



## Debate Brief · Vaccine Mandates

***Resolved: The state of North Carolina should adopt a COVID-19 vaccine mandate for private employers.***

*"Real liberty for all could not exist under the operation of a principle which recognizes the right of each individual person to use his own [liberty], whether in respect of his person or his property, regardless of the injury that may be done to others."*

– Supreme Court Justice John Marshall Harlan in *Jacobson v Massachusetts* (1905)

*"The goal is never going to be to get cases to zero. [The goal is] to remove the ability of the virus to crush a hospital, and I think we have to say that the vaccine is the best tool to do that."*

–Amesh Adalja, MD, Johns Hopkins Center for Health Security

*"[U]nderstand human beings and how we operate. You don't persuade people through coercion. You don't persuade people through messaging that is paradoxical and contradictory.... You talk to people."*

–Zubin Damania, MD, UNLV School of Medicine

*"Good health is one of our chief national assets. Yet, in spite of all the progress that has been made in the science of hygiene, the yearly losses in this country from the ravages of disease run into many hundreds of millions of dollars. The discouraging feature of the situation is that much of this is needless."*

—Calvin Coolidge, August 9, 1930

## **ABOUT THE COOLIDGE FOUNDATION**

The Calvin Coolidge Presidential Foundation is the official foundation dedicated to preserving and promoting the legacy of America's 30th president, Calvin Coolidge, who served in office from August 1923 to March 1929. Coolidge values include civility, bipartisanship, and restraint in government, including wise budgeting. The Coolidge Foundation sponsors the Coolidge Scholarship and Senators program for academic merit, along with a national debate program culminating in the Coolidge Cup, an invitational tournament held each July at the President's birthplace in Plymouth, Vermont. The Foundation was formed in 1960 by a group of Coolidge enthusiasts, including John Coolidge, the president's son. The Coolidge Foundation maintains offices in Plymouth, Vermont, where it works in cooperation with the President Calvin Coolidge State Historic Site, and in Washington, D.C. The Foundation seeks to increase Americans' understanding of President Coolidge and the values he promoted.

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## BACKGROUND

Americans are heading into year three of the COVID-19 pandemic, and public debates are heating up over the question of whether states should mandate employers to require that their employees be vaccinated. As of December 2021, 25 states have put *some* type of COVID-related vaccine mandate into place. Healthcare workers are the most common target for state vaccine mandates, with states defining “healthcare workers” in different ways (e.g., those who work in any healthcare facility, or those who work in long-term care and nursing homes).<sup>1</sup> Another type of vaccine mandate that some states have instituted requires that all public employees, that is to say employees who work for the government, be vaccinated or else be tested weekly in order to keep their jobs. Examples of states that have passed this law include California, Colorado, and Virginia.

While some states are legislating to mandate vaccines, other states are legislating to *prevent* employers from instituting vaccine mandates. In other words, these states are passing legislation that says that employers in their state cannot require their employees be vaccinated. There are 13 states that have taken this approach. In this 13-state category of states that block employers from requiring vaccination, some states (e.g., Arkansas, Georgia, North Dakota) have bans that apply only to public employers in the state. Other states (e.g., Florida, Kansas, Texas) have bans on vaccine mandates that apply both to public *and* private employers.

As if the situation were not complex enough, in December 2021 the federal government indicated that it wished to use its rulemaking power through the Department of Labor’s Occupational Safety and Health Administration (OSHA) to require large companies to mandate that their workers get vaccinated against the coronavirus or submit to weekly testing. This federal approach has been challenged in court and the future of this strategy is uncertain.

For the purposes of this debate tournament, we ask you to focus on state-level vaccine mandates, and consider specifically whether North Carolina should adopt a COVID-19 vaccine mandate that would require private employers to make their employees get vaccinated. That is to say, the government would require private employers to enforce the government’s rule that all employees must be vaccinated against COVID-19. This scenario is different from employers themselves *voluntarily* making a rule that their own employees be vaccinated. (In this alternate, voluntary scenario, if employees do not like the vaccine requirement, they are always free to quit and look for a new job at a different company.) The government mandate referred to in this resolution removes the voluntary aspect, and legally compels employers to enforce a COVID-19 vaccine requirement for workers. This is the crux of the debate: should the

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<sup>1</sup> Pekruhn, D. “[Vaccine Mandates by State: Who is, Who isn't, and How?](#)” *LeadingAge*. December 22, 2021.

government compel this action, specifically through private employers? It is a nuanced question that will require you to think through the issue from many angles.

You might be aware that states have a well-established power to require vaccination in certain contexts. The famous 1905 Supreme Court case *Jacobson v. Massachusetts*<sup>2</sup> upheld the authority of states to enforce compulsory vaccination laws (in that case, for smallpox). Justice John Marshall Harlan wrote in the majority 7-2 decision:

*[I]n every well-ordered society charged with the duty of conserving the safety of its members the rights of the individual in respect of his liberty may at times, under the pressure of great dangers, be subjected to such restraint, to be enforced by reasonable regulations, as the safety of the general public may demand.*

Later cases built upon this finding, eventually allowing public schools to require vaccinations as a condition of enrollment. State requirements (for school enrollment) are now nearly universal for many vaccines, including the vaccines for whooping cough, diphtheria, tetanus, pertussis, polio, varicella (chickenpox), measles, mumps, and rubella.<sup>3</sup> Not all vaccines are required for school enrollment, though—for instance, only 17 states require the Hepatitis A vaccine for school enrollment.<sup>4</sup> This suggests that vaccine mandates should at least be judged on a case-by-case basis, in the context of each particular disease.

At the state level, the legal precedent to require vaccines in certain settings is relatively well established. But just because legal precedent may support the power of a state to require an employer or an individual to do something for their own good (or “the common good”), it does not necessarily mean a state *should* exercise that power as a matter of public policy. Perhaps the precedent related to other vaccines should not apply in the case of COVID-19? What about the costs, the downsides, and the risks associated with a vaccine mandate—how well can we estimate those? Maybe a vaccine mandate for North Carolina would save lives and shorten the pandemic, but maybe it would not. Maybe it would impose unanticipated costs or have unintended side effects. What about the right of individuals to make decisions for themselves about what vaccines they wish, or do not wish, to take? And should the government be allowed to force private businesses to be the ones to enforce employee vaccination?

What are the best arguments and evidence both for and against a mandate that private businesses in North Carolina require their employees to be vaccinated against COVID-19? That is what we invite you to dig into for this debate.

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<sup>2</sup> [Jacobson v Massachusetts](#), 197 U.S. 11 (1905).

<sup>3</sup> Paul Offit, in an interview with Lyon, “[Opinion: Schools Should Mandate COVID-19 Vaccines for Kids](#)” *U.S. News*. September 29, 2021.

<sup>4</sup> “[Hepatitis A Vaccine Mandates for Child Care and K-12](#)” Immunization Action Coalition. Accessed Dec. 30, 2021.

