

The Influence of Policy Measures on Vaccine Rates: Vaccine Mandates

Presentation to Foundation for a Healthy Kentucky, “Bost Memorial Health Forum”

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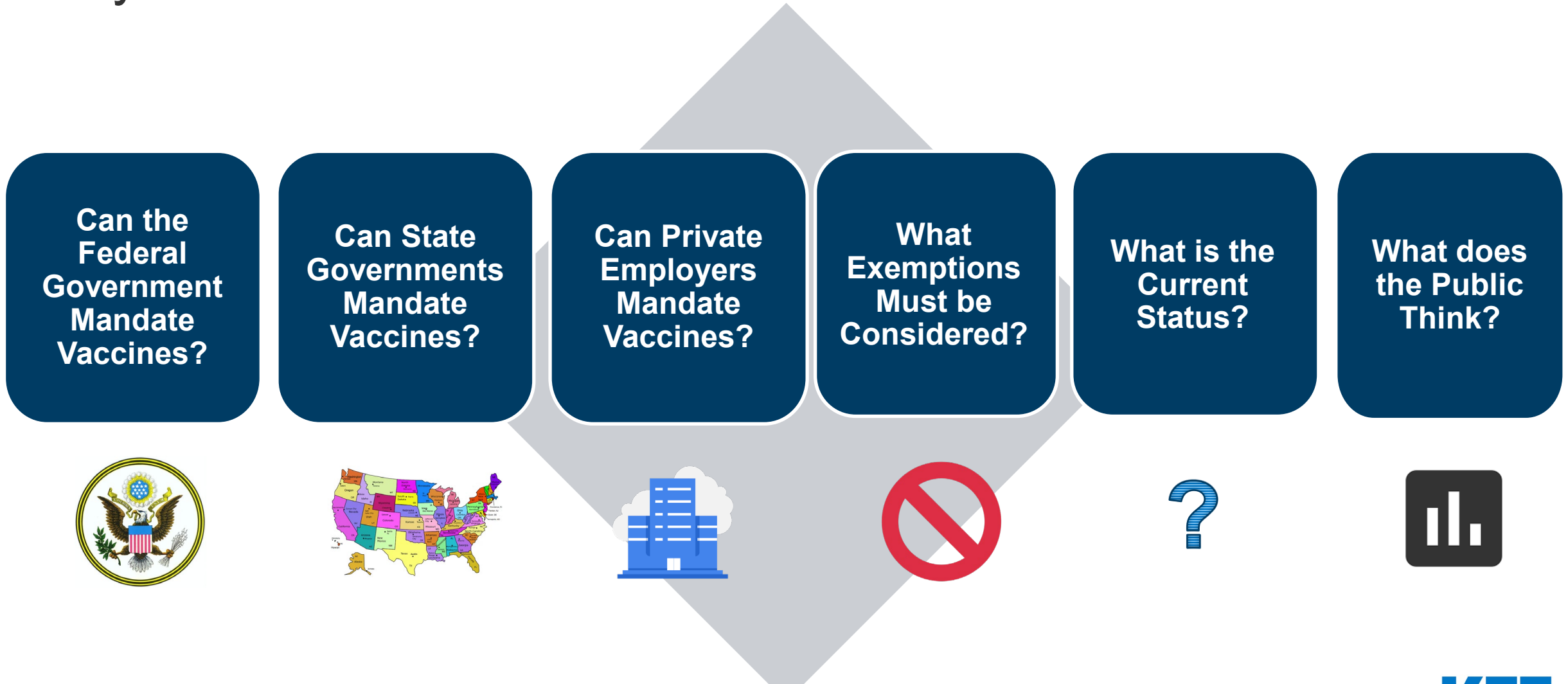
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KFF

Filling the need for trusted information on national health issues.

Figure 1

Key Questions about Mandates



SOURCE: Musumeci and Kates, KFF, Key Questions About COVID-19 Vaccine Mandates, April 2021. Available at: <https://www.kff.org/coronavirus-covid-19/issue-brief/key-questions-about-covid-19-vaccine-mandates/>.

