Delta variant. These reasons support the adoption of an identical vaccination and testing policy applicable to employees and contractors of the United States Bankruptcy Court for the Eastern District of Virginia.

On July 29, 2021, President Biden announced that all qualifying federal employees, as well as federal contractors, are required to be vaccinated against COVID-19 or be subject to

certain health and safety requirements. Similarly, on August 5, 2021, the Governor of Virginia issued an Executive Directive indicating that all Virginia executive branch employees and state contractors are required to be vaccinated against COVID-19 or be subject to certain health and safety requirements. *See* <https://www.governor.virginia.gov/media/governorviriniagov/executive-actions/ED-18-Ensuring-a-Safe-Work-Place.pdf> (last visited Aug. 13, 2021). Both the federal policy and Virginia policy require individuals that are not fully vaccinated to: (1) undergo routine COVID-19 testing; and (2) wear a mask while indoors and conducting public business. Both policies also recognize that religious and medical exemptions to vaccination may be sought.

The safety of Court employees, judges, contractors, litigants, counsel, and members of the public that enter the Courthouses and Court facilities in this District is a critical priority. *Cf.* Federal Judiciary COVID-19 Recovery Guidelines, at 2 (“The health and welfare of each Judiciary employee, contractor, and member of the public that enters our facilities should be paramount in the decisions that are made as these [COVID-19 recovery] guidelines are implemented.”).¹ Many Court employees interact directly with the public on a daily basis, and the importance of creating an environment that allows the Court to satisfy its constitutional mission, while at the same time avoiding danger to those individuals ordered to appear in our Court, cannot be overstated. This Court, therefore, hereby adopts a vaccination and testing policy consistent with the policy adopted by the President, the Governor of Virginia, the United States District Court for the Eastern District of Virginia, at least five other federal district courts,

¹ Similar to the instant Standing Order, as pandemic conditions have evolved, this Court has issued multiple prior Standing Orders aimed at protecting the safety of employees and other individuals working in or visiting our Courthouses and facilities, drawing on guidance from the CDC, the Governor of Virginia, and state and local health officials. *See, e.g.*, Standing Order Nos. 20-9, 20-10, 20-13, 20-19, 20-21, 21-12.

multiple federal bankruptcy courts, and at least one federal appellate court.²

Employees and contractors of the United States Bankruptcy Court for the Eastern District of Virginia must either be vaccinated against the COVID-19 virus,³ or alternatively: (1) be tested for COVID-19 twice a week, separated by at least 72 hours, and provide such test results to a designated representative of the Court;⁴ and (2) wear a mask while indoors in our Courthouses and Court facilities, except when alone inside a private office, which consists of an area enclosed by floor-to-ceiling walls and a closed door.⁵ Anyone with a positive test result will be subject to the then-applicable policy regarding admittance to our Courthouses and facilities.

In order to implement the instant vaccination and testing policy, all judges, employees, and Court contractors, to include all chambers staff, Clerk's Office and IT employees, and contractors working for the Court, are expected to complete a vaccination attestation form, a

² Multiple public universities in Virginia have also recently adopted COVID-19 vaccination policies, subject to qualifying exemptions.

³ The Court acknowledges that some employees and contractors may have concerns about the safety of the available COVID-19 vaccines, and such individuals are encouraged to consult their doctor/medical provider to discuss the safety of the vaccines and the risks to themselves, their family members, and the public should they remain unvaccinated, particularly in the context of the Delta variant and potential future variants of concern.

⁴ "At-home" COVID-19 test results will not be accepted by the Court, though in light of masking requirements and the benefits of receiving timely test results, "rapid-tests" obtained through a pharmacy, health department, doctor's office, or other healthcare provider will be accepted. PCR test results will likewise, of course, be accepted. To the extent that an employee or contractor does not have an insurance plan that covers all costs associated with COVID-19 testing, no-cost testing may be available through that individual's local health department and/or through the partnership between the Virginia Department of Health and Walgreens pharmacy. *See, e.g.*, <https://www.vdh.virginia.gov/coronavirus/covid-19-testing/walgreens-partnership/> (last visited Aug. 13, 2021).