## COOLIDGE CONNECTION

Calvin Coolidge was no stranger to the challenges posed by infectious disease. In the spring of 1918, America was just over a year into the first World War; however, Central Powers were not the only deadly opposition then facing Americans. The Great Influenza outbreak of 1918, sometimes called the Spanish flu, came in three waves and, by best estimates, took the lives of 675,000 Americans.<sup>5</sup>

At the time, Coolidge was Lieutenant Governor of Massachusetts, the sixth most populous state and among the hardest hit. After a mild first wave came the more deadly second wave, first detected in Massachusetts on August 28, 1918.<sup>6</sup> On September 7, “[t]he second wave of the flu [emerged] at Camp Devens, a United States Army training camp just outside of Boston, and at a naval facility in Boston.”<sup>7</sup> At the outbreak’s peak at Camp Devens, 1,543 soldiers reported ill with influenza in a single day.<sup>8</sup> By September 24, there were 10,898 cases at Camp Devens.<sup>9</sup> There was plenty of reason for alarm. The Spanish Flu was especially pernicious due to its unpredictable severity across age groups and quick transmissibility. “Doctors could do nothing to contain the disease.”<sup>10</sup> The Spanish Flu “killed an estimated 195,000 Americans during October alone.”<sup>11</sup> Aware of the “widespread illness in the cities...the Coolidges tried to keep their sons in the country as much as possible.”<sup>12</sup>

In his capacity as Lieutenant Governor, Coolidge did what he could to assemble the supplies and personnel to combat the outbreak. On September 24, Coolidge telegraphed Vermont Governor Horace Graham, appealing to his home state for available nurses and for its governor to “earnestly solicit [his] influence in obtaining for [Massachusetts] this needed assistance.”<sup>13</sup>

Research is limited regarding Coolidge’s view of the proper role of government during health crises, in general, and nonexistent regarding vaccine mandates, in particular. Silent Cal made no plain reference to the outbreak in speeches or writings after the fact. So, it is only possible to speculate, not articulate, Coolidge’s stance on vaccine mandates. As with any major policy question, in order to understand or approximate Coolidge’s view of allowable and appropriate government action, one must first determine which level of government—federal, state, or local—

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<sup>5</sup> Centers for Disease Control and Prevention (CDC), “[1918 Pandemic Influenza Historic Timeline](#)” March 20, 2018.

<sup>6</sup> J. Alex Navarro and Howard Markel, eds., “[Boston, Massachusetts](#),” in *Influenza Encyclopedia* (Ann Arbor, MI: University of Michigan Center for the History of Medicine, September 19, 2016)

<sup>7</sup> CDC, “1918 Pandemic Influenza Historic Timeline.” See also John M. Barry, “[How the Horrific 1918 Flu Spread Across America](#),” *Smithsonian Magazine*, November 2017.

<sup>8</sup> Barry, “How the Horrific 1918 Flu Spread Across America.”

<sup>9</sup> “[Camps Have Reported Three Thousand Cases](#)” *Cincinnati Commercial Tribune*, September 25, 1918.

<sup>10</sup> “[The 1918 Flu Epidemic Kills Thousands in New England](#)” *New England Historical Society*, September 11, 2015.

<sup>11</sup> CDC, “1918 Pandemic Influenza Historic Timeline.”

<sup>12</sup> Amity Shlaes, *Coolidge* (New York, NY: Harper Perennial Publishers, 2014), 145.

<sup>13</sup> Rachel Muse, “[History Space: Vermont Responds to Spanish Flu](#)” Burlington Free Press, January 6, 2018.

is to act and then whether that body's proposed actions accord with its constitution and bylaws. Speculations about *Governor Coolidge's* view of vaccine mandates must differ from *President Coolidge's*. With different offices come different duties, powers, and expectations. As Governor, Coolidge had to act under the Massachusetts Constitution and could more closely work to encourage local governments to act for themselves or, if necessary, lend state support without violating state law. As President, Coolidge had to act under the U.S. Constitution. In this capacity, Coolidge was resistant to sending federal funds to states, including his home state of Vermont amidst a devastating flood in 1927. But since there were no major health crises during Coolidge's presidency, we only have his time in state government during the influenza outbreak.

As Lieutenant Governor of Massachusetts during the flu outbreak, Coolidge was at the heart of a heavily and early affected state. Working under the direction of Governor Samuel McCall, Lieutenant Governor Coolidge was directed to issue and sign a proclamation on the gravity of the situation. Issued from the governor's office, the proclamation began:

*The Commonwealth is suffering from an epidemic of influenza, which prevails in a large number of our communities with such a degree of virulence that the public safety is seriously threatened. I am informed by the Commissioner of Health and the Surgeon General that the present emergency demands immediate action and that our citizens should be made aware of the situation.*<sup>14</sup>

The proclamation was serious in tone yet hesitant to issue statewide orders or to use the state police power as a means to an end. Coolidge's word choice and phrasing are deferential and do not explicitly mandate or order any citizen or state official to do anything by force of law. Coolidge 'most strongly urged' public officials to *allow* the release of *some* medical professionals from aiding the war effort to help manage the influenza outbreak; he 'earnestly requested' private citizens with medical training to lend a hand; he 'suggested' that cities coordinate supplies and personnel with one another. "In [those] communities where the disease prevails to an alarming extent," Coolidge, "earnestly [urged] the authorities to seriously *consider* the *advisability* of closing the public parochial and private schools, places of amusement, churches and all places where people gather in considerable numbers." Coolidge concluded: "If we shall all use the utmost care, avoid needless exposure, follow painstakingly the advice which will be issued from time to time by the Commissioner of Health regarding the conduct of the public the epidemic will be short-lived, its spread to other people saved from the ravages of the disease." The proclamation worked. On September 29, 1918, the front page of the *Boston Globe* trumpeted "Influenza has reached peak officials say," with a photograph of Canadian nurses "who answered immediately Lieutenant Governor Coolidge's appeal for help through the Red Cross."<sup>15</sup>

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<sup>14</sup> ["Proclamation on the 'Flu' Pandemic"](#) *Cincinnati Commercial Tribune*, September 25, 1918.

<sup>15</sup> ["Influenza Has Reached Peak Officials Say"](#) *Boston Globe*, September 29, 1918.

## KEY TERMS

**Vaccine** – A substance or biological preparation that is used to stimulate the production of antibodies and provide immunity against a particular disease. The goal is to provide a person with protection against a disease, without causing the disease. Usually delivered by injection.

**Mandate** — A legal requirement to do something. An authoritative command. Unlike a contractual requirement that only applies to the individuals or groups who are directly involved in some relationship or transaction, mandates are usually broad and apply to large swaths of the population (e.g., all people, all employees, all adults, all children, etc.).

**Employer Vaccine Mandate** — A vaccine mandate that applies to businesses and organizations that employ workers. Some states have enacted laws requiring employers to require their employees to be vaccinated. Such laws may or may not provide exemptions and alternatives.

**Private employer / Private employee** — A business or organization that is owned by an individual or a company and has employees. Stores, hotels, factories, restaurants, law firms, and nonprofit foundations are all examples of private employers. People who work for these private employers are called private employees.

