



LOCAL UNION 6

International Brotherhood of Electrical Workers

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Date: September 22, 2021

To: IBEW 6 Members employed by City & County of San Francisco and SFMTA

From: John J. Doherty, BM/FS IBEW Local 6

RE: City/SFMTA Mandatory Vaccination Policy

In a memo dated June 29, 2021, Local Union 6 addressed the announcement from Mayor Breed that all workers employed by the City & County and SFMTA would be required to submit proof of COVID-19 vaccination or face termination. IBEW Local 6 was not conferred with regarding the City/SFMTA's proposed policy.

The Local Union has been actively engaged in the meet and confer process with the Employer over the vaccination mandate, and regret to inform you all that the Employer is still taking a very hard stance.

Based upon multiple inquiries from members, we sought clarification as it relates to the use of Workers' Compensation for any Employee that has an adverse reaction to the vaccination that would not otherwise have occurred but for the threat of separation. The City/SFMTA's reply was:

For an adverse reaction to the vaccination

"All employees are allowed to use their COVID-19 leave to receive a COVID-19 vaccine from their personal doctor or other health care provider. City and MTA employees can also use COVID-19 leave to recover from any potential side effects of the vaccine, though these have overwhelmingly proven to be mild."

For Workers' Compensation Eligibility

"If an employee receives a COVID-19 vaccine because of the City or SFMTA's COVID-19 vaccination mandate and suffers any adverse health consequences as a direct result of the vaccine, the City or SFMTA, as applicable, will not contest that the injury or illness, as applicable, is work-related."

The Local Union asked the City/SFMTA to provide a plan outlining any and all contingency plans for critical services that may negatively impact the working conditions of those employees who are in compliance with the City's policy, as written, should the City/SFMTA not permit testing as an alternative to full vaccination. The Local Union further requested an outline be provided of how the City and its departments will address staffing issues, including, but not limited to departments and divisions which are already short staffed and/or have longstanding recruitment and retention issues. Specifically, we were looking for the plans for Power Generation, Water Distribution, Wastewater, and Line Divisions of both the SFPUC and the SFMTA.

The response the Local Union received was less than informative and simply states that *"[t]he City and MTA will communicate with IBEW Local 6 throughout the remainder of the COVID-19 pandemic and are willing to*

meet with the union should the need arise. We are striving to make the City as safe a place as possible and look forward to partnering with you in that goal.” We will continue to press for a more definitive answer that can provide some workable insight for our members who have chosen to comply with the Employer’s vaccination requirement.

We have offered what we believe is a framework that allows the Employer to fulfill their safety goals in a way that allows for what we believe is a reasonable accommodation for those who choose not to get vaccinated.

We offered:

Consequences Of Non-Compliance by October 13, 2021. (Occasional High-Risk Settings)

Employees subject to the California Public Health Officer order dated August 5, 2021 who do not receive the vaccine, and do not have a valid exemption or deferral, shall have the option to remain on an unpaid leave of absence status until the end of the COVID-19 emergency as determined by either the State Department of Public Health or the San Francisco Health Officer.

Employees with medical or religious exemptions (high risk settings)

- a) Test for COVID-19 with either PCR or antigen test that either has Emergency Use Authorization by the U.S. Food and Drug Administration or be operating per the Laboratory Developed Test requirements by the U.S. Centers for Medicare and Medicaid Services. Testing must occur twice weekly for unvaccinated exempt workers in acute health care and long-term care settings, and once weekly for such workers in other health care settings. The cost shall be covered by the employer.
- b) Wear a surgical mask or higher-level respirator approved by the National Institute of Occupational Safety and Health (NIOSH), such as an N95 filtering facepiece respirator, at all times while in the facility.
- c) Deadline to be fully vaccinated or have a qualified exemption submitted is September 30, 2021.
- d) Employees without a qualified exemption on file shall be placed on unpaid leave effective October 14, 2021 until fully vaccinated. Employees may use accrued PTO during this time period. Failure to provide proof of vaccination within 60 days will result in initiation of a non-disciplinary separation of employment. The term non-disciplinary does not imply a waiver of Skelly Rights.
- e) Should an employees appeal be granted, any time in unpaid status shall be changed to paid administrative leave.

Consequences Of Not Submitting Proof of Full Vaccination By 11/1/21 (Non-High-Risk Settings)

- a) Test for COVID-19 with either PCR or antigen test that either has Emergency Use Authorization by the U.S. Food and Drug Administration or be operating per the Laboratory Developed Test requirements by the U.S. Centers for Medicare and Medicaid Services. Testing must occur once weekly for such workers.
- b) Wear a surgical mask or higher-level respirator approved by the National Institute of Occupational Safety and Health (NIOSH), such as an N95 filtering facepiece respirator, at all times while in the facility.

- c) Should testing not be permitted under Federal or State orders for employees without a qualified exemption on file, employees shall be provided an opportunity to submit a leave of absence request in lieu of separation and the procedures above shall apply, with timelines adjusted as appropriate.

Unsurprisingly, they do not agree with our position, and have responded as follows.

The health and safety of all employees is the top priority of the City. Vaccination against COVID-19 has proven to be the most effective way to stay safe and out of the hospital. Vaccination will protect you, your families, your friends, and the public to a much greater extent than social distancing, masking, and testing. Testing one (1) time per work week still leaves four (4) days per work week when employees can be exposed to or expose others to COVID-19. For these reasons, the City has adopted COVID-19 vaccination requirements.

