

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE UNITED STATES DEPARTMENT OF LABOR,
THE AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES LOCAL 12,
THE NATIONAL COUNCIL OF FIELD LABOR LOCALS,
AND
THE NATIONAL UNION OF LABOR INVESTIGATORS

Introduction

This is a Memorandum of Understanding (MOU) entered into between the United States Department of Labor (DOL), the American Federation of Government Employees (Local 12), the National Council of Field Labor Locals (NCFLL), and the National Union of Labor Investigators (NULI) (collectively “Unions”), in accordance with the applicable provisions of the DOL/Local 12 CBA; DOL/NCFLL CBA; and the OLMS/NULI CBA.

Background

On September 9, 2021, President Biden issued Executive Order 14043 on Requiring Coronavirus Disease 2019 Vaccination for Federal Employees. The Executive Order and associated guidance requires that Federal employees must be fully vaccinated no later than November 22, 2021. The Safer Federal Workforce Task Force issued guidance which states that, for an employee to successfully achieve the requirement no later than November 22, 2021, they must receive their last dose of vaccine by November 8 in order to allow for 2 weeks post-vaccination required by the CDC guidelines to be considered fully vaccinated. This applies to the following vaccines: Pfizer-BioNTech (also known as Cominarty), Moderna, AstraZeneca/Oxford, and Johnson and Johnson (J&J)/Janssen vaccines. Because the vaccines that are approved or have emergency use authorization have differing protocols for the timing between doses, the Task Force provided the following deadlines for the initial shot:

1. Obtain the first dose of the Moderna COVID-19 Vaccination no later than October 11, 2021, and the second dose of the Moderna vaccine no later than November 8, 2021;

2. Obtain the first dose of the Pfizer-BioNTech COVID-19 Vaccination (also known as Cominarty) no later than October 18, 2021, and the second dose of the Pfizer- BioNTech/Cominarty vaccine no later than November 8, 2021; or
3. Obtain the only dose of the Johnson and Johnson (J&J)/Janssen COVID-19 Vaccination no later than November 8, 2021.

In addition, clinical trial participants from a U.S. site who are documented to have received the full series of an “active” (not placebo) COVID 19 vaccine candidate, for which vaccine efficacy has been independently confirmed, are considered fully vaccinated 2 weeks after they complete the vaccine series.

Subject

This MOU concerns the impact and implementation of Executive Order 14043 on Requiring Coronavirus Disease 2019 Vaccination for Federal Employees.

Definitions and Foundation

1. Coronavirus Disease 2019 and COVID-19 may be used interchangeably in this MOU.
2. An employee is fully vaccinated two weeks after the employee has received either the second dose of the Moderna, AstraZeneca/Oxford, or Pfizer-BioNTech (also known as Cominarty) COVID-19 vaccines or two weeks after the employee has received the sole dose of the Johnson and Johnson (J&J)/Janssen COVID-19 vaccine. If the dose regimen changes for any vaccine or, if booster shots are later included in the definition of fully vaccinated, the current CDC definition of full vaccination will apply to all employees.

Terms of Agreement

1. **Administrative Leave and Duty Time, as appropriate, for Receiving COVID-19 Vaccines, including additional doses/boosters**

Guidance on duty time for receiving the COVID-19 vaccine was communicated to all DOL employees on September 28, 2021, and posted on LaborNet at <https://labornet.dol.gov/COVID-19/Employee-Messages.htm>. As outlined in previous announcements, the Department is granting administrative leave for employees to receive an additional dose of the COVID-19 vaccine (e.g. a booster shot), to take a family member to receive any dose of the COVID-19 vaccine, and for employees who may experience side effects (e.g., fever, chills, headache) following receipt of a vaccination dose. The amount of administrative leave varies, and full guidance on these policies can be found under Employee Messages on the Coronavirus Guidance and Resources page on LaborNet at <https://labornet.dol.gov/COVID-19/Employee-Messages.htm>.

2. **Documentation by Employee confirming receipt of the COVID-19 Vaccinations**

- A. DOL maintains information on LaborNet related to how employees can obtain the COVID-19 vaccination. (<https://labornet.dol.gov/COVID-19/COVID-19-Vaccine-Information.htm>)
- B. Employees are required to provide documentation to prove their vaccination status, despite their obligation to previously attest to their vaccination status. Approved types of documentation can be found on the Safer Federal Workforce Task Force at <https://www.saferfederalworkforce.gov/faq/vaccinations/>
- C. DOL will generally utilize VaxTrak to upload documentation confirming employee's receipt of the COVID-19 vaccination. VaxTrak is covered by the Office of Personnel Management (OPM) OPM/GOVT-10, Employee Medical File System Records, System of Records Notice (SORN) and maintained accordingly. Sharing and disposition of information regarding vaccination status will be on a need to know basis. (see 5 USC 552a(b)(1)). If an employee has lost their COVID-19 Vaccine card, please see: <https://labornet.dol.gov/COVID-19/Information-from-the-States.htm>
- D. DOL will maintain information on LaborNet that was provided to employees in the VaxTrak open forums, including a demonstration of changes made to the attestation form.

3. **Update to VaxTrak Attestation**

- A. VaxTrak will be accessible by a link on LaborNet and is only accessible on government furnished equipment connected to the VPN.
- B. The COVID-19 vaccination attestation will be completed by the employee in VaxTrak, an electronic system developed to track employee vaccination status and accessible by their immediate supervisor and others in DOL with a need to know. If the documentation submitted to VaxTrak is not clearly compliant, a subject matter expert within the Department may be asked to review the documentation.
- C. The Privacy Act protects the information contained in VaxTrak.
- D. Language regarding the Privacy Act will be contained in VaxTrak.
- E. Management will not use vaccination status as a means to engage in prohibited personnel practices.