**Public employer / Public employee** — An organization or agency that is part of the federal, state, or local government. Public schools, town libraries, courts, the city health department, national parks, police departments, and fire department are all examples of public employers. People who work for these public employers are called public employees.

**Exempt or Exemption** — When someone is granted permission *not* to do something that he or she otherwise would be required to do, due to some special or extenuating circumstance. Vaccine mandates always include medical exemptions for people who should not receive a vaccination due to a severe allergy or because their doctor says it would harm them.

**Religious Exemption / Philosophical Exemption** — Non-medical exemptions. All 50 states have vaccine mandates for children to attend school. There are 44 states that grant religious exemptions to families who have religious objections to immunizations. There are 15 states that grant philosophical exemptions to families who have personal or moral objections.

**Herd immunity** — When a large enough portion of a population becomes immune to a disease, then it starts to become difficult for that disease to spread through the population because the disease cannot easily “find” new unprotected people. The unprotected people benefit from being surrounded by protected people, and thus it can be said that the whole population (i.e., the “herd”) is protected.

**Virulent** — Severe or harmful in its effects. Not to be confused with contagious, which means easily transmissible from one person to another.

**Vaccine hesitancy** — A preference to delay or temporarily decline a vaccination that is available and that normally would be given according to general medical guidelines.

## AFFIRMATIVE ARGUMENTS

### 1. We need a high vaccination rate in order to end the public health emergency, and a mandate upon private companies helps society to achieve that high rate.

Of all the tools that human beings have in our arsenal that could help bring the COVID-19 public health emergency to an end—vaccines, masks, pharmaceuticals, thermometers, tests, stay-at-home policies, and other tools—vaccines are the best hope. They offer the best combination of three important things: cheap, effective, and available. No other strategy is in as good a position as having a goal of high vaccination across the whole population.

“Without vaccination requirements, we face endless months of chaos in our hospitals, further detrimental impacts on our economy, and anxiety in our schools. With them, we will accelerate our path out of the pandemic.”

Source: [White House Report](#), Oct. 7, 2021.

Vaccines help mainly by lessening the likelihood that people who contract COVID-19 end up with severe illness requiring hospitalization. Recall how in the early months of the pandemic, hospitals were continually overrun with severe cases, and people were dying at a high and uncontrollable rate. That happens much less frequently now, thanks primarily to vaccines. Vaccines have moved us one big step closer to ending the public health emergency, and this has been *despite* there being less-than-full uptake. As of December 2021, the percentage of adults 18 years and older that were fully vaccinated was 79.2 percent.<sup>16</sup> Adding in children, the percentage of the entire U.S. population that was fully vaccinated is about 62 percent.

With COVID-19, the issue of vaccination is *not* just a personal decision. Those who choose not to be vaccinated pose a real risk to others. There is a negative externality, as economists term it, to one’s decision not to receive a vaccine. After all, an unvaccinated person is far more likely to contract the virus and transmit it to others. Unvaccinated people are also far more likely to come down with severe illness requiring hospitalization that will overwhelm hospitals and make medical care unavailable to others who need it. The sudden flooding of patients into hospitals in recent weeks and months makes the need for a mandate crystal clear. Reports from many states suggest that hospital overcrowding is driven primarily by illness in unvaccinated Americans. According to recent numbers from the deputy secretary of the North Carolina Department of Health and Human Services, 87 percent of the individuals hospitalized in intensive care units (ICUs) across the state are unvaccinated.<sup>17</sup>

It’s the risk of overloading our hospitals that keeps the public health emergency going. If we can *mostly* restart schools, *mostly* return to shopping and restaurant dining, *mostly* hold sporting events, and *mostly* offer elective surgeries and medical procedures using a tool at only 62 to 79

<sup>16</sup> “[COVID-19 Vaccination Coverage and Vaccine Confidence Among Adults](#)” CDC. Accessed December 29, 2021.

<sup>17</sup> Mackenzie, H. “[NCDHHS: COVID-19 patients, most unvaccinated, occupy 85% of ICU hospital beds statewide](#)” ABC13 News. January 4, 2022.



percent of its capability, imagine how quickly we could return to full, “regular” life if we could just get vaccination to 100 percent (or close to it). Things could return to normal.

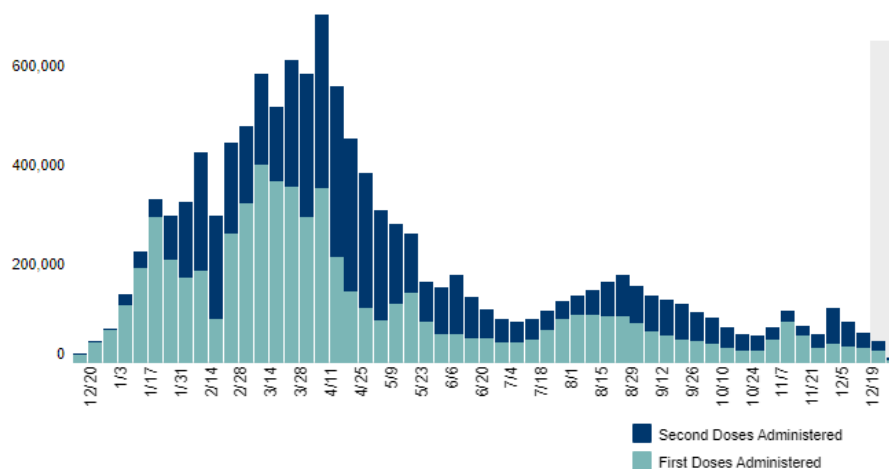
Where they have been tried, vaccination requirements have been associated with increases in vaccination rates. As a report issued by the White House states:<sup>18</sup>

*Vaccination requirements have increased vaccination rates by 20+ percentage points to over 90% in many organizations. An analysis of health care systems, educational institutions, public-sector agencies, and private businesses shows that organizations with vaccination requirements have seen their vaccination rates increase by more than 20 percentage points and have routinely seen their share of fully vaccinated workers rise above 90%. That is substantially higher than broader working-age vaccination rates for Americans aged 18 to 64 where only 63% are fully vaccinated.*

**2. The rate at which people are getting vaccinated in North Carolina has slowed considerably, evidence that the state will not achieve a high level of vaccination absent a mandate.**

Some opponents of vaccine mandates acknowledge the value and importance of vaccines but argue that a mandate is not needed because enough people will get the vaccine voluntarily. Although uptake was strong among North Carolinians around the time when the vaccines first became available, uptake has slowed considerably. As Figure 1 shows, fewer people were vaccinated in the previous two weeks than in any other two-week period since the vaccines first became available. If this continues, the North Carolina vaccination effort will stall.

**Figure 1. COVID-19 Vaccine Doses Administered to North Carolinians, by Week**



Source: [North Carolina COVID-19 Vaccine Management System](#) (CVMS). Accessed December 29, 2021.