Can the Federal Government Mandate Vaccines?

For the public?

- Authority unlikely for public at large.
- Potential legal basis for public:
 - Commerce Clause (power to regular commerce between states), PHSA (HHS Secretary can institute quarantine and isolation measures to prevent inter-state spread).
 - Not tested in courts.
 - Generally, purview of state/local governments.
- But likely through employers under certain conditions

For Federal workers?

- Yes.
- Has been upheld in court in prior cases for military.
- Government can mandate for immigrants seeking to enter U.S.
- Could be applied to federal workers and contractors

Can State & Local Governments Mandate Vaccines?

- **Yes**
 - Supreme Court upheld a state vaccine mandate over a century ago, in a case setting out the legal test still applied today: *Jacobson v. Massachusetts* (1905)
 - Supreme Court upheld state and local government authority to condition school attendance on vaccination: *Zucht v. King* (1922)
- **General landscape today (outside of COVID-19):**
 - Children: all states have school vaccination requirements
 - Adults: where in place, have focused on health care workers and patients in health care facilities, rather than general population.
 - Exceptions/accommodations are required by law (medical and religious)

Can Employers Mandate Vaccines?

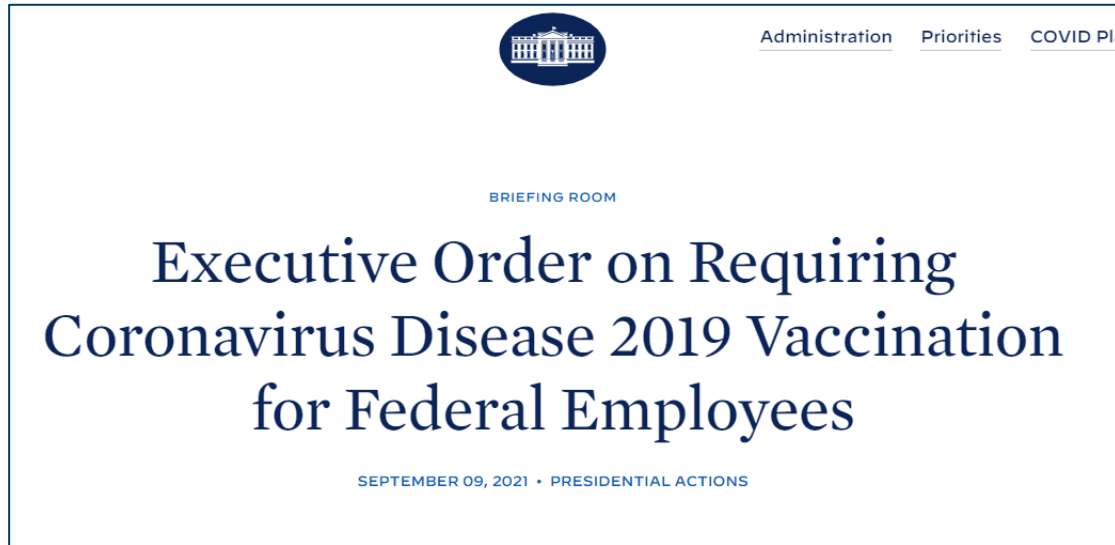
- **Yes**
 - Some private employers require vaccines, such as for influenza, for employees in health care settings.
 - But states may prohibit private employers from instituting vaccine mandates as a condition of employment and require opt out.
 - Employers may be subject to collective bargaining agreements that require them to negotiate with unions before imposing a vaccine mandate
 - Exceptions/accommodations are required by law (medical and religious)

