

American Federation of Government Employees
Field Services & Education Department

BARGAINING GUIDANCE
2019 n-CoV Vaccine Bargaining

VERSION 1.3

This guidance is the property of AFGE and is intended for AFGE use only. This guidance does not address specific case facts nor is it intended to be a substitute for individualized legal advice. This guidance does not create an attorney-client relationship nor is it an agreement to act as a representative in any case. Controlling law is subject to interpretation and/or change and should be reviewed carefully before taking any action, as AFGE is not responsible for errors or omissions in this guidance or any accompanying materials. This guidance is general in nature and has been prepared solely in order to assist AFGE members and officers with respect to the administration of the COVID-19 vaccine.

The situation involving a COVID-19 (Coronavirus) vaccine is a rapidly evolving one. AFGE has resources available regarding the virus, in general, on its website at:

<https://www.afge.org/member-benefits/health-and-safety/coronavirus-disease/>

The following informational sheet is intended to assist with bargaining with the Agency regarding the distribution and use of the COVID-19 vaccine at work.

Circumstances will vary greatly in locals: some agencies may require the vaccine while some may not; some agencies may tie the return to the facility with the vaccine while some may not; some agencies may directly provide the vaccine while some may not. As a result, these proposals are varied and speak to different potential scenarios.

In crafting these proposals, FSED has focused on keeping them based on the limited scope of bargaining afforded in the exercise of a management right, “procedures” and

“appropriate arrangements.” It is important to note that since these have different standards in determining negotiability and scope of bargaining, we have tried to keep each proposal separate.

Bargaining Tips:

- If no changes have been proposed or implemented, first furnish the “Planning With Your Agency to Prevent Spreading of Coronavirus” letter to begin working through these changes and have a voice in the Agency plan regarding the vaccine is specific
 - Follow the guidance on how to use the letter, including submitting a demand to bargain if either 1) the agency refuses to plan with the Union, or 2) the Agency proposes or begins to implement changes
- If changes are implemented, even as emergency provisions, submit a demand to bargain
- Ensure that union proposals are either crafted as “procedures” or “appropriate arrangements.” Each proposal that is designated as an appropriate arrangement should be specifically linked to an adversely affected employee or employees in order to minimize declarations of non-negotiability by the agency.

- Avoid proposals containing multiple issues to limit the need for severance of proposals in a negotiability dispute.

Caselaw supports the proposition that requiring immunization to safeguard the public, and Agency personnel, and operations falls under management's right to determine its internal security practices, as delineated in 5 U.S.C. § 7106(a)(1). *Am. Fed'n of Gov't Employees Local 1345*, 64 F.L.R.A. 949, 951 (2010).

For that reason, our proposals are intended to be appropriate arrangements for employees who are adversely affected by management's exercise of this right, or permissible procedures. AFG's position is that these proposals do not excessively interfere with any management right and are therefore negotiable under 5 U.S.C. § 7106(b)(3) and/or are negotiable procedures under 5 U.S.C. § 7106(b)(2)

NOTICE

UNION PROPOSAL # _____

Notice of the vaccines requirement and rollout schedule will be released to the bargaining unit through bulletin boards, email, and Agency intranet posting as soon as practicable.

UNION PROPOSAL # _____

Any amendments, updates and additional information will be posted on bulletin boards, email, and Agency intranet posting as soon as practicable.

UNION PROPOSAL # _____

The Union will be provided copies of the notices prior to or upon release to the bargaining unit. Any joint notices will be discussed, agreed upon and signed by both parties prior to release to the bargaining unit.

UNION PROPOSAL # _____

Notice of the vaccines requirement and rollout schedule will be included as part of the new employee orientation package provided during in-processing of bargaining unit employees until such a time as vaccines are no longer required.

NOTICE CONTENT- MANDATORY

UNION PROPOSAL # _____

Vaccine recipients must be made aware of the following:

1. FDA has authorized emergency use of the product; and
2. The significant known and potential benefits and risks associated with the emergency use of the product, and of the extent to which such benefits and risks are unknown; and
3. The vaccine is being mandated as a condition of employment, and is required unless the employee is granted a religious or medical exemption; and
4. The Employee has the option to accept or refuse the Emergency Use Authorization (EUA) product and the specific consequences of refusing administration of the product; and
5. Any available alternatives to the product and of the risks and benefits of available alternatives; and of any other information or condition required by the EUA.

NOTICE CONTENT- VOLUNTARY

UNION PROPOSAL # _____

Vaccine recipients must be made aware of the following:

1. FDA has authorized emergency use of the product; and
2. The significant known and potential benefits and risks associated with the emergency use of the product, and of the extent to which such benefits and risks are unknown; and
3. The vaccine is being ~~being~~ offered on a voluntary basis, is not required; and
4. The employee has the option to accept or refuse the Emergency Use Authorization (EUA) product without consequence; and
5. If the employee chooses to refuse the administration of the vaccine, what if any additional safety protocols the employee may be required to abide by; and
6. Any available alternatives to the product and of the risks and benefits of available alternatives; and of any other information or condition required by the EUA.
7. Vaccines will be administered by trained personnel.