<sup>18</sup> [White House Report](#). The White House. Washington, D.C. October 7, 2021.

### **3. We need a high vaccination rate to prevent new variants from emerging.**

The longer the pandemic continues, the more opportunities there are for the SARS-CoV-2 virus to mutate into a form that is more virulent, more difficult to contain, or potentially both of those things. We have seen this already with the Delta and Omicron variants. Although vaccinations primarily benefit us by making disease less severe, they also have a side benefit of modestly reducing

transmission and interrupting chains of transmission by reducing viral load in those who do get sick. To the extent that vaccines cut transmission in this way, they help lessen the chances of dangerous new variants from evolving. A vaccine mandate would increase the vaccination rate.

“[I]f the virus has an easy host, such as an unvaccinated individual, then it is easy for it to mutate into a more contagious and virulent form.”

Source: [Dr. Purvi Parikh](#), immunologist with the Allergy and Asthma Network in New York City. Quoted in October 2021.

### **4. State governments clearly have the right to issue a mandate. Indeed, they already mandate vaccinations for other infectious diseases.**

Some opponents of vaccine mandates argue that a vaccine mandate is an abuse of state power. However, there is almost nothing unique about states issuing COVID-19 vaccine mandates. Most students at a public and private schools across the country are already required to receive certain vaccinations as a condition of enrollment.

A COVID-19 vaccine mandate that applies to private employers would work in a similar way: unless exempted for some important reason, employees would be required to receive a COVID-19 vaccine.

“The state already requires that students are vaccinated against viruses that cause measles, mumps, and rubella – there’s no reason why we wouldn’t do the same for COVID-19. Today’s measure, just like our first-in-the-nation school masking and staff vaccination requirements, is about protecting our children and school staff, and keeping them in the classroom.”

Source: [California Governor Gavin Newsome](#), October 1, 2021.

### **5. A vaccine mandate for employers would be good for the economy and good for business.**

If you ask business owners what their biggest pandemic-related fear is, the answer you will likely get is “shutdowns.” Businesses can adapt to mask requirements, supply chain challenges, and other obstacles—even requirements that they seat their patrons outdoors. But they cannot adapt to being shut down. Vaccine mandates can help avoid shutdowns by keeping enough workers healthy so that businesses can stay open, and enough customers willing to go out in public so that businesses have people to whom they can sell their goods and services.

Since the pandemic, there has been a buildup in the demand for labor while the supply is short—fewer people feel safe returning to a high consumer interactive workspace when

there is no assurance that others are vaccinated. Figures 2a and 2b show how employment levels in North Carolina are still lower than they were at the beginning of the pandemic for key sectors of the economy (education and health services in Figure 2a, and Leisure and Hospitality in Figure 2b). To make it safe for workers to come back to work, North Carolina should pass a vaccine mandate for private employers.

**Figure 2a, 2b. Employment Levels for Various Sectors in North Carolina**



Source: [U.S. Bureau of Labor Statistics](https://fred.stlouisfed.org/). Accessed December 2021.

A national economic analysis by Goldman Sachs estimated that “an increase in vaccination and almost full vaccination at workplaces should encourage many of the 5 million workers that have left the labor force since the start of the pandemic to return.”<sup>19</sup> Similarly, but on a smaller scale,

<sup>19</sup> Briggs, Struyven, and Bhushan. “[US Daily: The Effect of the Biden Vaccine Mandate on Vaccination and Employment](#)” Goldman Sachs Publishing. September 13, 2021.

North Carolina could bring some of its own workers back to work with a vaccine mandate that applies to private employers.

By adopting a COVID-19 vaccine mandate applicable to private employers, North Carolina could follow what New York City—the nation’s hub of capitalism and economic activity—has instituted. New York City mayor Bill de Blasio argued that the best way to promote and preserve safe workplaces is through a vaccine mandate, saying that “we’ve been to this movie before,” and “we are not going back to what happened in 2020” [referring to shutdowns].<sup>20</sup> The New York City mandate requires vaccinations for all employees who work in person in the city. The mandate applies to all private employers, irrespective of size, and there is no plan to offer a “test out” option, nor to allow employers to permit employees to wear masks as an alternative to vaccination. It would not be difficult for North Carolina to adopt something similar. Indeed, following the example of New York City would be good for North Carolina businesses and good for the North Carolina economy.

“Small business employee hours grew faster and stayed higher during the rise of the Delta variant in the states that have higher working-age vaccination rates, versus states with lower vaccination rates.”

Source: [White House Report](#), Oct. 7, 2021.

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<sup>20</sup> [“Transcript: Mayor de Blasio”](#) Office of the Mayor of New York City. December 6, 2021.

## NEGATIVE ARGUMENTS

### 1. Vaccine mandates are un-American. Vaccination should be a personal decision between individuals and their employers, or between individuals and their doctors.

The decision to receive a vaccination is a personal medical decision, not something that should be subject to public lawmaking and political pressures. COVID-19 vaccinations are a personal matter because they *primarily benefit the recipient* by training the recipient's immune system to respond in a robust way to the actual infection when it eventually occurs. The benefit of reduced transmission is secondary and arguably modest.

This is unlike some other vaccines, such as the measles vaccine, which actually *prevent* the disease from occurring and in so doing curtail transmission in a major way. With the measles vaccine, there is a stronger "public health" case for a mandate because the most vulnerable people (infants) are not physically mature enough to receive the vaccination themselves. COVID-19 vaccinations are not the same, so we should not approach it with the same policy tools that we do for measles and other such vaccines. As Ohio Governor Mike DeWine put it in August 2020, "[vaccination] is an individual decision that people will have to make, and government should not be involved in mandating it."<sup>21</sup>

"I think the small business owner who's running their business cares deeply about the wellbeing of their employees, deeply about the wellbeing of their customers, exercises common sense and good judgment. Let them operate their business, for goodness sake. Don't put all these restrictions on them and don't shut them down, which now it seems far too many governors and mayors are attempting to do."

"Vaccine mandates are un-American."

Source: U.S. Representative Jim Jordan (Ohio). Remarks made on [November 23, 2020](#), and [September 6, 2021](#) respectively.

Senator Ron Johnson of Wisconsin expounded on this view. In a May 2021 op-ed, he wrote:<sup>22</sup>

*I don't have anything against vaccines. I have gotten annual flu shots since the 1970s and am up-to-date with all other standard vaccinations. I strongly supported Operation Warp Speed and celebrated its astonishingly rapid success. But I do believe getting vaccinated is a personal choice that should be made in consultation with a doctor.*

*Since I'm not a doctor or medical researcher, I don't believe it's appropriate for me to either encourage or discourage vaccination. My role is to help ensure transparency, so people have as much information as possible to make their own informed medical decisions. That is why I held two Senate hearings on early treatment of COVID last November and December and championed federal right-to-try legislation in 2018.*

<sup>21</sup> Bella, T. "[Jim Jordan says vaccine mandates are un-American. George Washington thought otherwise](#)" *Washington Post*. September 7, 2021.