Vaccine Mandates Must Allow for Accommodations

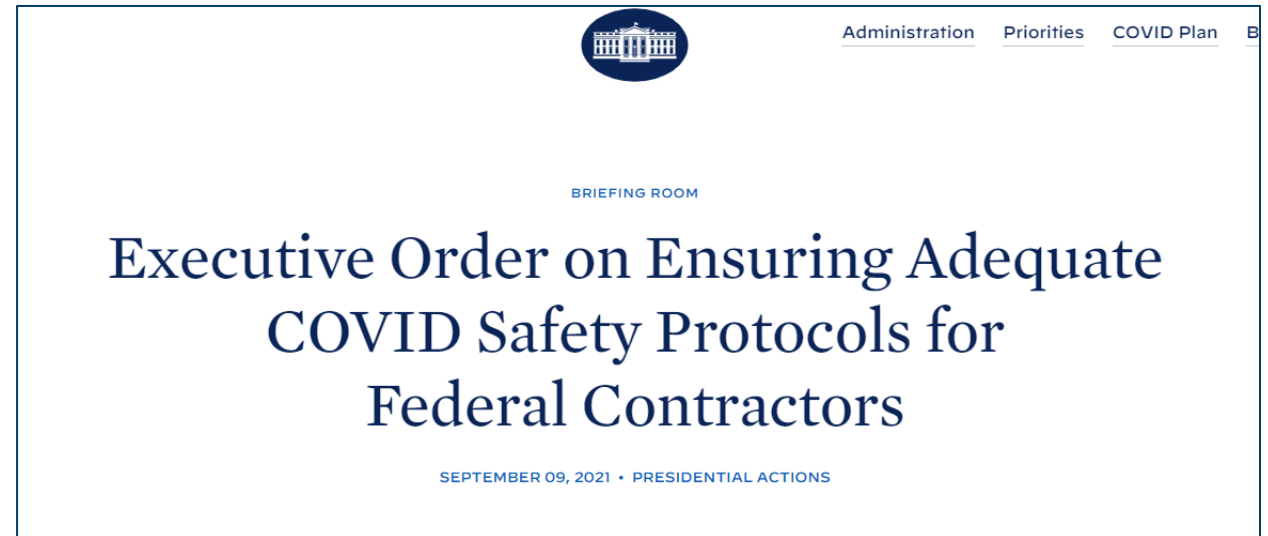
- Medical accommodations
 - Title II of the Americans with Disabilities Act (ADA), applies to state and local government
 - Section 504 of the Rehabilitation Act, applies to the federal government
 - EEOC guidance: if an employer mandates vaccines, and an employee indicates they cannot receive a vaccine due to a disability, the employer generally must consider whether a reasonable accommodation is warranted (unless “direct threat” to health and safety).
- Religious accommodations
 - Title VII of the Civil Rights Act requires employers to accommodate an employee’s sincerely held religious beliefs that conflict with job requirements unless the accommodation is an undue hardship on the conduct of the employer’s business.

