

# Members Only



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## Ohio Immunization Laws\*

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Immunizations protect both individuals and the general public against communicable diseases. Ohio has many laws in place governing immunizations, some of which aim to balance both the state's interest in safeguarding the public health and the concerns of citizens who object to mandatory vaccinations. For instance, Ohio law requires a child to be vaccinated against a number of diseases as a condition of being admitted to school or enrolled in child care. However, a child can be excused from this requirement on certain grounds, including that a child's parent declines vaccination for reasons of conscience, including religious convictions.

### Mandatory immunizations for children

A child attending school must be immunized against each of the diseases listed below.<sup>1</sup>

|                       |               |
|-----------------------|---------------|
| Chicken pox           | Mumps         |
| Diphtheria            | Pertussis     |
| Hepatitis B           | Poliomyelitis |
| Measles               | Rubella       |
| Meningococcal disease | Tetanus       |

A child enrolled in a child care center or licensed family day care home or receiving child care from an in-home aide must be immunized against these same diseases, but also must be vaccinated against Haemophilus influenzae B, hepatitis A, influenza, pneumococcal disease, and rotavirus.<sup>2</sup> To demonstrate immunity, the child must present written evidence of receiving vaccinations or of being in the process of receiving them.<sup>3</sup>

### Exemptions from mandatory immunizations

A school child or child enrolled in child care does not have to be vaccinated against a disease if any of the following apply:

\*This *Members Only* brief is an update of an earlier brief dated April 10, 2009 (Volume 128, Issue 6).

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- The child had the disease and acquired natural immunity;
- The vaccination is medically contraindicated for the child or is not medically appropriate for the child's age;
- The child's parent declines vaccination for reasons of conscience, including religious convictions.<sup>4</sup>

### Other states

With respect to school children, all 50 states currently have some form of compulsory immunization laws in place, and each state grants exemptions for medical reasons. Three states – California, Mississippi, and West Virginia – do not allow for school children to claim any religious or philosophical exemption. Forty-five states provide for religious exemptions, and 15 grant philosophical exemptions.<sup>5</sup> However, after recent outbreaks of certain vaccine-preventable diseases,<sup>6</sup> some states removed nonmedical exemptions. For example, in 2019, Washington eliminated the personal belief exemption for the measles, mumps, and rubella vaccine requirement for children enrolled in schools or child care. Also in 2019, for children attending public school, Maine removed personal and religious belief exemptions, and New York eliminated its religious exemption.<sup>7</sup>

Rather than remove religious or philosophical exemptions, some states instead impose additional conditions on parents seeking them. For example, in Michigan, a parent claiming a nonmedical exemption must first visit a local health department to receive education on the benefits of vaccination as well as the risks posed by waiving immunizations.<sup>8</sup> Similarly, Oregon requires parents to obtain a “vaccine education certificate,” either from a health care provider or by viewing an online seminar, before claiming an exemption.<sup>9</sup> In Delaware, a request for an exemption must be accompanied by a notarized Affidavit of Religious Belief, which includes an acknowledgement that (1) the child may be excluded from school during an outbreak or when the state's Division of Public Health determines that the child is at risk of exposure and (2) the parent had the opportunity to review educational materials about the medical benefits and risks of immunization.<sup>10</sup> Montana requires requests for religious exemptions to be notarized.<sup>11</sup>

### First Amendment concerns

The U.S. Supreme Court has long held that state laws requiring compulsory immunizations are a constitutional exercise of state police power and that, in the absence of explicit statutory exemptions, claims based on the First Amendment guarantee of free exercise of religion are insufficient to overcome immunization requirements. The Court has found that neither the rights of free exercise of religion nor the rights of parenthood are absolute, and that neither outweighs the state's interest in protecting the health and well-being of its citizens.<sup>12</sup> Ohio case law reinforces this precedent.<sup>13</sup> Finally, even in states that have eliminated both religious and philosophical exemptions (California, Mississippi, and West Virginia), courts have held that their compulsory immunization laws are still constitutional.<sup>14</sup>

*Some states have eliminated religious or philosophical exemptions, while others impose additional conditions on parents seeking them.*



## Access to immunizations

Some parents may not be able to obtain vaccinations for their children. Current Ohio law permits a local school board to apply to a board of health, municipal corporation, or township to provide these children with vaccinations against the following diseases: diphtheria, hepatitis B, measles, mumps, pertussis, poliomyelitis, rubella, and tetanus. The law also requires the vaccinations to be provided without delay and at public expense. While local entities are not required to provide vaccinations against chicken pox, the Department of Health must do so, but only to the extent funds are available.<sup>15</sup>

## Disclosure by college students

Current Ohio law requires a college student—when seeking to reside in on-campus housing—to disclose to the college or university whether he or she has been vaccinated against hepatitis B and meningococcal meningitis. To meet this requirement, the student may complete either the form prepared by the Ohio Department of Health or an equivalent developed by the college or university.<sup>16</sup>

## Child care staff

Rules of the Ohio Department of Job and Family Services (ODJFS) mandate that employees and administrators of licensed child day care centers and family day care homes, as well as certified in-home aides, be immunized against diphtheria, measles, mumps, rubella, and tetanus.<sup>17</sup> Ohio law does not, however, require school teachers or other school employees to be vaccinated against any disease.