<sup>22</sup> Johnson, R. "[Getting vaccinated is a personal choice](#)" *Washington Examiner*. May 13, 2021.

*[...] No one should be shamed, coerced, or mandated to take COVID-19 vaccines that are being allowed under an emergency use authorization. In the U.S., three COVID-19 vaccines have completed the Phase I safety stage of the FDA approval process. The Phase II and III portions of the clinical trials are currently in an observational period until 2023, tracking participants for two years following vaccination.*

By their very nature, vaccine mandates interfere with a person’s medical autonomy. Mandates might be appropriate for other vaccines for other diseases, but for COVID-19, the costs in terms of personal liberty outweigh the benefits. North Carolina should not impose a vaccine mandate.

Furthermore, requiring that private employers enforce the vaccine mandate on their workers puts the government between the employer and employee. Employers and employees ought to be free to negotiate amongst themselves – if the employer would like their employees to be vaccinated, they can make that a condition of employment. If the employees don’t like that condition, they can always quit, or decide not to work for that company. The government should not be forcing employers to enforce a rule about vaccines if that is not something for which the private business wants to have responsibility.

## **2. If the vaccine is a condition of employment, people will quit their jobs, hurting the economy.**

Employment levels are already suffering in North Carolina, as they are in many states. Businesses report that it is difficult to find workers who are willing to work during the pandemic. Some businesses have had to close down. According to a ranking of states by the Bureau of Labor Statistics, North Carolina has the 8th highest quit rate. The industries that people are quitting the most are services and retail, which are feeling increased demand from consumers.

If North Carolina adopts a vaccine mandate on private businesses, at least some workers likely will choose to quit, making the employment situation in the state worse, not better. This is tantamount to a self-inflicted wound.

“The ongoing labor shortage is continuing to cripple businesses around the country and here in the Carolinas. In Rowan County businesses are begging for workers, offering signing bonuses, or asking customers for patience.

“We’re having a tough time finding the right help, staffing, wait staff, kitchen staff,” said Nick Kalogeromotros of Blue Bay on Statesville Blvd. in Salisbury. They’ve tried advertising for workers, but they just can’t find them.”

Source: Whisenant, D. “[Local businesses continue to struggle to find workers](#)” WBTV. June 9, 2021.

**Table 1. North Carolina Labor Economy Statistics**

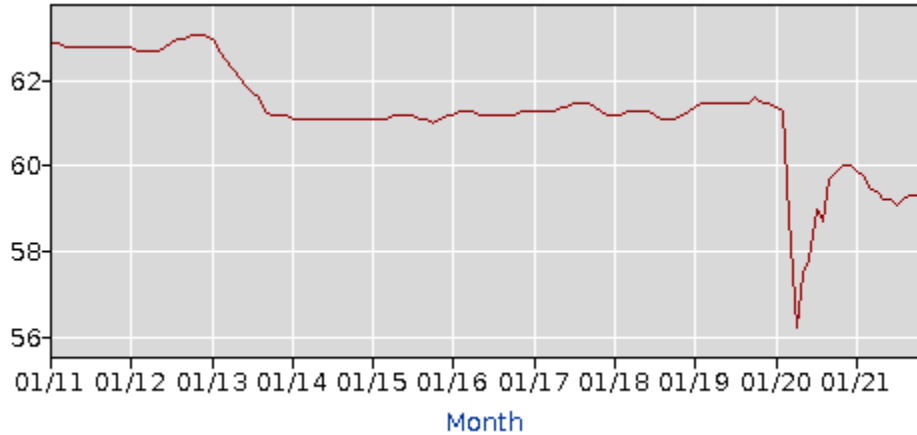
<b>Data Series</b>	<b>June 2021</b>	<b>July 2021</b>	<b>Aug 2021</b>	<b>Sept 2021</b>	<b>Oct 2021</b>	<b>Nov 2021</b>
<b>Labor Force Data</b>						
Civilian Labor Force(1)	5,000.9	4,999.8	5,011.5	5,029.1	5,033.8	5,041.7
Employment(1)	4,769.0	4,777.4	4,794.9	4,814.8	4,825.4	4,843.5
Unemployment(1)	231.9	222.5	216.6	214.3	208.4	198.2
Unemployment Rate(2)	4.6	4.4	4.3	4.3	4.1	3.9
<b>Nonfarm Wage and Salary Employment</b>						
Total Nonfarm(3)	4,505.2	4,530.9	4,518.6	4,523.1	4,551.3	4,554.8
Mining and Logging(3)	5.8	5.7	5.7	5.7	5.6	5.7
Construction(3)	237.2	240.7	240.3	241.3	243.4	241.5
Manufacturing(3)	465.3	469.2	470.9	471.4	472.7	474.4
Trade, Transportation, and Utilities(3)	868.8	869.4	865.9	869.6	877.6	873.9
Information(3)	77.9	77.9	78.1	78.3	78.6	78.9
Financial Activities(3)	259.2	260.3	261.1	260.5	259.8	258.5
Professional & Business Services(3)	660.7	670.4	671.5	675.7	677.7	682.7
Education & Health Services(3)	600.0	599.0	597.8	594.3	597.2	598.5
Leisure & Hospitality(3)	462.9	463.7	459.5	460.7	472.9	475.3
Other Services(3)	156.7	157.5	157.7	159.5	160.3	161.2

Notes: November numbers are preliminary. (1) Number of persons, in thousands, seasonally adjusted. (2) In percent, seasonally adjusted. (3) Number of jobs, in thousands, seasonally adjusted.

Source: [Bureau of Labor Statistics](#). Accessed December 30, 2021.

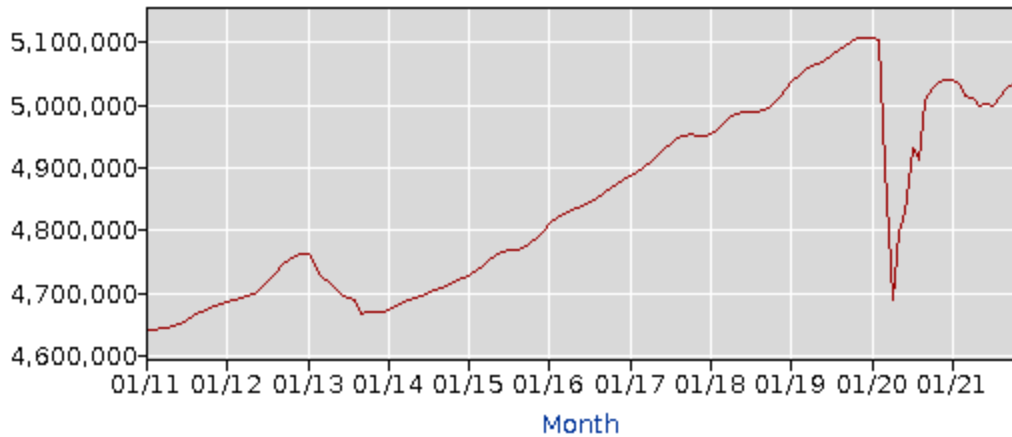
Table 1 shows selected North Carolina employment statistics for the past six months. Although in many categories, employment has been on an upswing, the truth is that employment is still lower than prior to the pandemic. The labor force participation rate is the percentage of all people of working age who are employed or are actively seeking work. Figure 3 shows that since the pandemic, labor has suffered in North Carolina.

