

## FREQUENTLY ASKED QUESTIONS

ON

### LABOR RELATIONS:

#### MANDATORY COVID-19 VACCINATIONS FOR DEPARTMENT OF THE AIR FORCE CIVILIAN EMPLOYEES

*Current as of 29 October 2021*

#### - BARGAINING OBLIGATIONS:

Q: What are our bargaining obligations with regards to the vaccination requirement?

A: There may be collective bargaining obligations over the impact and implementation (I & I) of Department of Defense (DoD) and Department of the Air Force (DAF) policies and procedures regarding the vaccination requirement. Management should engage with DAF civilian employee unions and otherwise satisfy any applicable collective bargaining obligations under the law at the earliest opportunity, including on a post-implementation basis where appropriate. The U.S. Federal Labor Relations Authority has stated the COVID-19 national emergency does not suspend an agency's obligations to comply with the Federal Service Labor-Management Relations Statute. The vaccination requirement and associated procedures are being established in response to a national emergency; therefore, post-implementation bargaining may be appropriate based on the immediate need to protect the health and safety of employees, contractor employees, and visitors. Bargaining obligations should not delay the implementation of the vaccine requirement. Management should provide DAF guidance to the union as soon as it is provided and are encouraged to communicate regularly with union representatives on workplace safety matters. In addition, any agreement between a union and an agency is subject to approval by the head of the agency. *See* 5 U.S.C. § 7114(c). AFI 36-704, *Labor-Management relations*, Chapter 8, outlines the agency head review process.

#### - STATUS QUO

Q: The union has requested that we maintain the status quo until all negotiations are completed including any Federal Service Impasses Panel proceedings.

A: Pursuant to 5 U.S.C. § 7106 (a)(2)(D), management officials have the authority to take whatever actions may be necessary to carry out the agency mission during emergencies subject to 5 U.S.C. § 7106 (b)(2) and (3). The vaccination requirement and associated procedures are being established in response to a national emergency pursuant to Proclamation 9994 of 13 March 2020, *Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak*. Post-implementation bargaining may be appropriate based on the immediate need to protect the health and safety of employees, contractor employees, and visitors. The President has determined that the ensuring the health and safety of the Federal workforce and the efficiency of the civil service requires immediate action to protect the Federal workforce and individuals interacting with the Federal workforce. For this reason, maintaining the status quo may prevent the DAF from being able to carry out its mission during this emergency.

## - VACCINATION

Q: The union has requested we disseminate locations and facilities where employees can receive vaccinations and fully inform employees of their right to request a reasonable accommodation.

A: The DAF has not yet published its accommodation policies for employees who communicate to the DAF that they are not vaccinated because of a disability (or medical condition), or because of a sincerely held religious belief, practice, or observance. Nothing precludes management from engaging in I & I bargaining with the union over how to disseminate information on locations where employees are eligible to receive COVID-19 vaccinations or current policies.

Q: The union has requested that we grant administrative leave for the time it takes employees to get vaccinated and recover from the vaccination.

A: Pursuant to the DAF Mandatory COVID-19 Vaccination Guide, dated 22 October 2021, official duty time will be granted to DAF civilian employees for the purpose of receiving COVID-19 vaccine doses, generally up to four hours per vaccination event. Employees should not be charged personal leave or credited administrative leave for this purpose. In addition, employees who experience an adverse reaction to a COVID-19 vaccination are entitled to no more than two workdays of administrative leave “for recovery associated with a single vaccination dose.” Other appropriate leave may be granted to cover an additional absence. The agency is required to bargain only to the extent that a proposal is not inconsistent with federal law, government-wide rule or regulation, or agency regulations for which a compelling need exists. *See* 5 U.S.C. §7117(a).

## - EXEMPTIONS AND ACCOMMODATIONS

Q: The union has requested that we exempt all bargaining unit members from the vaccination mandate if they oppose receiving the vaccination or if they have already had a COVID-19 infection.