⁵ The currently in-force mask policy for vaccinated individuals is set forth in General Order No. 2021-11 entered on July 30, 2021, by Chief United States District Judge Mark S. Davis, and Standing Order No. 21-14 entered on August 5, 2021, by Chief United States Bankruptcy Judge Frank J. Santoro (which latter order provides for a consistent mask policy for the Martin V.B. Bostetter, Jr. Courthouse in the Alexandria Division, where the District and Bankruptcy Courts do not share divisional courthouse facilities).

copy of which is attached to this Order. Such form must be completed and promptly returned to the individual designated by the Clerk of the Bankruptcy Court no later than **Wednesday, August 25, 2021**. Such form will be accepted in paper format or by email.⁶ Individuals indicating on the attestation form that they are in the vaccination process, but are not yet “fully vaccinated” (defined as two weeks after receiving the second dose of a two-dose vaccine (Pfizer or Moderna) or the single-dose vaccine (Johnson & Johnson)) will be required to follow the health and safety protocols for unvaccinated individuals until they are fully vaccinated.

While all covered employees and contractors must timely submit an attestation form, exemptions to the vaccination policy will be granted for individuals with medical conditions that prevent them from being vaccinated and for individuals with sincerely held religious beliefs that prohibit them from being vaccinated. To request an exemption, an employee or contractor must submit a letter to the Chief Judge of the Bankruptcy Court no later than **Wednesday, August 25, 2021**, requesting an exemption and providing sufficient details and/or supporting documents to allow the Chief Bankruptcy Judge to consider the request.⁷ Similar to the attestation form, employees and contractors completing an exemption request are required to provide accurate information and sign the request. The exemption request must be submitted in a sealed envelope marked “confidential” and addressed to the Chambers of the Chief Bankruptcy Judge in Norfolk, Virginia. A request for a medical exemption should generally include documentation from a medical provider. If the employee requesting an exemption works in chambers, the request should be sent directly to the appointing Judge, who may consult with

⁶ Employees currently on approved leave extending past **August 25, 2021**, should submit the attestation form prior to returning to work. Employees and Bankruptcy Court contractors that begin work after **August 25, 2021**, should complete the attestation form on or before their start date.

⁷ Employees and contractors beginning employment/contracted work after such date may submit their exemption request at the same time they submit their attestation form.

the Chief Bankruptcy Judge as he or she deems appropriate.

With respect to those employees and contractors for whom an exemption is approved, there will still be health and safety requirements in place for the protection of all employees and visitors to our Courthouses/facilities in light of such exempt individuals' inability to receive a COVID-19 vaccine. However, rather than twice-a-week testing, as will be required for non-exempt unvaccinated employees and contractors, exempt employees and contractors will be required to be tested once a week (if an employee is on full-time telework for medical reasons, the weekly testing requirement may be suspended by the Chief Bankruptcy Judge). Exempt employees will also be required to wear a mask while in our Courthouses and Court facilities, except when alone inside a private office space, which consists of an area enclosed by floor-to-ceiling walls and a closed door. The Court may consider other accommodations for those with an approved exemption, with any such case-by-case determinations to be made by the Chief Bankruptcy Judge.

Vaccine mandates, even broad statewide mandates applicable to all adults, have been long deemed constitutional by the United States Supreme Court, *Jacobson v. Massachusetts*, 197 U.S. 11 (1905),⁸ with the history of mandated inoculation dating back to the founding of our nation. This Court, however, is not mandating a vaccine for all adults, or even for all covered Court employees and contractors, but is instead adopting a vaccination and testing policy that presents two alternatives (vaccination, or twice-weekly testing coupled with masking) to

⁸ In *Jacobson*, the United States Supreme Court rejected the claim that “a compulsory vaccination law is unreasonable, arbitrary, and oppressive, and, therefore, hostile to the inherent right of every freeman to care for his own body and health in such way as to him seems best,” explaining that “the liberty secured by the Constitution of the United States to every person within its jurisdiction does not import an absolute right in each person to be, at all times and in all circumstances, wholly freed from restraint” and that there “are manifold restraints to which every person is necessarily subject for the common good.” *Jacobson*, 197 U.S. at 26 (emphasis added).

