

September 09, 2021

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA**

**JULIA C. DUDLEY, CLERK  
BY: A. Seagle  
DEPUTY CLERK**

**IN RE:**

**COURT OPERATIONS UNDER )  
THE EXIGENT CIRCUMSTANCES )  
CREATED BY THE OUTBREAK ) Standing Order 2021-17  
OF COVID-19: )  
COVID-19 TESTING ORDER )**

The United States District Court for the Western 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. The staggering surge of the Delta variant this summer has caused the COVID-19 community transmission rate to be at the HIGH level throughout the Western District of Virginia.<sup>1</sup> The dramatic spike in COVID-19 cases has caused an increase in hospitalizations across the United States, Virginia, and this District. The COVID-19 surge caused by the highly contagious Delta variant requires the court to take additional steps to safely fulfill its constitutional duties. Notwithstanding an unprecedented COVID-19 vaccination effort, a significant percentage of adult Americans eligible for vaccination remains unvaccinated, including nearly 20% of the court and probation staff of the Western District of Virginia. The public health risk posed by the rapid spread of the Delta variant supports the adoption

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<sup>1</sup> See <https://covid.cdc.gov/covid-data-tracker/#county-view> (last visited September 8, 2021).

of this COVID-19 Testing Order requiring employees of the U.S. District Court, U.S. Bankruptcy Court, and U.S. Probation Office who are not fully vaccinated to be regularly tested for COVID-19.

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/governorvirginiagov/executive-actions/ED-18-Ensuring-a-Safe-Work-Place.pdf> (last visited September 7, 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.

The safety of court employees, judges, litigants, counsel, and members of the public that enter the court facilities in the Western District is a critical priority. See 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.”).<sup>2</sup> 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. In addition to members of the public coming to the courthouse, the court’s probation officers interact directly with members of the public in a variety of community settings. As such, to protect the health of the court’s employees and the broader public, the court enters this COVID-19 Testing Order consistent with the policy adopted by the President, the Governor of Virginia, and at least five other federal district courts, multiple federal bankruptcy courts, and at least one federal appellate court.<sup>3</sup>

Accordingly, it is **ORDERED** that employees of the U.S. District Court and U.S. Bankruptcy Court, including judges, chambers staff, and staff of the Clerk’s Office and Probation Office, who are not fully vaccinated against the COVID-19 virus are required to: (1) be tested for COVID-19 by means of a PCR test every seven days,<sup>4</sup> and

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<sup>2</sup> Similar to the instant Standing Order, as pandemic conditions have evolved, the court has issued multiple prior Standing Orders aimed at protecting the safety of employees and other individuals working in or visiting our court facilities, drawing on guidance from the CDC, the Governor of Virginia, and state and local health officials. See, e.g., Standing Orders posted on the court’s public website at XVII. COVID-19: <http://www.vawd.uscourts.gov/court-information/local-rules-standing-orders/standing-orders.aspx>.

<sup>3</sup> Multiple public universities in Virginia have also recently adopted COVID-19 vaccination policies, subject to qualifying exemptions.

<sup>4</sup> The test results must be provided to the applicable court’s Human Resources Director or designee, except for chambers’ staff, who shall provide their results to their appointing judge. To the extent that an employee 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 September 7, 2021).

(2) wear a mask while indoors in our court facilities, except when alone inside a private enclosed office space which consists of a door, ceiling, and walls.<sup>5</sup> Anyone with a positive test result must quarantine at home for an appropriate period before returning to our court facilities.

To implement the instant vaccination and testing policy, all Western District of Virginia District and Bankruptcy Court employees, including judges and chambers staff, Probation employees, and Clerk's Office staff, are required to complete a vaccination attestation form, a copy of which is attached to this Order, no later than **Wednesday, September 15, 2021**. The attestation form may be submitted in paper format or by email.<sup>6</sup> Clerk's Office and Probation Office employees should return such form to the Director of Human Resources or the Human Resource Assistant for their respective court. Chambers staff should return their attestation form directly to their appointing Judge. 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.

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<sup>5</sup> The currently in-force mask policy for vaccinated individuals is set forth in General Order No. 2021-11.

<sup>6</sup> Employees currently on approved leave extending past September 15, 2021, should submit the attestation form prior to returning to work. Employees that begin work after September 15, 2021, should complete the attestation form on or before their start date. Employees beginning employment after such date may submit their exemption request at the same time they submit their attestation form.

It is important to emphasize that this COVID-19 Testing Order does not compel anyone to be vaccinated.<sup>7</sup> Rather, this COVID-19 Testing Order requires court employees who are not fully vaccinated to be PCR tested for COVID-19 every seven days and to wear a mask except when inside a private enclosed office space, which consists of a door, ceiling, and walls.

By entering this COVID-19 Testing Order, the court has determined to take the next step to protect the health of court employees and the public so that the courts may continue to function. Depending on the trajectory of the current health crisis, additional steps may be required, and the court will continue to evaluate such measures in the public interest. In this regard, the court notes that 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),<sup>8</sup> with the history of mandated inoculation dating back to the founding of our nation. At this time, the court is not mandating a vaccine for all of its employees, but is instead entering

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<sup>7</sup> The court acknowledges that some employees 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. Other employees may choose not to be vaccinated for other reasons, including persons with medical conditions preventing them from being vaccinated and those with sincerely held religious beliefs. See Klaassen v. Trustees of Indiana Univ., No. 21-2326, - F.4th --, 2021 WL 3281209, at \*1 (7th Cir. Aug. 2, 2021) (noting “exceptions for persons who declare vaccination incompatible with their religious beliefs and persons for whom vaccination is medically contraindicated.”).

<sup>8</sup> 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).

this COVID-19 Testing Order requiring court employees who are not fully vaccinated to be PCR tested every seven days to protect the health and welfare of everyone who enters our court facilities and the community. Such an order, 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. See <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws> (last visited September 7, 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”).

This COVID-19 Testing Order will take effect **September 15, 2021**, and will remain in place until further order of the court. The Director of Human Resources and Human Resources Assistant for their respective courts are directed to collect and monitor the attestation forms and the seven day PCR COVID-19 test results.<sup>9</sup>

It is **SO ORDERED**.

**ENTER:** This 9th day of September, 2021.



Michael F. Urbanski  
Chief U.S. District Judge  
2021.09.09 09:02:21  
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Michael F. Urbanski  
Chief United States District Judge

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<sup>9</sup> These records are to be kept confidential pending further order of the court.

**Western District of Virginia  
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 on 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). Once completed, this form must be returned to the designated Court representative (***chambers staff should return this form to their appointing judge***).

Name:

Classification:                      Clerk's Office                                      Probation                                      Chambers

**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
3. I received my first dose of the Pfizer or Moderna vaccine, and my second appointment is scheduled for
4. I have not yet been vaccinated, but I have scheduled an appointment to receive my first dose of vaccine on
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 Signature

\_\_\_\_\_  
Date