Figure 6

Status of Federal Workforce Mandate: Required



***No testing alternative;
Medical & religious exceptions
required.***

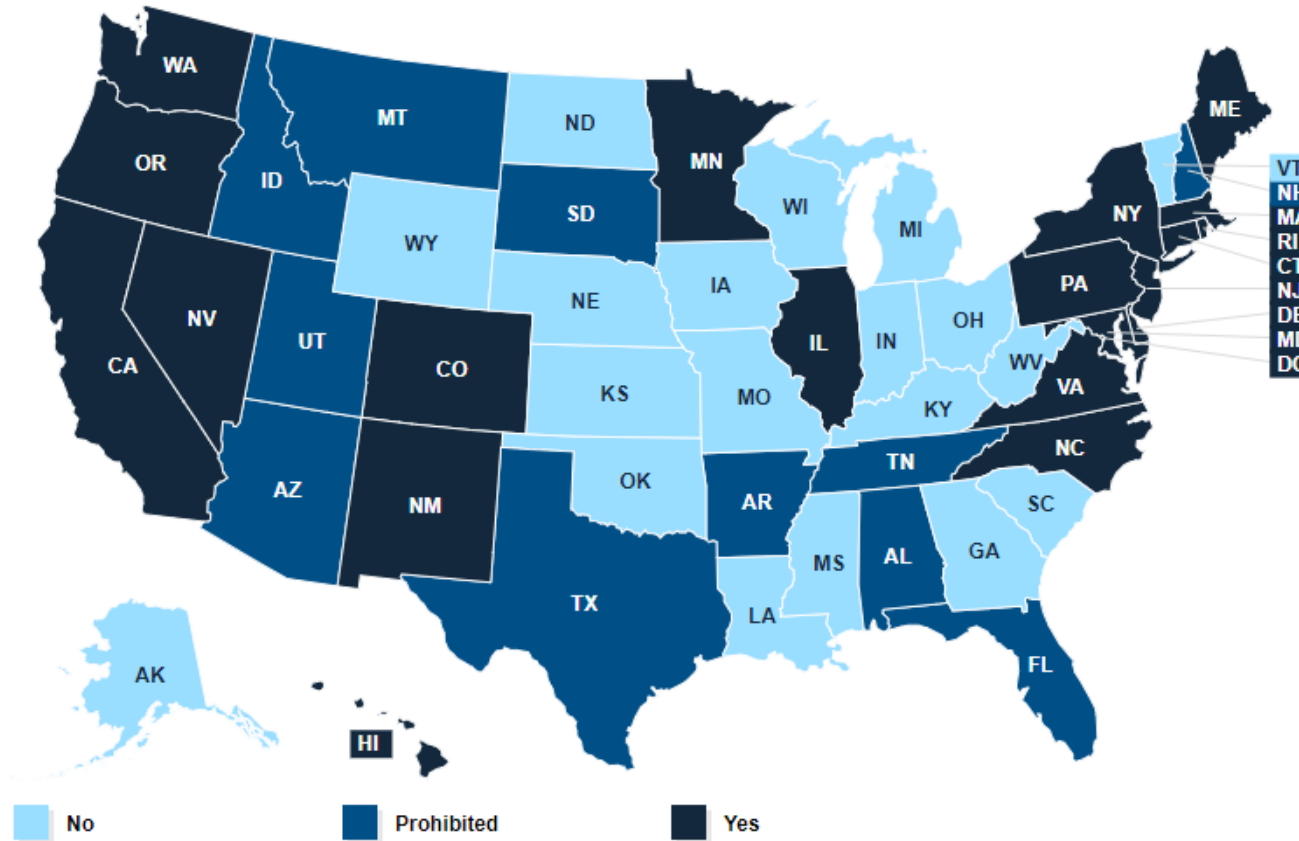


SOURCES: White House, <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/09/09/executive-order-on-requiring-coronavirus-disease-2019-vaccination-for-federal-employees/>; <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/09/09/executive-order-on-ensuring-adequate-covid-safety-protocols-for-federal-contractors/>.

Figure 7

Status of State Mandates: Variable

as of 9/13



Required: 21
Prohibited: 11
None: 19

*Some allow for testing
alternative;
Medical & religious
Exceptions required.*

Status of Employer Mandates: Variable

EEOC Guidance:

“The federal EEO laws do not prevent an employer from requiring all employees physically entering the workplace to be vaccinated for COVID-19, subject to the reasonable accommodation provisions of Title VII and the ADA and other EEO considerations....”

“Employers may provide employees and their family members with information to educate them about COVID-19 vaccines, raise awareness about the benefits of vaccination, and address common questions and concerns. Also, under certain circumstances employers may offer incentives to employees who receive COVID-19 vaccines...”

- **Hundreds of colleges and universities are requiring**
- **Growing number of private employers requiring**
- **Several legal challenges underway**
- **Several states have passed laws prohibiting employer mandates**

Federal Action Regarding Private Employers and Health Care Workers

Employers

- President has announced that OSHA, through the “Emergency Temporary Standard (ETS)”, will develop a rule requiring all employers with 100 or more employees to ensure their workforce is fully vaccinated or require weekly testing. Also will require time off for vaccine and any post-vaccination side effects.
- Being challenged in court (including by 24 Ags).

Health Care Workers

- President has announced that the Centers for Medicare & Medicaid Services (CMS) is taken action to require COVID-19 vaccinations for workers in most health care settings that receive Medicare or Medicaid reimbursement
- Already required for nursing homes.