4. **Medical and Religious Accommodations (Exemption)**

- A. DOL's processes for Requests of Medical and/or Religious Exceptions or Delays (Accommodations) to the COVID-19 Vaccination Requirement are on LaborNet at <https://labornet.dol.gov/COVID-19/Reasonable-and-Religious-Accommodations.htm>

- B. DOL’s processes for requesting and receiving a religious accommodation (exemption) are managed by the Civil Rights Center (CRC).
- C. Employees who submitted a written statement for religious accommodation or made an inquiry related to a religious accommodation to an appropriate Workplace Equality Compliance Officer (WECO), the Reasonable Accommodation Resources Center (RARC), the COVID19questions@dol.gov or the main CRC email box by October 12, 2021, received a response by email and were provided with the DL1-7071A Request for a Religious Exception to the COVID-19 Vaccination Requirement For and Declaration by October 12, 2021. Employees were encouraged to submit the form as timely as possible by October 18, 2021, however, the message indicated that submissions would be accepted after October 18, 2021. To facilitate timely resolution to the accommodation process, employees must engage in good faith efforts to respond back to inquiries and/or requests for additional information.
- D. Should the initial request for a medical and/or religious accommodation be denied, the employee will have ten business days to request a reconsideration of the decision. Management retains the right to determine the official(s) who will reconsider a medical and/or religious accommodation denial, however, the official(s) responsible for reconsidering the decision will generally be at a Deputy Assistant Secretary level (or equivalent) for the Agency.
- E. No employee who has filed a medical and/or religious accommodation (Exemption) request will be required to take a COVID-19 vaccine while their initial request and reconsideration (if applicable) is being processed prior to its approval or denial by the Department.
- F. Should the employee’s medical and/or religious accommodation (exemption) request and/or reconsideration (if applicable) be denied, the employee must receive their first (or, if a one-dose series, only) dose within 14 calendar days of the denial. If receiving a two-dose series, the employee must receive the second dose within 6 calendar weeks of receiving the first dose. Employees must upload their proof of vaccination within five business days of each dose.

5. Office of Worker Compensation Claims

The parties recognize that the Office of Workers’ Compensation Programs (OWCP) has the sole authority to make decisions on workers’ compensation benefits. To facilitate ensuring that information is available to DOL employees regarding this process, DOL will maintain information about COVID-19 related Federal Employees’ Compensation Act (FECA) claims on dol.gov at <https://www.dol.gov/agencies/owcp/FECA/InfoFECACoverageCoronavirus> and <https://www.dol.gov/agencies/owcp/FECA/regs/compliance/DFECfolio/FECABulletins/FY2020-2024>. The Office of Worker Safety, Health, and Environment (OWSHE) will provide assistance to employees and management in the filing of any workers’ compensation claims.

6. DOL and Union Communications

- A. DOL and the Union agree to meet ninety (90) calendar days following the date this agreement is signed regarding COVID-19 vaccinations, to discuss and review the progress of the COVID-19 vaccinations program.
 - B. In preparation for the meeting described in #6 A. and to the extent the information is available, DOL will provide the following aggregate data to address the following: number of medical exemptions requested; number of religious exemptions requested; number of medical exemptions granted; number of religious exemptions granted. The parties acknowledge that the data will represent only a snapshot in time.
- 7. If a Union representative or a bargaining unit employee has questions related to the COVID-19 vaccine, they may continue to utilize the COVID19questions@dol.gov email box.
 - 8. DOL recognizes its obligations under the Federal Service Labor Management Relations Statute. As such, DOL will provide notice to the Unions regarding changes to processes that may give rise to a bargaining obligation.

REFERENCE DOCUMENTS

- 1. 5 USC Chapters 11 and 79
- 2. Executive Order 13991 and 12196 (<https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-protecting-the-federal-workforce-and-requiring-mask-wearing/>) (<https://www.archives.gov/federal-register/codification/executive-order/12196.html>)
- 3. Executive Order 14043 <https://www.federalregister.gov/documents/2021/09/14/2021-19927/requiring-coronavirus-disease-2019-vaccination-for-federal-employees>
- 4. Privacy Act <https://www.justice.gov/opcl/overview-privacy-act-1974-2020-edition/disclosures-third-parties>
- 5. HIPAA <https://www.hhs.gov/hipaa/for-professionals/faq/499/am-i-a-covered-entity-under-hipaa/index.html>
- 6. SORN <https://www.govinfo.gov/content/pkg/PAI-2021-OPM-interim/xml/PAI-2021-OPM-interim.xml#govt10>
- 7. Prohibited Personnel Practices <https://labornet.dol.gov/me/hr/ethics/prohibited-personnel-action.htm>
- 8. OWCP FECA Bulletin 22-01 <https://www.dol.gov/agencies/owcp/FECA/regs/compliance/DFECfolio/FECABulletins/FY2020-2024>

9. Safer Federal Workforce Task Force Enforcement Guidance on Enforcement of Coronavirus Disease 2019 Vaccination Requirement for Federal Employees – Executive Order 14043
<https://chcoc.gov/sites/default/files/Enforcement-Guidance-FAQs.pdf>

DISTRIBUTION

DOL will email all employees the link to and post this MOU on LaborNet.

CONCLUSION

This MOU establishes no precedent for any other agreement, practice, or procedure.

FOR THE DEPARTMENT:

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HOOPER

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Shawn K. Hooper
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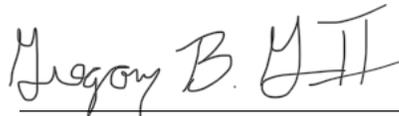
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Maria Jordan
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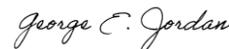
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November 8, 2021

Date