

Use this guide to ensure the State is following the Union Contract and the Impact Bargaining Agreement for HR Policy 50.000.03 (Vaccine Mandate)

Background Vaccine Mandates

When Governor Brown issued a vaccine mandate to State employees, our union immediately issued a demand-to-bargain because we knew that workers' voices needed to be part of the process. Through bargaining surveys, tele-town halls, and numerous conversations with members across the state, we honed in on the priority issues for our members: safe worksites, access to leave for getting the vaccine and recovering, and a clear exceptions process for employees unable to get the vaccine. We're proud to say we were able to win language that gets at all these priority issues, and more!

This agreement is a reminder that we must always include the voices of essential workers, who are often the people most impacted by policy decisions. At a non-union job, policies like this are unilaterally implemented without any input from workers. Because we have a union we got a say in how this happens.

We know in our role of stewards our number one job is enforcing the contract. That means making sure the State lives up to their commitments on the impact bargaining agreement and if they move forward with discipline that they do so with cause and the workers have access to a steward at their pre-dismissal meeting. There will be five categories of workers and this guide will give you some advice on each.

1. The workers who meet the requirements by being fully vaccinated by October 18th.
2. The workers who have begun, but not completed, the vaccination process as of October 18th, 2021.
3. The workers who have requested and been approved a medical exception.
4. The workers who have requested and approved a sincerely held religious belief exception.
5. The workers who do not plan to begin the vaccination process and have not applied for, or were denied an exception.

Vaccine Mandate Timeline

- Governor Brown emailed all executive branch employees informing of mandate. August 10th
- Our Union submitted a demand-to-bargain to State. August 10th
- Governor Brown issues executive order No. 21-29. August 13th
- More than 7,000 State Worker Union members filled out survey about the mandates. August 13th - 19th
- Tentative Agreement reached on Impact Bargaining. September 20th
- Deadline to show worker has begun vaccination process or submitted a written request for an exception. October 18th
- Grace period ends for workers who had begun but not finished vaccination process by the October deadline. November 30th.

PEBB Benefit

If workers are PEBB eligible, they likely qualify for a \$100 incentive for completing the vaccine. Follow the instructions on the QR code at the bottom of the page. This incentive will be added to your gross pay on your subsequent pay check. It is a benefit your SEIU PEBB Board members supported to help incentivize folks to get the vaccine and it was extended to coincide with the October 18th deadline so more workers could take advantage of it. (PEBB Board Decision)

Safety

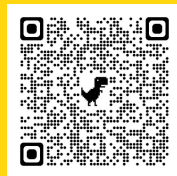
- The employer will provide information to employees about COVID-19 vaccines that may be useful to answer questions or concerns from employees considering whether to get vaccinated. (Section 1 of Agreement)
- Full reopening of state offices will be delayed until January 1, 2022. (Section 9 of Agreement)
- Vaccinated employees, or employees with an approved exception, will be able to request up to 80 hours of hardship leave when quarantining or recovering after a COVID diagnosis. Employees will also be able to donate sick leave in addition to vacation and compensatory time. (Section 5 of Agreement)

Access to Leave for Vaccine & Side Effects

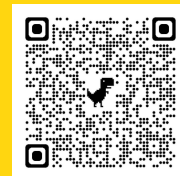
- The State will seek to provide on-site COVID-19 vaccination. When on-site vaccinations are not an option, the State will provide information weekly about where to access the vaccine near worksites. (Section 2 of Agreement)
- Employees will be allowed work and/or flex time to get the vaccine during normal work hours, when possible. (Section 4 of Agreement)
- Employees who can't get the vaccine during normal work hours will be compensated for the time it takes to get the vaccine, pursuant to Article 32 – Overtime, if applicable. This was effective August 13th when the Executive Order was issued. (Section 4 (a) of Agreement and Article 101 Section 5)
- Employees unable to work due to adverse reactions to the vaccine shall use accrued sick leave for the time needed to recover. (Section 4 (b) of Agreement)
- An employee who exhausts their sick leave will be granted miscellaneous paid leave (MPL) for the time needed to recover. If more than one day of MPL is needed (not including first shift), the employee will be required to get documentation from a health care provider indicating the need for time off work, and expected length of time needed to recover. (Section 4 (b) of Agreement)



