

NFFE-IAM Sample Proposals for Local Leaders Vaccine Program I&I Bargaining Topics

NFFE Sample Proposals for Bargaining the Impact and Implementation of the Vaccine Mandate.

I. Employee Rights

1. The Agency will implement the vaccine mandate in accordance with the terms of this Memorandum of Understanding, applicable articles of the Parties' Collective Bargaining Agreement, and all implementation guidance on the President's Executive Order on Requiring Coronavirus Disease 2019 Vaccination for Federal Employees released by the Safer Federal Workforce Task Force.
2. The Agency will provide onsite, worksite vaccination opportunities to any employee who requests it. Covid vaccination will be performed only by trained, qualified individuals if/when done by the Agency.
3. Employees are entitled to have a union representative present for any discussion related to the vaccine mandate.
4. Employer will assume responsibility for any harm or injury to an employee caused by the vaccine.
5. The Agency agrees to treat employees with dignity and respect at all times related to the vaccine mandate. Managers will not demand, coerce, shame or intimidate any employee who is unvaccinated and/or granted exemption, nor will the Agency tolerate such behavior in the workplace.

II. Exemptions and Reasonable Accommodations

6. The Agency will provide the current policy and procedures on Reasonable Accommodations to employees.
7. The Agency will process requests for Reasonable Accommodations as expeditiously as possible and strive to have all requests granted or denied in advance of the November 22, 2021 deadline for employees to be fully vaccinated. The agency may provisionally grant requested accommodations until such time as the reasonable accommodation process is completed.
8. The Agency recognizes 100% telework is an appropriate reasonable accommodation.

9. If a Reasonable Accommodation request has been submitted but is under consideration and in process by the Agency as of November 22, 2021, an employee may not be subject to discipline for failure to comply with the mandate by that date. Employees will be granted extensions of time and a grace period to comply with the mandate when the Agency has not completed the reasonable accommodation process by the November 22, 2021 deadline. Normally, employees will have sixty additional (60) days to comply with the vaccine mandate beginning the date they receive notification their reasonable accommodation request was denied.
10. The Agency will only consider lawful factors in determining whether an exception is legally required. Such factors include the basis for the claim; the nature of the employee's job responsibilities; and the reasonably foreseeable effects on the agency's operations, including protecting other agency employees and the public from COVID-19. Under current EEO law regarding religious exemptions, factors agencies may consider are anything that might undermine the assertion: past behavior that is inconsistent with the professed belief; whether the accommodation sought is likely to be sought for secular reasons; timing if employee made an earlier request for the same benefit for secular reasons. The Agency will also consider any factors established by the Safer Federal Workforce Task Force.
11. Employees may submit new or revised requests for reasonable accommodations at any time. The Agency must engage in the interactive process on all requests for exemption.
12. Employees who have recently had Covid-19 and are told by a doctor to delay vaccination will utilize the reasonable accommodation process. The Agency recognizes one appropriate accommodation in this circumstance is a reasonable extension of time on the deadline to be fully vaccinated that comports with the doctor's recommendation.

III. Vaccination Documentation and Information

13. An employee is not required to state their medical condition or deep held religious belief to his/her supervisor.
14. Employees will provide vaccine documentation and/or requests for reasonable accommodation to the Federal Occupational Health officer to maintain privacy. Exceptions to this privacy safeguard will be made for a) the deciding official for any proposed discipline, b) one Human Resources employee for each proposed discipline c) a medical official needed to evaluate an individual's claimed medical exemption, and d) one official who will evaluate religious exemption requests. The Agency will notify the Union and each affected employee which individuals will serve in the capacity of a, b, c, or d. With respect to c and D, the Agency will provide the union and the impacted employee with information on the persons' qualifications to serve in that role.
15. The supervisor MAY NOT keep copies of vaccine, medical or religious documentation or collect them.

16. If the agency does not have a contract with Federal Occupational Health, the Agency will hire or contract with FOH to perform the administrative tasks necessary to process reasonable accommodation requests, collect and maintain documentation, and track employees' vaccine status.
17. The Agency will collect and maintain documentation in accordance with the Privacy Act.
18. Vaccine documentation and reasonable accommodation documentation will not be maintained in the Official Personnel Folder.
19. Employees do not need to provide vaccine documentation when the Agency already maintains it. For example, the employee received the vaccine at work.
20. The Agency will provide instructions to employees on how to request a replacement vaccine card.

IV. Enforcement and Discipline

21. Thirty (30) days prior to initiating any disciplinary action against an employee, a supervisor or other appropriate management official will request to meet with the employee and their union representative to discuss the benefits of vaccination and ways to obtain the vaccine, inform the employee of the process to request exemption, and put the employee on notice of the possible discipline that could result for non-compliance.
22. The Agency commits to the use of progressive discipline for all employees who have not complied with the vaccine mandate and who have not been exempted. First, management may issue a warning of non-compliance the employee after November 22, 2021. Employees will have 30 days to comply with the vaccine mandate if not granted exception. Failure to comply may result in a Letter of Reprimand and a second opportunity of 30 days to comply. Failure to comply with the second opportunity may result in a suspension and a third opportunity of 30 days to comply. Failure to comply with the third opportunity may result in an indefinite suspension.
23. The Agency will consider and apply the Douglas Factors to all disciplinary actions. The Agency recognizes that failure to comply with a vaccine mandate is a unique form of misconduct and not similar to other charges of misconduct in terms of determining an appropriate penalty. Past disciplinary actions will not be considered as an aggravating factor in penalty determinations.
24. The Agency may only take disciplinary action to encourage compliance with the vaccine mandate, and will not use discipline as a punitive measure.
25. The Agency may cancel or reverse discipline against employees in connection with the vaccine mandate at any time and make the employee whole.

26. The Agency will stop pursuing discipline and not effectuate a disciplinary action in process at the point in time the employee demonstrates compliance with the mandate and they are fully vaccinated. The Agency will include this as standard language in discipline proposal letters to employees.
27. If the vaccine mandate is eventually lifted, the Agency will reverse all vaccine mandate discipline and expunge related documentation from eOPFs.
28. The Agency does not intend to remove employees from federal service for failure to comply with the vaccine mandate. The Agency will use lengthy or indefinite suspensions in lieu of removal actions.
29. The Agency will monitor and track disciplinary actions across the agency and across the federal government to ensure consistency. The Agency will provide copies of all written disciplinary actions to the Union on a weekly basis [written warnings, written counselings, letters of reprimand, proposal letters and final decisions, alternate discipline agreements]. The Agency will redact individual names and all PII on the discipline-related documentation it provides to the Union.