**Figure 3. North Carolina Labor Force Participation Rate, 2011-2021**



Similarly, as shown in Figure 4 below, the overall number of people in the labor force in North Carolina is down. Losses here include people who are no longer looking for employment. If people who prefer not to be vaccinated for COVID-19 were to quit their job upon the passage of a mandate, it could push this trendline down.

**Figure 4. North Carolina Labor Force Participation Rate, 2011-2021**



The affirmative in this debate may argue that a vaccine mandate on private employers would help the businesses and the broader economy. However, employers are already able voluntarily to tell their own employees they must be vaccinated. If businesses thought creating such a requirement would help their business, they would voluntarily do so. But if the government is feeling the need to make this a mandated requirement, it must mean that at least a large share of private employers have decided not to create a vaccine requirement, presumably because they think such a requirement would hurt, not help, their business. Therefore, it is not logical to argue that this mandate would help businesses relative to the status quo whereby businesses can voluntarily make vaccination a condition of employment.



### 3. Forcing people to do something that they do not wish to do breeds resentment and skepticism. In other words, a vaccine mandate could make the problem worse.

“Blowback” is a term that the Central Intelligence Agency (CIA) uses to describe operations that backfire and achieve the opposite of their intended goal. The same thing can and does happen in public health. For example, researchers have found that mythbusting erroneous information about the flu vaccine—i.e., presenting people with corrective information about how the flu vaccine works—is just as likely to cause them to double down on their beliefs as it is to get them to change their mind.<sup>23</sup> The reason why this happens is that it is natural for people to become very attached to and invested in the positions that they hold publicly on controversial issues. For many people, it is easier to insist that they distrust the corrective source or come up with a counter-narrative than it is to publicly change one’s mind.

“Legal mandates signal clear policy support for immunizations, which can also increase resources for a vaccine infrastructure. Yet mandates can undermine public support, creating a backlash and even reducing vaccine uptake. Mandates may be useful in the future, but their implementation among any population that does not widely support vaccination could be counterproductive. The purpose of risk communication is to inform decision-making, respecting individual choice. Mandates fundamentally alter this dynamic by overriding personal autonomy.”

Source: Gostin, et al. “[Mandating COVID-19 Vaccines](#)” *JAMA*. 2021;325(6):532-533.

Vaccination is a charged topic in America, so regardless of what policymakers *wish* people would do, they must take into account the risk that any vaccine mandate policy is almost certain to result in some blowback.<sup>24</sup> As Harvard Medical School professor Martin Kulldorf has said, “If we want to have long-term trust in public health, we cannot use coercion and mandates. We have to use education and mutual trust.”<sup>25</sup> Mandates are not the solution. A better approach is to persuade people to get vaccinated voluntarily, either by appealing to reason or by offering incentives (e.g., extra pay, gift cards) instead of penalties.

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<sup>23</sup> Nyhan, B. and J. Reifler. “[Does correcting myths about the flu vaccine work? An experimental evaluation of the effects of corrective information](#)” *Vaccine*. 33:3. (2015) pp459-464.

<sup>24</sup> Damania, Z. “[This Vaccine Mandate Is A Mistake, Here's Why](#)” ZDoggMD Show (podcast) September 11, 2021.

<sup>25</sup> Kulldorf, M. “[Vaccine Mandates.](#)” Munk Debates. September 14, 2021.

#### **4. The government may have the right to impose a vaccine mandate, but implementation could be confrontational and expensive. Labor union contracts will have to be renegotiated.**

As of the writing of this brief, it is unclear whether employers are legally required to renegotiate with labor unions when a state enacts a vaccine mandate. From the perspective of the union, there is little reason to accept such a significant change in the terms of employment without challenging it, insisting on having a say in its implementation details, or using it as an occasion to demand new terms and benefits. Unions have a duty to their members to bargain. That is their purpose.

Labor lawyers are watching these cases spring up with great interest. In Chicago, a union called the Teamsters filed a lawsuit against its own health organization over the organization's internal vaccine mandate that required employees to get vaccinated or else be fired:<sup>26</sup>

“Although some state courts and agencies have recently determined that state and local government employers aren’t required to negotiate with unions over vaccine mandates because it’s an urgent health emergency, it’s still an open question in the private sector. As a result, a union’s failure to at least push for the right to bargain over a mandate would be giving up one of its most powerful rights without a fight.”

Source: Hirsch, J. [“Why So Many Unions Oppose Vaccine Mandates – even when They Actually Support Them”](#) *Government Executive*. November 15, 2021.

*In the complaint, the Teamsters allege the fund’s vaccination policy required bargaining and that the fund failed to adequately negotiate over the requirement with the union. Under labor law, an employer dealing with a unionized workforce typically must bargain any changes with a union related to the terms and conditions of the workers’ employment. These are known as “mandatory subjects of bargaining.” This includes things such as wages, benefits, and work rules that can result in termination or discipline. Because TeamCare’s vaccination mandate could result in the termination of workers, it likely is a mandatory subject requiring bargaining.*

This is the kind of expensive legal proceeding that could play out at employers across the nation if more states adopt COVID-19 vaccine mandates. This is neither the cost nor the distraction that North Carolina businesses need right now as they do their best to stay open during what is already a challenging time.

#### **5. Mandating vaccination is the wrong aim. If anything, the policy should be about *immunity*.**

If the alleged goal of state vaccine mandates for private employers is to serve the public health and end the public health emergency, why do mandates not let natural immunity count for anything? It’s true that medical experts have differing opinions on the strength and longevity of

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<sup>26</sup> Pryzbylski, D. [“Do You Have To Negotiate The Vaccine With Your Union?”](#) Barnes & Thornburg, LLP. July 22, 2021.

natural immunity (i.e., immunity received from having contracted and recovered from COVID-19). Some of the disagreement comes from how natural immunity performs against different variants. Nevertheless, it is generally agreed that natural immunity provides at least some lasting protection against future COVID-19 infection.

States that wish to impose an employer vaccine mandate could easily include an exemption for those who have COVID-19 antibodies from prior infections, yet none of the states with vaccine mandates has done this.<sup>27</sup> This is more than a minor policy implementation detail. It calls into question the entire intent behind the mandates, and only breeds unwarranted skepticism (e.g., *“if they have to mandate the vaccination, does that mean masks don’t work?”*), undue ire toward the government (e.g., *“they want power and control over our lives!”*), and conspiratorial thinking (e.g., *“is big pharma secretly behind the vaccine mandates?”*).

If it is indeed true that we are caught in a pandemic from which there is no escape unless we have strong, coordinated action, then a better approach would be one that makes participation in society and employment conditional not on vaccination status, but on *immunity*, which can be achieved in multiple ways, including through vaccination.