**PEBB Vaccine Incentive
Instructions**



**Agreement Web Article
with Highlights**



**Impact Bargaining
Agreement**

Exception Process

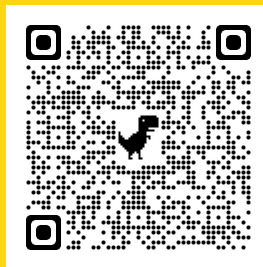
- The State will make reasonable accommodations for employees unable to be vaccinated due to disability, qualifying medical conditions, or a sincerely held religious belief. Reasonable accommodations may include, but are not limited to, remote or telework (where possible), transfer of positions, shift changes, or physical modifications to the employee's work area. (Section 7 of Agreement)
- Employees seeking an exception must do so on or before October 18, 2021. (Section 7 of Agreement)
- After October 18, 2021, if an exception request is denied, the employee will have seven days from the denial to begin the vaccination process (get first dose) before the State takes personnel action. (Section 8(a) of Agreement)
- Between the time of denial and full vaccination status, the employee will be expected to work remotely, if possible. If remote work is not possible, employees will use accrued vacation or compensatory time or leave without pay to cover the time until full vaccination status is reached. (Section 8 (b) of Agreement)
- Exception denials are not grievable, but the employee may seek recourse through BOLI or other legal avenues. (Section 7 of Agreement)

Vaccination Deadline Flexibility

- Employees must begin the vaccination process (received at least one dose) or the exception process (submitted written request for exception) by October 18, 2021 in order to avoid personnel action. (Section 8 (a) of Agreement)
- Employees who have begun, but not completed the vaccination process will have until November 30, 2021 to become fully vaccinated, and avoid personnel action. (Section 8 (a) of Agreement)
- Between October 18, 2021 and the point of full vaccination status employees will be expected to work remotely, if possible. If remote work is not possible, employees will use accrued vacation or compensatory time or leave without pay to cover the time until full vaccination status is reached. (Section 8 (a) of Agreement)
- Employees who have entered into the exception process on or before October 18, 2021 will be allowed to complete the exception process before the State takes any personnel action. The employee will be allowed to continue working while awaiting a decision on their exception request. (Section 8 (b) of Agreement)



DAS HR Policy
50.000.03



Medical Exception Form



Religious Exceptions Form

Proof of Vaccination

- The employer will accept any COVID-19 vaccination that has been either fully approved by the FDA or authorized for emergency use.
- Proof of vaccination may include, but is not limited to a COVID-19 vaccination record card, a copy or digital picture of the vaccination record card, or a print-out from OHA's immunization registry.
- These records will be kept separate from the employees' personnel files. The employer will not disclose whether an individual employee is vaccinated. General vaccination level information may be disclosed if it is de-identified and in the aggregate (i.e. 95% of the agency's employees have been vaccinated).

Steward Advice on Exceptions

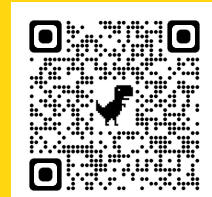
- Stewards should familiarize themselves with the Employee Procedure for Requesting an Covid-19 Vaccination Exception. The QR code is at the bottom of this page for those directions. Some workers may need help finding and navigating this process.
- Workers must request an exception on or before October 18th. If they attempt to do so after it is likely the State will not consider their request.
- Medical exceptions are covered by the ADA, so **workers have the right to a steward in the meeting** with management to talk about it. This is because of the new language in the contract in article 10, section 10 that adds that to the types of meetings a steward may attend on work time.
- The state uses a very similar to ADA process for religious exceptions so a steward may be allowed to attend those meetings as well, but that is not explicitly in the contract.
- If a worker is denied a medical or religious exception **the decision is not grievable**. This is covered in Section 7 of the Letter of Agreement (LOA). However, the worker may seek recourse through BOLI or by consulting their own attorney. If a worker would like to reach out to BOLI the QR code is below. It is important that **stewards not give legal advice about exceptions**.
- If the worker's exception is denied, and they choose not to get vaccinated they will face personnel action (discipline).