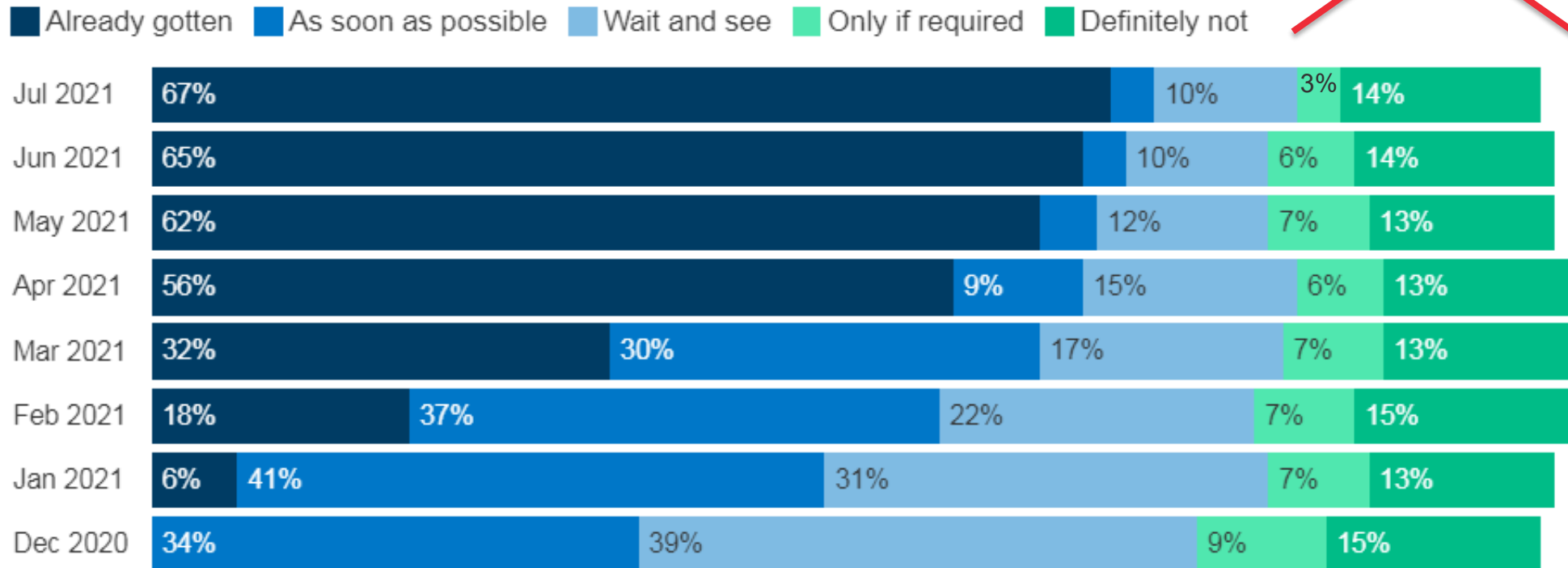
Examples of Companies with Vaccine Mandates

- **A&T**
- **Amtrak**
- **Anthem**
- **Bank of America**
- **BlackRock**
- **Cisco**
- **Citigroup**
- **CNN**
- **CVS Health**
- **Deloitte**
- **Delta Air Lines**
- **DoorDash**
- **Equinox**
- **Facebook**
- **Ford**
- **Goldman Sachs**
- **Google**
- **Jefferies**
- **Johnson & Johnson**
- **Lyft**
- **McDonald's**
- **MGM Resorts International**
- **Microsoft**
- **Moderna**
- **Morgan Stanley**
- **NBCUniversal**
- **Netflix**
- **NYT**
- **Pfizer**
- **Saks**
- **Salesforce**
- **TJX**
- **Twitter**
- **Tyson's Food**
- **Uber**
- **Union Square Hospitality Group**
- **United Airlines**
- **ViacomCBS**
- **Walgreens**
- **Walt Disney Company**
- **Walmart**
- **Washington Post**

Figure 11

Trends in COVID-19 Vaccination Status and Intention, United States, December 2020-July 2021

Have you personally received at least one dose of the COVID-19 vaccine, or not? As you may know, an FDA-authorized vaccine for COVID-19 is now available for free to all adults in the U.S. Do you think you will...?