“There is consistent epidemiologic evidence that prior SARS-CoV-2 infection provides substantial immunity to repeat SARS-CoV-2 infection. Prior SARS-CoV-2 infections provide similar protection when compared to vaccination for SARS-CoV-2. Longer follow-up studies are needed to determine how long protection lasts for natural immunity, especially among higher risk groups such as those with chronic medical conditions and those that are immunocompromised. More research is needed to investigate whether initial disease severity changes the risk of repeat infection.”

Source: Kojima, et al. [“A Systematic Review of the Protective Effect of Prior SARS-CoV-2 Infection on Repeat Infection”](#) *Evaluation and the Health Professions*. 44:4. September 30, 2021.

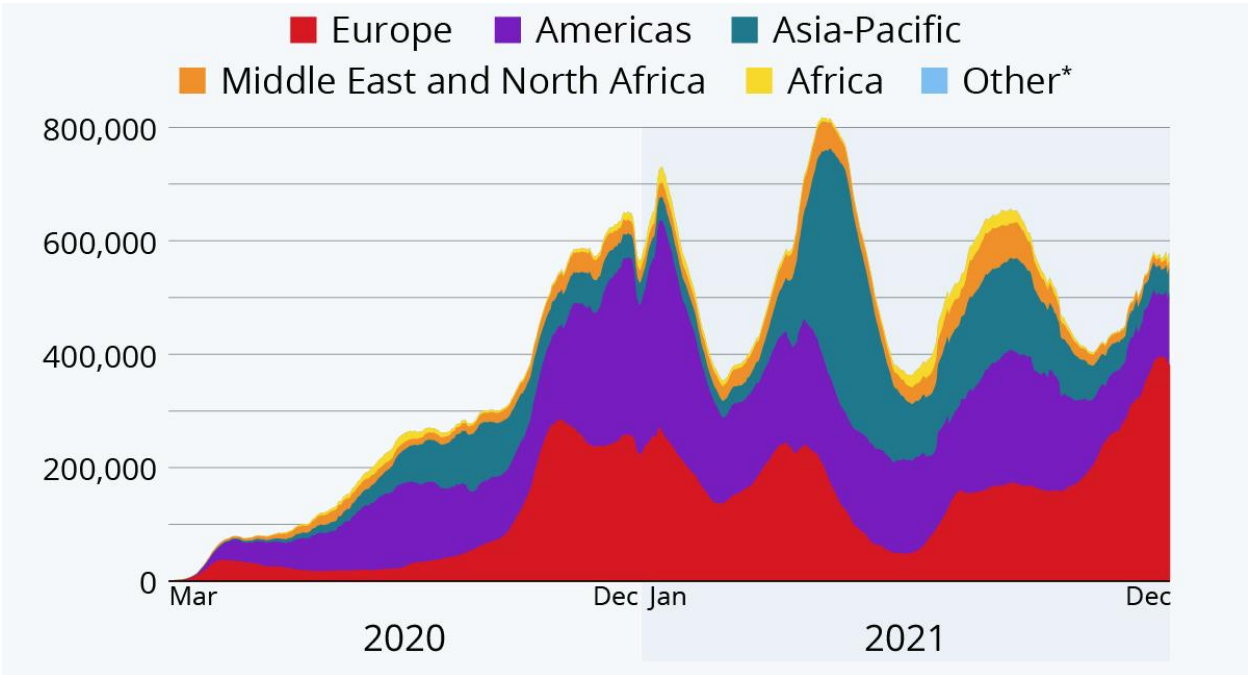
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<sup>27</sup> In November, 2021, Florida wrote natural immunity into its law as a strategic move to preempt a possible federal law or rule issued by the Biden administration. Florida does not itself have a vaccine mandate. In fact, it is one of the states that has a law banning private and public employers from instituting their own mandates.

### APPENDIX A. Newly Confirmed COVID-19 Cases Worldwide

The World Health Organization (WHO) declared the COVID-19 outbreak a global pandemic on March 11, 2020. The COVID-19 pandemic has had multiple waves. Despite high vaccination uptake in some regions, new cases continue to be reported, typically of new variants. To date there have been more than 266 million cases of COVID-19 around the world. More than 5 million people have died from the disease.

Seven-Day Moving Average of Newly Confirmed COVID-19 Cases Worldwide



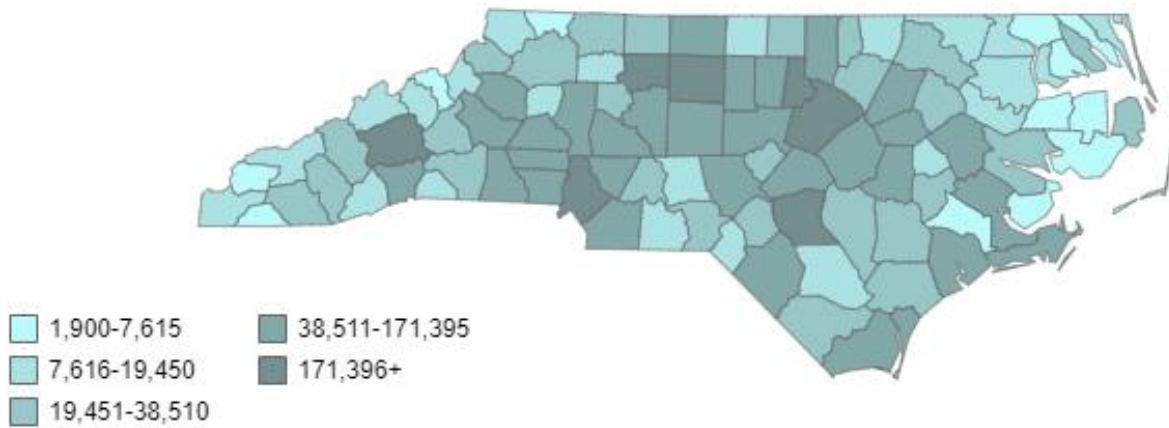
Notes: "Other" includes cases reported from international conveyances.

Source: Richter, F. ["Two Years In, the World Battles Another Covid Wave"](#) Statista. December 7, 2021. Based on data from the World Health Organization.

## APPENDIX B. People Vaccinated in North Carolina, By County

As of December 2021, about 6 million people in North Carolina were fully vaccinated. About 5.6 million of those received two doses of a two-dose vaccine. About 470,000 people had received one dose of a one-dose vaccine. The map below shows vaccination rates by county.