The City shall issue a notice of “Intent to Separate” to those employees who are subject to the Vaccine Policy who are not fully vaccinated as of November 1, 2021, i.e., the employee has not received their final dose of a vaccine by October 18, 2021. However, if such an employee provides proof to the City (via People and Pay, or the employee's human resources department) by no later than COB October 30, 2021 that they have received two doses of either the Moderna or Pfizer COVID-19 vaccines or one dose of the Johnson & Johnson vaccine on or before October 30, 2021, the City will grant the employee a leave of absence beginning November 1, 2021 in order for the employee to become fully vaccinated and to return to work no later than November 15, 2021. The employee may use unpaid or paid leave time other than sick leave (SLP, COV, or CSP) for a period beginning on November 1, 2021 and last day of leave being no later than November 14, 2021. The City shall take no adverse action against the employee unless the employee is not fully vaccinated on or before November 14, 2021. Once the employee is fully vaccinated, they shall return to their regular assignment and schedule. The City reserves its right to hold a Skelly Meeting or other administrative due process hearing during paid leave.

The City will issue a notice of “Intent to Separate” to those employees who fail to report that they have received a dose of a vaccine by the deadline applicable to for their worksite under either the Health Orders or the City’s COVID-19 Vaccination Policy. Permanent civil service (PCS) employees will be placed on unpaid leave pending a Skelly or other administrative hearing, consistent with the City’s Charter. Temporary and permanent exempt (TEX, PEX) employees will be separated from employment.

An employee who provides evidence of receiving the first dose of Moderna or Pfizer or a single dose of J&J vaccine within thirty (30) days of the issuance of the notice of “Intent to Separate” or date of final separation, whichever comes first, will be placed back on the paid status once the employee is fully vaccinated, and they shall return to their regular assignment and schedule. Those employees who receive the first dose of Moderna or Pfizer vaccine must receive their second dose within the minimum number of days recommended by the FDA of their first dose to avoid being disciplined, including being released from employment.

Upon becoming fully vaccinated, the City will withdraw the notice of “Intent to Separate” to the employee. As applicable, employees will be issued a letter of warning memorializing the employee’s

noncompliance with departmental and City policies. This letter will not be subject to the grievance process or other administrative appeal.

For those intermittently working in “Health Care Facilities” or “High Risk Settings”, the deadline is approaching much faster, as noted below.

The City shall issue a notice of “Intent to Separate” to those employees who are subject to the Health Order because they work intermittently in a "Health Care Facility" or "High-Risk Setting", **who have not received their final dose of a vaccine by September 29, 2021, i.e., are not fully vaccinated by October 13, 2021.**(emphasis added) However, if such an employee provides proof to the City (via People and Pay, or the employee's human resources department) by no later than September 29, 2021 that they have received one dose of either the Moderna or Pfizer COVID-19 vaccines on or before September 29, 2021, the City will grant the employee an unpaid leave of absence beginning September 30, 2021 in order for the employee to become fully vaccinated by October 31, 2021, and to return to work no later than November 1, 2021. The employee may use unpaid or 100 hours of paid leave time other than sick leave (SLP, COV, or CSP) for a period beginning on September 30, 2021 with the last day of leave being no later C.O.B. October 31, 2021. Such employees must provide evidence of having received two doses of either the Moderna or Pfizer COVID-19 vaccines or one dose of the Johnson & Johnson COVID-19 vaccine on or before October 17, 2021. The City shall take no adverse action against the employee unless the employee is not fully vaccinated by C.O.B. October 31, 2021. However, the City may hold a Skelly Meeting or other administrative due process hearing during leave. Once the employee is fully vaccinated by October 31, 2021, they shall return to their regular assignment and schedule.

Under the Health Orders, an employee who works in one of these settings but does not meet the requirements of the Health Orders is committing a misdemeanor. Accordingly, if an employee who works in a "Health Care Facility" or "High-Risk Setting", as defined by the Health Orders, is not compliant with the Health Orders' requirements, they will not be permitted to work. Remaining on unpaid leave indefinitely is not an option.

It is important to once again note that guidance from both federal and state Occupational Health & Safety Administrations, along with the Equal Employment Opportunity Commission, have stressed the employer’s responsibility to provide a safe work environment for its employees. COVID vaccines address the safety of the work environment, and the EEOC has stated that restrictions tied to vaccinations do not trigger EEO review unless tied to a protected status.

Moving forward we must advise you that the City/SFMTA do seem intent on carrying out their threat to terminate. If that is the path they take, we advise all PCS appointments (Permanent Civil Service appointments) to **NOT** voluntarily separate employment (DON’T QUIT!!). We cannot guarantee that any member that receives a notice of Intent to Separate will be successful in an appeal of that notice, but if you quit you will be voluntarily giving up your appeal rights. Members appointed in TEX appointments (temporary exempt), provisional appointments, or currently on probation will almost certainly be separated and have no appeal rights under either the contract or the Civil Service Rules.

The Local Union has actively fought for COVID Vaccine access for our members and ***still strongly urges our members to get COVID vaccinated.*** The Local Union believes it is in the best interest of *ALL* of our members and the reputable data proves that vaccination protects you and your fellow workers. Our support of COVID vaccinations should not be read as implicitly supporting the Employer's vaccine mandate. We would rather work with the Employer to craft a COVID Safety policy that addresses their concerns (which are the same concerns of the majority of your fellow members employed at the City/SFMTA) without disruptively impacting your employment.

To be perfectly clear, the Local Union does not believe threatening to terminate employment was the appropriate measure, and we have repeatedly communicated that to the City. Again, we will provide updates as they become available.