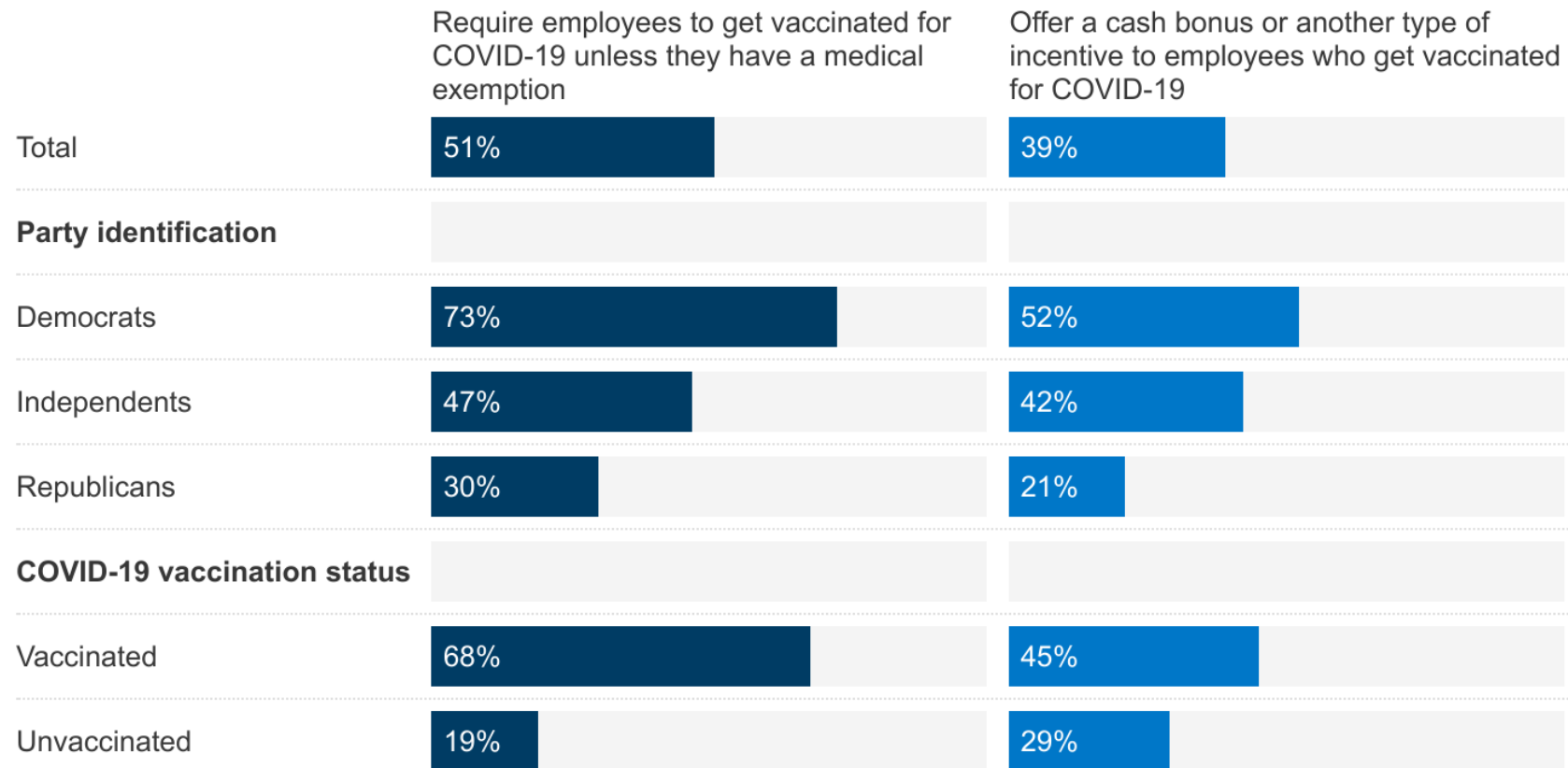
NOTE: December 2020 survey did not have an option for respondents to indicate they had already been vaccinated. December 2020-April 2021 question wording: "When an FDA authorized vaccine for COVID-19 is available to you for free, do you think you will...?" See topline for full question wording.