promote the health and welfare of everyone who enters our Courthouses and Court facilities. Moreover, the Court will authorize “exceptions for persons who declare vaccination incompatible with their religious beliefs and persons for whom vaccination is medically contraindicated.” *Klaassen v. Trustees of Indiana Univ.*, No. 21-2326, -- F.4th --, 2021 WL 3281209, at *1 (7th Cir. Aug. 2, 2021). Such policy, consistent with the policies adopted by the President and the Governor of Virginia, is a reasonable and lawful response during a nationwide state of emergency and will promote safety in our Court facilities during the resurgence of the deadly COVID-19 virus. *Cf.* <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws> (last visited Aug. 13, 2021) (discussing the lawfulness of COVID-19 vaccine and testing requirements for individuals physically entering the workplace “because an individual with the virus will pose a direct threat to the health of others”).

The above vaccination and testing policy will take effect **September 1, 2021**,⁹ and will remain in place until further Order of the Court. The Clerk of the Bankruptcy Court is hereby ordered to designate a representative to collect and monitor the attestation forms and the once-weekly, or twice-weekly, COVID-19 test results, which should generally be kept confidential unless there is a sufficient health and safety reason justifying their disclosure.

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⁹ Because September 1, 2021, falls in the middle of a workweek, non-exempt unvaccinated employees and contractors will only be required to undergo one COVID-19 test during the first week of policy implementation. Starting the following week, such individuals will be required to be tested twice each week, separated by at least 72 hours. Exempt unvaccinated employees should begin their once-weekly testing during the September 1, 2021 workweek.

IT IS SO ORDERED.

FOR THE COURT:



FRANK J. SANTORO
Chief United States Bankruptcy Judge

Dated: August 13, 2021

**United States Bankruptcy Court
Eastern District of Virginia
Employee and Contractor
COVID-19 Vaccination Status Attestation**

Please complete and sign this self-attestation concerning your COVID-19 vaccination status. You do not need to provide any medical information in this form, nor any explanation concerning your decision to receive or not to receive a COVID-19 vaccine. For purposes of this form, being “fully vaccinated” means that two weeks have passed after receiving the second dose of a two-dose vaccine (Pfizer or Moderna) or after receiving the single-dose vaccine (Johnson & Johnson). This form must be returned to the designated Court representative by **Wednesday, August 25, 2021**.

If you believe you are entitled to an exemption from vaccination, you will need to request it in writing from the Chief Judge of the Bankruptcy Court by **August 25, 2021**. (Employees who work in chambers should direct their request to the appointing Judge, who may consult with the Chief Bankruptcy Judge as deemed appropriate.) Employees and contractors who are not vaccinated and have not received an exemption, as well as those that decline to disclose their vaccination status, will be required to undergo twice-weekly COVID-19 testing and will be required to wear masks in our Court facilities. Individuals granted an exemption must undergo once-weekly COVID-19 testing and will be required to wear masks in our Court facilities.

Name: _____

I am a: Court Employee Contractor

Please choose one of the following options:

1. I am fully vaccinated.
2. I received my second dose of the Pfizer or Moderna vaccine or my single dose of the Johnson & Johnson vaccine less than two weeks ago on _____.
(date)
3. I received my first doses of the Moderna or Pfizer vaccine, and my second appointment is scheduled for _____.
(date)
4. I have not yet been vaccinated, but I have scheduled an appointment to receive my first dose of vaccine on _____.
(date)
5. I have not been vaccinated.
6. I decline to disclose my vaccination status.

I understand that I am required to provide accurate information on this form. I hereby affirm that I have accurately and truthfully answered the above question. I also understand that if I stated that I am fully or partially vaccinated, the Court may request documentation of my vaccination status (e.g., a copy of my vaccine card or other similar official document confirming vaccination status).

Electronic or Ink Employee/
Contractor Signature

Date