A: Although DAF guidance on accommodations and exemption requests is forthcoming, Executive Order 14043, only permits exemptions that are “required by law.” Management may be required to provide accommodations to employees who communicate to the DAF that they are not vaccinated because of a disability (or medical condition), or because of a sincerely held religious belief, practice, or observance. Pursuant to the Deputy Secretary of Defense Memorandum, Mandatory Coronavirus Disease 2019 Vaccination of DoD Civilian Employees, dated October 1, 2021, “Those with previous COVID-19 infection(s) or previous serology are not considered fully vaccinated on that basis for the purpose of this mandate.” Accordingly, although management should engage in I & I bargaining at the earliest opportunity, including on a post-implementation basis where appropriate, they cannot agree to provide exceptions to the vaccine mandate other than those “required by law.” The agency is required to bargain only to the extent that a proposal is not inconsistent with federal law, government-wide rule or regulation, or agency regulations for which a compelling need exists. *See* 5 U.S.C. §7117 (a).

Q: The union has requested to be notified when a bargaining unit member requests an accommodation and asked for regular updates on the status of accommodation requests.

A: The agency has an obligation to provide the union information within its possession that is necessary and relevant to the union’s representational responsibilities pursuant to 5 U.S.C. § 7114 (b)(4). However, the union is responsible for demonstrating a particularized needs for the requested information. Medical and other information collected from employees, including vaccination information and vaccine

exemption requests, must be treated in accordance with applicable laws on privacy, including the Privacy Act of 1974, and DoDI 5400,11, *DoD Privacy and Civil Liberties Programs*, the Rehabilitation Act of 1973, as amended (Rehabilitation Act), and 5 C.F.R. Part 293, subpart E. The privacy interests in protecting the information provided by employees may constitute a countervailing interest that outweighs the union's need for the information.

Q: The union has requested an accommodation request/exemption process that differs from DOD/DAF policy guidance.

A: DAF guidance on accommodations and exemption requests is forthcoming. Executive Order 14043, only permits exemptions that are "required by law." Accordingly, although management should engage in I & I bargaining at the earliest opportunity, including on a post-implementation basis where appropriate, they cannot agree to provide exceptions to the vaccine mandate other than those "required by law." The agency is required to bargain only to the extent that a proposal is not inconsistent with federal law, government-wide rule or regulation, or agency regulations for which a compelling need exists. *See* 5 U.S.C. §7117(a).

Q: The union has requested an employee be permitted to telework or placed on paid administrative leave while an accommodations request is pending.

A: DAF guidance on the accommodation process is forthcoming. An employee with an accommodation or exemption request that is pending decision will be required to undergo COVID-19 screening testing at least weekly, comply with other health protection measures, and will still be permitted to work. Civilian employees that are teleworking or working remotely on a full-time basis will not be subject to weekly testing. The agency will be required to bargain only to the extent that a proposal is not inconsistent with federal law, government-wide rule or regulation, or agency regulations for which a compelling need exists. *See* 5 U.S.C. §7117 (a).

#### - ADVERSE EFFECTS

Q: The union has requested that an employee who experiences an adverse action after receiving the vaccination will be placed on paid administrative leave, rather than sick leave, to include any night or weekend differential pay an employee should receive.

A: Pursuant to the DAF Mandatory COVID-19 Vaccination Guide, dated 22 October 2021, and the Under Secretary of Defense for Personnel and Readiness memorandum, *Administrative Leave for Coronavirus Disease 2019 Vaccination of Department of Defense Employees*, dated 14 April 2021, Civilian employees who experience an adverse reaction to a COVID-19 vaccination that prevents the employee from working will be granted no more than two workdays of administrative leave for recovery associated with a single vaccination dose. The agency will be required to bargain only to the extent that a proposal is not inconsistent with federal law, government-wide rule or regulation, or agency regulations for which a compelling need exists. *See* 5 U.S.C. §7117 (a).

Q: The union has requested employees be fully compensated for any harm attributed to the vaccine mandate, including physical harm, reimbursement of sick leave attributed to any side effects from the vaccine, or any other compensable loss directly attributable to the vaccination.