## Foster caregivers

In the case of foster families, while state law does not currently establish vaccination requirements for these individuals, ODJFS is in the process of implementing federal regulations which set standards for some foster families. Under federal law, all adults who are foster caregivers of children with special medical needs or infants and all children in the household must be vaccinated against specified diseases.<sup>18</sup> In the case of adults, these include pertussis and influenza. For children in the household, the diseases include those for which immunizations are recommended by the American Academy of Pediatrics, the federal Centers for Disease Control and Prevention's Advisory Committee on Immunization Practices, and the American Academy of Family Physicians. Although the federal standards do not include religious exemptions, in an effort to be consistent with current state law governing the vaccination of school children and children in child care, ODJFS has indicated its intent to incorporate the exemptions.<sup>19</sup>

## Vaccinations in nursing homes and hospitals

Under Ohio law, nursing homes and hospitals must offer residents and patients vaccination against influenza and pneumococcal pneumonia.<sup>20</sup> (In the case of a

*State law mandates that child care staff – but not school teachers or other school employees – be vaccinated against certain diseases.*



Recent general assemblies have considered legislation that would permit employees to “opt out” of employer adopted vaccination requirements.

nursing home resident, the influenza vaccine must be offered annually.) A nursing home or hospital is not required to make the offer if a physician has determined that vaccination of the resident or patient is not medically appropriate. Ohio law also specifies that a resident or patient may refuse vaccination.

With respect to nursing home and hospital employees, nothing in Ohio law specifically requires them to be vaccinated against any disease. But, a nursing home or hospital may require proof of vaccination as a condition of employment, except in the following circumstances: a collective bargaining agreement or employment contract expressly prohibits the employer from requiring vaccinations or a law permits an employee to “opt out” of employer mandated vaccinations.

Ohio law recognizes the “at will” employment doctrine, which allows an employer to terminate an employee at any time for any reason, so long as the discharge is not illegal. Under this doctrine, an employer could adopt a vaccination requirement and terminate an employee who refuses to comply.

Recent general assemblies, however, have considered legislation that would permit an employee to “opt out” of influenza vaccinations.<sup>21</sup> H.B. 268 of the 133<sup>rd</sup> General Assembly proposes to prohibit an employer from taking an adverse employment action against an employee who refuses vaccination against any illness or disease because of a medical contraindication or for reasons of conscience, including religious convictions.<sup>22</sup> 

## Endnotes

<sup>1</sup> R.C. 3313.671.

<sup>2</sup> R.C. 5104.014.

<sup>3</sup> R.C. 3313.671(A) and 5104.014(B).

<sup>4</sup> R.C. 3313.671(B) and 5104.014(C).

<sup>5</sup> National Conference of State Legislatures, *States with Religious and Philosophical Exemptions from School Immunization Requirements*, June 14, 2019, available at <http://www.ncsl.org/research/health/school-immunization-exemption-state-laws.aspx>.

<sup>6</sup> See, e.g., <https://www.cdc.gov/measles/cases-outbreaks.html>.

<sup>7</sup> See <http://www.ncsl.org/research/health/school-immunization-exemption-state-laws.aspx>.

<sup>8</sup> Michigan Administrative Code R325.176(12).

<sup>9</sup> <https://www.oregon.gov/oha/ph/PreventionWellness/VaccinesImmunization/GettingImmunized/Pages/non-medical-exemption.aspx#about>.

<sup>10</sup> 14 Delaware Code 131(a)(6).

<sup>11</sup> Montana Code Annotated 20-5-405.

<sup>12</sup> See *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944); *Zucht v. King*, 206 U.S. 174 (1922); *Jacobson v. Massachusetts*, 197 U.S. 11 (1905).

<sup>13</sup> See *State ex. rel. Dunham v. Board of Education*, 96 N.E.2d 413 (Ohio 1951); *State ex rel. Milhoof v. Board of Education*, 81 N.E. 568 (Ohio 1907); *Ohio ex rel. Mack v. Board of Education*, 204 N.E.2d 86 (Ohio App.2d 1963).



<sup>14</sup> *Workman v. Mingo County Bd. of Ed.*, 419 Fed. Appx. 348 (4<sup>th</sup> Cir. 2011) (cert. denied 565 U.S. 1036 (2011)); *Whitlow v. California*, 203 F.Supp.3d 1079, 1085-1087 (S.D. Cal. 2016); *Brown v. Smith*, 235 Cal. Rptr. 3d 218 (Cal. Ct. App. 2d 2018); *Brown v. Stone*, 378 So.2d 218 (Miss. 1979) (cert. denied 449 U.S. 887 (1980)); *F.F. v. State of N.Y.*, 2019 NY Slip Op 29261, 65 Misc. 3d 616 (Sup. Ct. 2019).

<sup>15</sup> R.C. 3313.671(D) and 3701.134.

<sup>16</sup> R.C. 1713.55, 3332.25, 3345.85, and 3701.133.

<sup>17</sup> Ohio Administrative Code 5101:2-12-08 (Appendix B), 5101:2-13-02 (Appendix B), 5101:2-12-08, and 5101:2-14-3 (Appendix C).

<sup>18</sup> Family First Prevention Services Act (FFPSA), enacted as part of the Bipartisan Budget Act of 2018, Public Law 115-123.

<sup>19</sup> See <http://jfs.ohio.gov/ocf/FFPSA-ModelStandards.stm>.

<sup>20</sup> R.C. 3721.041 and 3727.19.

<sup>21</sup> H.B. 193 of the 132<sup>nd</sup> General Assembly and H.B. 170 of the 131<sup>st</sup> General Assembly.

<sup>22</sup> <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA133-HB-268>.

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