SOURCE: KFF COVID-19 Vaccine Monitor

Figure 12

Public Split On Employer Vaccination Requirements, Fewer Support Employer Incentives

Percent who say employers should...



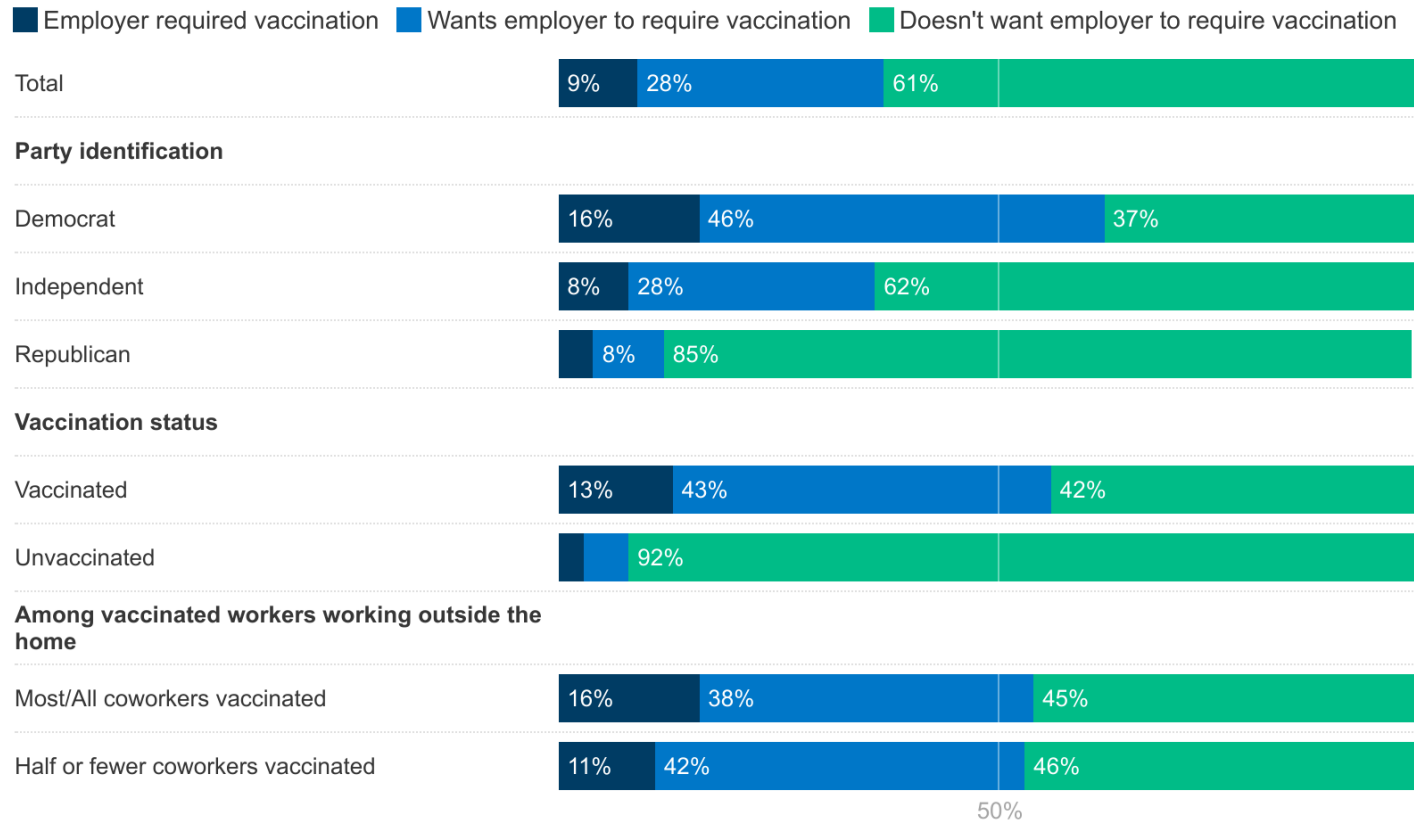
NOTE: Vaccinated adults are those who have received at least one dose of a COVID-19 vaccine. See topline for full question wording.