A: Pursuant to the DAF Mandatory COVID-19 Vaccination Guide, dated 22 October 2021, there may be instances when a civilian employee impacted by the vaccination mandate may be afforded coverage under

the Federal Employees' Compensation Act (FECA) for adverse reactions to the vaccine itself, or for injuries sustained while obtaining the vaccine. *See* FECA Bulletin No. 22-01, *Coverage for Injuries Resulting from the COVID-19 Vaccination Mandate for Federal Employees*, dated 1 October 2021. The agency will be required to bargain only to the extent that a proposal is not inconsistent with federal law, government-wide rule or regulation, or agency regulations for which a compelling need exists. *See* 5 U.S.C. §7117 (a).

#### - DISCIPLINE

Q: The union has requested that management attempt to reassign an employee who refuses to become fully vaccinated or who has had their request for an accommodation denied to a full-time telework or remote work position, in lieu of removal, if available.

A: Executive Order 14043, only permits exceptions to the vaccine requirement that are “required by law.” Management may be required to provide accommodations to employees who communicate to the DAF that they are not vaccinated because of a disability (or medical condition), or because of a sincerely held religious belief, practice, or observance. Accordingly, management cannot agree to provide exceptions to the vaccine mandate other than those “required by law.” The agency is required to bargain only to the extent that a proposal is not inconsistent with federal law, government-wide rule or regulation, or agency regulations for which a compelling need exists. *See* 5 U.S.C. §7117 (a).

Q: The union has requested that management permit employees be granted an extension past the November 22, 2021 deadline to be vaccinated.

A: Executive Order 14043 requires all Federal civilian employees to be fully vaccinated by 22 November 2021, unless they have an approved or pending request for an accommodation. The agency is required to bargain only to the extent that a proposal is not inconsistent with federal law, government-wide rule or regulation, or agency regulations for which a compelling need exists. *See* 5 U.S.C. §7117 (a). To the extent an employee has only received one dose of a two-dose vaccination, the employees supervisors may decide to hold any corrective personnel action in abeyance until the employee is eligible to receive the second dose.

Q: The union requests that any discipline for failing to be vaccinated be standardized (e.g. counseling, then paid administrative leave, then unpaid suspension, then removal).

A: Any proposals that place a substantial limitation on an agency's ability to exercise management rights are non-negotiable. Any disciplinary actions taken will be taken pursuant to AFI 36-704, *Discipline and Adverse Actions of Civilian Employees*, AFI 34-301, *Nonappropriated Funds Personnel Management and Administration*, applicable collective bargaining agreements, and any forthcoming guidance.

Q: The union requests that any employee who ultimately becomes fully vaccinated have any disciplinary records removed from their personnel folder related to previous corrective actions taken for failing to comply with the vaccination requirement.

A: Any proposals that place a substantial limitation on an agency's ability to exercise management rights are non-negotiable. Any disciplinary actions will be taken pursuant to AFI 36-704, *Discipline and Adverse Actions of Civilian Employees*, AFI 34-301, *Nonappropriated Funds Personnel Management and Administration*, applicable collective bargaining agreements, and any forthcoming guidance. In addition, DAF is required to comply with DoD, DAF, and other Federal regulations concerning the maintenance of

personnel records. The agency is required to bargain only to the extent that a proposal is not inconsistent with federal law, government-wide rule or regulation, or agency regulations for which a compelling need exists. *See* 5 U.S.C. §7117 (a).

- UNEMPLOYMENT INSURANCE

Q: The union has requested that management not oppose unemployment insurance applications for individuals removed for failure to comply with the vaccine mandate.

A: Unemployment insurance programs are administered by the states on behalf of the Federal government under agreements with the U.S. Department of Labor. State Employment Security Agencies (SESAs) determine and pay unemployment insurance claims, review appeals, and conduct due process hearings based on applicable State law. Pursuant to DoDI 1400.25, Vol. 850, *DoD Civilian Personnel Management System: Unemployment Compensation (UC)*, an agency that disagrees with a SESA determination should file an appeal. The agency is required to bargain only to the extent that a proposal is not inconsistent with federal law, government-wide rule or regulation, or agency regulations for which a compelling need exists. *See* 5 U.S.C. §7117 (a).