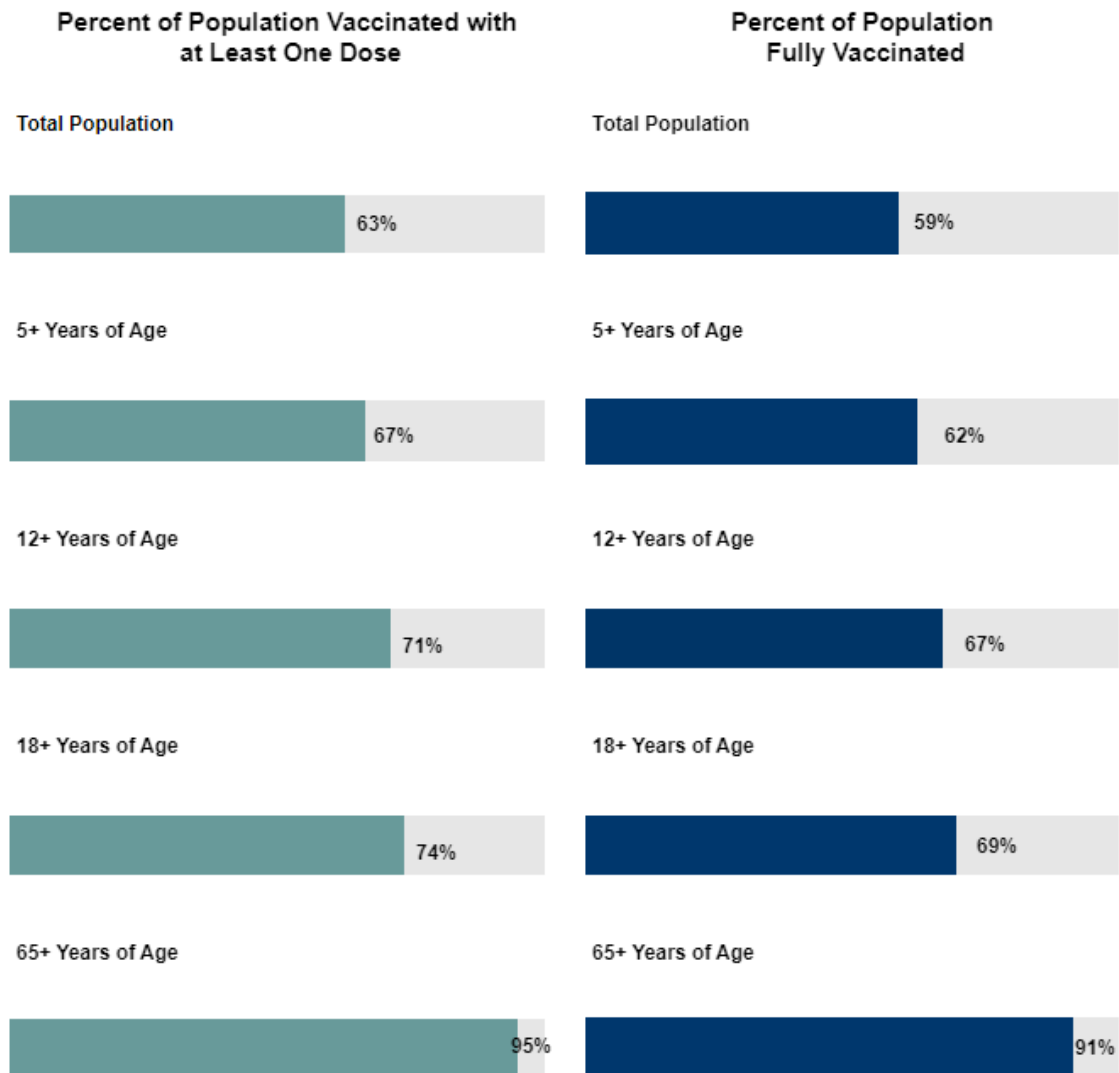
### People Vaccinated with at Least One Dose, by County of Residence



Source: [CDC Covid Tracker for North Carolina](#). Accessed December 29, 2021.

## APPENDIX C. People Vaccinated in North Carolina, By Age

Since different age groups became eligible for vaccination at different times, there are naturally differences in the age-based vaccination rates. The figure below shows the data for North Carolina as of December 2021. The North Carolinians who are most susceptible to serious illness from the disease—the elderly—are vaccinated at a very high rate (91 percent). Acknowledging that fact, opponents can question whether imposing a burden onto working age individuals is justified.



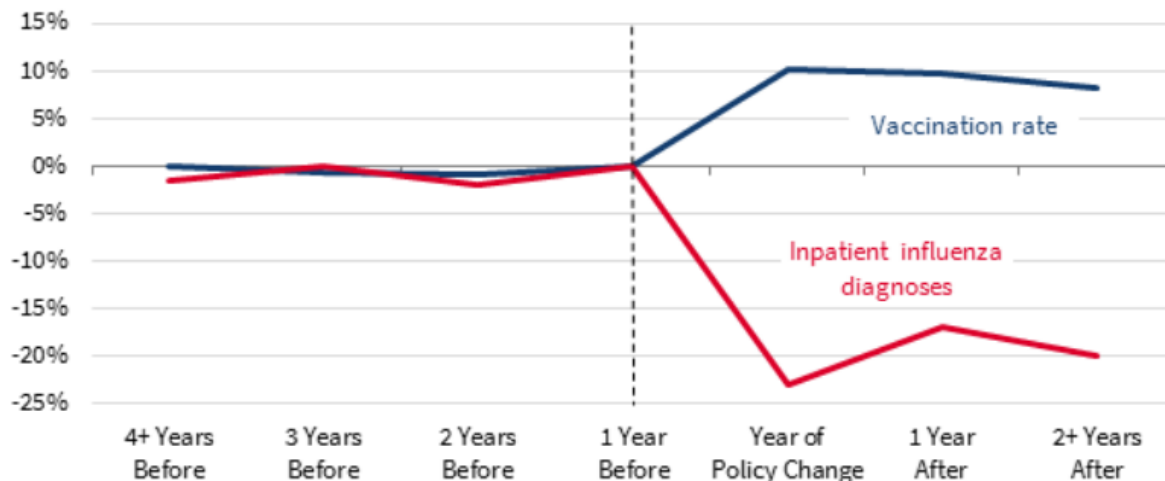
Source: [CDC Covid Tracker for North Carolina](#). Accessed December 29, 2021.

## APPENDIX D. Do Vaccination Requirements Work for Other Diseases?

State vaccine mandates for COVID-19 are so new that we do not have a great amount of longitudinal data with which to study their effect. Looking at other recent vaccine requirements that have been studied more extensively might be helpful. Below is a graph showing California's experience with a flu vaccine requirement for healthcare workers, which was instituted in many counties in the state between 2017 and 2019. The data have been adjusted so that the dates "line up" and we can get a clearer before-and-after view (perhaps strengthening the case for causality). This particular analysis found that the flu vaccine requirement increased the vaccination rate of health care workers by 10 percentage points, from 74 percent to 84 percent, and reduced the number of inpatient influenza diagnoses by 20 percent.

### Flu Vaccine Requirements for Healthcare Workers in California Reduced Hospital-Acquired Infections

*Change in percentage points from year before county vaccine mandate*



Source: White, C. "Measuring social and externality benefits of influenza vaccination"  
*Journal of Human Resources*. 2021. 56:3. 749-785.