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ALLEGHENY COUNTY LABOR COUNCIL REPORT OF LEGAL COUNSEL October 7, 2021

COVID 19 VACCINE/TESTING MANDATES

I. Introduction

Regardless of the industry in which you labor and whether you are in the private or public sector, you are now confronting new challenges regarding COVID vaccine/testing mandates in your role as union leaders. Also, whether your employer's implementation of the mandate is a voluntary choice, or a government mandate, the employer's duty to bargain remains. Stated another way, an employer cannot lawfully implement and enforce a mandatory COVID-19 vaccination policy without first bargaining in good faith with your union.

This report is designed to help you identify the issues involved with vaccine mandates and assist you in navigating the topics that can and must be addressed on behalf of your members, as employers (public and private) roll out mandatory vaccination requirements in the workplace.

II. Bargaining over the Decision

An employer must bargain with the union over any decision to implement a policy mandating the COVID 19 vaccine or testing for the coronavirus. Such a mandate would introduce a new a term and condition of employment for unionized employees. Therefore, if your employer has announced its intention to implement mandatory vaccinations as a condition of employment, you must demand bargaining over this decision. I have attached a sample letter you can use for this purpose. It is unlikely the request for decisional bargaining will outright stop the employer's decision to implement the vaccine mandate. In this regard, if



your union is adamant about stopping the employer's decision to implement a vaccine mandate, you may attempt to arbitrate the question of whether compelling members to vaccinate violates your CBA. If the employer refuses to bargain or refuses to bargain in good faith, you should immediately file an unfair labor practice charge with the NLRB/PLRB.

III. Bargaining over the Effects/Impact of the Decision

If the decision to mandate a COVID-19 vaccine has been made, you must address the effects and impact of this decision as applied to your members. Some of the issues you should address regarding both the decision and effects of a mandate are:

- A. The time frame when an employee must be vaccinated.
- B. Whether periodic testing, masking, and social distancing are viable alternatives.
- C. Is testing covered by our health insurance? If not, who will pay for testing?

(Note: Currently, the costs of getting the vaccine are fully covered and free to everyone)
- D. When can an employee get vaccinated (work time or non-work time) and will s/he be paid for the time getting the vaccine?
- E. Clearly defined terms regarding how employees are to provide proof of their vaccinated status.
- F. Once a vaccine is received by your member, how long will that vaccine remain valid (i.e. will I need to get a booster too and if so, when?)
- G. Recognized lawful exemptions from having to get the vaccine in the first instance. (i.e. religious, disability-related and medical)
- H. If an employee is properly exempt from getting the vaccine, what is the process by which an employee may request an accommodation to continue working.
- I. For those employees refusing to vaccinate, is remote or teleworking an alternative.
- J. The benefits an employee will receive if s/he has an adverse reaction to the vaccination. (i.e. paid or unpaid leave and for how long)
- K. If an employee becomes ill or disabled because of the vaccination or contracts the coronavirus at work, such an event will likely be covered under workmen's compensation.

- L. Access to leave, with or without pay, for employees who choose not to become vaccinated and their temporary layoff and recall rights.
- M. Whether or not your employer will contest an employee's unemployment compensation claim if they elect not to get vaccinated and separate from employment.
- N. Access to accrued time off and continuation of medical benefits for employees who choose not to become vaccinated.
- O. Non-disciplinary separations for employees who choose not to become vaccinated.
- P. Alleged violations of the requirement to become vaccinated shall be subject to the disciplinary process, including the grievance/arbitration procedure.
- Q. The employer's ongoing duty to report to the union information related to the number of employees on leave, etc.
- R. Establishing the terms regarding the maintenance and confidentiality of an employee's medical records.
- S. Incentives to encourage vaccination. (i.e. paid leave, lump sum payments etc.)

Once you have reached agreement with your employer on the terms and conditions associated with the vaccine/testing mandate, reduce your agreement to writing and make sure it is signed by you and the employer's designated representative.

IV. Conclusion

In sum, there are a multitude of issues that must be addressed by your union as employers move forward with vaccine mandates. Furthermore, factors that continue to evolve such as the not yet finalized OSHA ETS rules, anticipated changes in Board law, and the changing nature of the pandemic itself will muddle the analysis moving forward. Since these issues are complex and constantly evolving, if you have any questions or need any guidance, please feel free to reach out to me or my firm.

Respectfully Submitted,

Joseph S. Pass