COST (MANDATED)

UNION PROPOSAL # _____

Employees will receive the COVID-19 vaccine at no cost to the employee.

COST (VOLUNTARY)

UNION PROPOSAL # _____

Employees who elect to receive the COVID-19 vaccine may do so at no cost to themselves.

TIME (MANDATED)

UNION PROPOSAL # _____

Employees will receive the COVID-19 vaccine during duty time.

EXEMPTIONS FROM MANDATORY VACCINES

UNION PROPOSAL # _____

Employees may be eligible for an exemption from being administered the COVID-19 vaccine as a medical or religious accommodation pursuant to federal law, rule, and regulation

UNION PROPOSAL # _____

Medical exemptions will be available to employees who have a contraindication (a condition or factor that serves as a reason to withhold the vaccine(s) due to the harm that it could cause the employee) to specific vaccines made available for COVID-19.

UNION PROPOSAL # _____

An employee requiring medical exemption from the administration of one vaccine may not necessarily be required to be exempted by medical exemption from the administration of another vaccine. As such an employee may be required to accept another formula of the COVID-9 vaccine (e.g. Pfizer vs. Moderna) if that separate vaccine does not present with similar contraindications.

UNION PROPOSAL # _____

Medical Exemptions may be temporary or permanent.

UNION PROPOSAL # _____

Temporary exemptions may be allowed for reasons including but not limited to:

1. Temporary contraindications to vaccines (e.g., pregnancy, acute illness, treatments causing immune suppression); or
2. Pending completion of an ongoing medical evaluation; or
3. Medical Supply exemption (e.g. lack of vaccine supply).

UNION PROPOSAL # _____

Permanent medical exemptions may be allowed for reasons including but not limited to:

1. Determination by a medical provider that further vaccination will seriously endanger patient's health; or
2. Medical, Reactive exemption (e.g., anaphylaxis); or
3. Medical, Immune exemption/Evidence of existing immunity (e.g., by serologic antibody test, documentation of previous infection or natural infection presumed)

UNION PROPOSAL # _____

If requested, employees will obtain medical certification regarding their request for a medical exemption.

1. Employees will be granted administrative leave to obtain medical certification for a consultation certifying a recommendation for an exemption.
2. Employees who are unable to immediately obtain medical certification will not be forced to take earned leave while attempting to obtain a certification of exemption.

UNION PROPOSAL # _____

Employees with a *bona fide* and deeply held religious objection to the vaccine(s) may be granted an exemption, pursuant to federal law, rule and regulation.

UNION PROPOSAL # _____

Employees applying for a religious objection will be granted a temporary exemption until a determination is made.

UNION PROPOSAL # _____

Employees who request a religious based exception will have a temporary exception for the time necessary for the request to be processed through both the initial determination and any appeals/grievances filed in regard to a denial.

UNION PROPOSAL # _____

Employees granted an exemption will be required to abide by reasonable and necessary safety protocols, in keeping with those in place prior to the availability of the vaccine or any additional/revised safety protocols developed by either the Agency or the Federal Government as a whole.

RECOGNITION OF VACCINATION

UNION PROPOSAL # _____

An employee may establish they have received a vaccination other than from the Agency by furnishing documentation (including but not limited to the CDC form 731(International Certificate of Vaccination or Prophylaxis), SF 601 (Immunization Record), DD Form 6673C (Adult Preventative and Chronic Care Flowsheet)).

UNION PROPOSAL # _____

Any employee's paperwork deemed unacceptable for recognition of vaccination will be allowed a reasonable period of time to obtain acceptable documentation from the employee's medical provider or whatever organization administered the vaccine.

DISCIPLINE (MANDATORY)

UNION PROPOSAL # _____

Employees who fail to comply with immunization requirements shall be given a direct order to comply. Employees who fail to comply with such an order may be subject to discipline.

RETURN TO WORKPLACE

UNION PROPOSAL # _____

Employees will be allowed to maintain maximum telework until the pandemic abates.

UNION PROPOSAL # _____

No workplace will return to regular operations until all returning employees have been vaccinated or granted an exemption.

[See [COVID-19 Return to Workplace Information Request](#) and [COVID-19 Return to Work Bargaining Guidance](#)]

ADVERSE REACTIONS

UNION PROPOSAL # _____

Employees who experience significant adverse reactions to the COVID-19 vaccine should report them to the Agency.

UNION PROPOSAL # _____

The parties agree that any and all adverse reactions to the COVID-19 constitute workplace injuries for the purpose of Federal Employees' Compensation Act claims and benefits.

UNION PROPOSAL # _____

Employees who were required to obtain a COVID-19 vaccine and experience significant adverse reactions to the COVID-19 vaccine will be placed on administrative leave while they obtain a medical evaluation from either the employee's physician or an Agency physician (choice to be made by the Employee).