SOURCE: KFF COVID-19 Vaccine Monitor (June 8-21, 2021)

Figure 13

Most Workers Do Not Want Their Employer To Require COVID-19 Vaccination, But Vaccinated Workers Are Split

Has your employer **required you to get a COVID-19 vaccine**, or not? IF NOT: Do you want your employer to require you and other employees to get a COVID-19 vaccine, or not?



NOTE: Based on those who are employed but not self-employed. Vaccinated adults are those who have received at least one dose of a COVID-19 vaccine. See topline for full question wording.

SOURCE: KFF COVID-19 Vaccine Monitor (June 8-21, 2021)

Figure 14

Workers Whose Employers Provided Paid Time Off Or Encouraged Vaccination Are More Likely To Report Being Vaccinated

Have you personally received at least one dose of the COVID-19 vaccine, or not? As you may know, an FDA-authorized vaccine for COVID-19 is now available for free to all adults in the U.S. Do you think you will...?

■ Already received at least one dose ■ As soon as possible ■ Wait and see ■ Only if required ■ Definitely not get it

Employer provided paid time off to get the vaccine or to recover from any side effects



Employer encouraged employees to get vaccinated



NOTE: Based on those who are employed but not self-employed. See topline for full question wording.

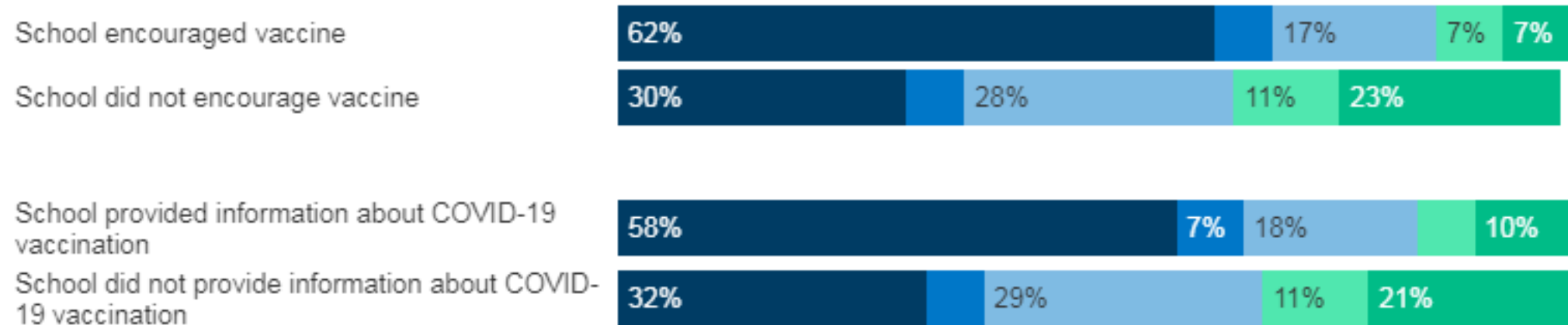
SOURCE: KFF COVID-19 Vaccine Monitor (June 8-21, 2021)

Figure 15

Parents Whose Child's School Encouraged COVID-19 Vaccination Or Provided Information Are More Likely To Say Child Is Vaccinated

Thinking about your child between the ages of 12 and 17, have they received at least one dose of a COVID-19 vaccine, or not? IF NOT: As you may know, the FDA has authorized the Pfizer COVID-19 vaccine for use in children ages 12 and up. Thinking about your child between the ages of 12 and 17, do you think you will...?

■ Child is vaccinated ■ Right away ■ Wait and see ■ Only if required ■ Definitely not



NOTE: Among parents or guardians of children ages 12-17. April 2021 question wording: "Once there is a COVID-19 vaccine authorized and available for your child's age group, do you think you will...?". See topline for full question wording.

SOURCE: KFF COVID-19 Vaccine Monitor: Parents And The Pandemic (Jul. 15-Aug. 2, 2021).



Thank you.