**Disciplinary Investigations
(104) Guide**



**Exception Request
Directions**

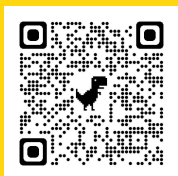


BOLI Complaint Form

Steward Advice for Personnel Actions (Discipline)

Pre-Discipline

- Workers may receive pre-dismissal notices after the October 18th deadline if they have not started the vaccination process. Partially vaccinated workers will have a grace period until November 30th to become fully vaccinated. Workers who do not complete the vaccination process may see pre-dismissal notices after November 30th.
- Section 8 (c) of the LOA says the Chief Human Resource Office will provide guidance to agencies in order to ensure consistent handling of any potential personnel action related to employees not meeting vaccination requirements. Therefore, State Agencies should handle this process consistently.
- Workers who are not fully vaccinated and have not had an exception approved should expect to receive a pre-dismissal notice informing them that the state is considering termination. Pre-dismissals are required by the contract in Article 20, Section 5 for workers being considered for dismissal.
- Workers have the right to have a steward in pre-dismissal meetings. This is the worker's opportunity to share mitigating circumstances and convince the employer to not move forward with termination. Their best chance to do this is to have started the vaccinations.
- Stewards should schedule a time to talk to the worker about the following:
 - Can they submit any documentation of vaccinations?
 - Do they want to attend the meeting in person and/or submit a response in writing?
 - If they choose to do the meeting, how do they want to approach it? What role will you as the steward play?
 - Write out the game plan so you can remind yourselves to stick to the plan.
- While it is not advisable to use the pre-dismissal meeting to challenge the State's ability to enforce the mandate through discipline, some workers may use the meeting for this purpose. That is their right even if we do not believe it will be effective. Vaccine mandates have been challenged in court and have been repeatedly upheld. The Union bargained over the impact and won the flexibility for workers to meet the requirements, through exceptions and a grace period.
- If a worker is open to being vaccinated, getting their first vaccine dose prior to the pre-dismissal meeting gives them the best chance to reduce or avoid personnel action (discipline).
- Staying calm in the conversations with workers and at pre-dismissal meetings is hard but is very important.



Vaccine Mandate FAQ

You may have other questions not covered in this guide, check out this resource guide on the Union's webpage. If you still have questions or need advice, reach out to your local officers or contact the Union Staff.

Steward Advice for Personnel Actions (Discipline)

Discipline

- After the pre-dismissal meeting the State will get back to the worker and steward soon after with a determination. It will likely either be a dismissal or a last chance agreement.
- If it is a last chance agreement it may have a non-termination discipline as well. Last chance agreements are covered in the contract in Article 21, Section 12. If the worker does not follow the conditions of the agreement it will result in termination. For these circumstances it means the worker has one final chance to show they have met the requirements of the vaccine mandate.
- If the worker is terminated the Union has 30 days to conduct an investigation and assess whether a grievance is appropriate. Some of these will be investigations will be as simple as talking to the worker. Others may be more nuanced and required requests for information or building a case around mitigating factors.
- If the charges are accurate and the worker did not meet the requirements, the Union is advising against filing a grievance. The employer has the right to enforce their policy, and the termination has just cause.
- If the worker actually did get vaccinated, a grievance could work. It would be an Article 20, just cause grievance, and the remedy would be to reinstate the worker and be made whole. If this is the situation, check your Stewards Grievance & Settlements guide and make sure you have a case to make.
- The Union has a duty of fair representation to represent every worker, whether they are a member or not, whether we agree on the vaccine or not, whether we like each other or not. Your duty is to make sure the employer follows the agreement and to do due diligence in the 30 days after a termination to assess whether a grievance is appropriate. If you are unable to do so please call the Union so the worker can be connected to another steward.
- Grievances filed without evidence that just cause has been violated will be denied by the employer.
- Letting a worker know you are not going to file a grievance is hard. Check in with your enforcement organizer or Chief Steward for support if you need it.



**State 21'-23' Draft
Contract**



State 21'-23' TA Summary



**Grievance & Settlement
Guide**

Steward Advice for Leaves and Other Issues

COVID Hardship Donations

- These donations are for workers who have been vaccinated or have an exception and are recovering from a COVID diagnosis.
- Section 5 of the vaccine mandate Letter of Agreement (LOA) is in addition to Article 56 Section 8 in the full contract. The LOA allows:
 - Workers can donate accrued compensatory and vacation leave.
 - Workers can donate accrued sick leave as well as long as they maintain a balance of 60 hours
- To donate leave a worker should follow the process Article 56 Section 8 and do so through Workday.

Receiving COVID Hardship Leave

- Workers must provide documentation of the COVID diagnosis or the need to quarantine to request Hardship Leave.
- Workers in need of this leave should request it as per Article 56 Section 8 through Workday.
- When workers request donations, the state will put out a general request to the hardship leave account.

Leave for Vaccinations

- Workers can be vaccinated on work time or flex their schedule, when possible. Anyone who was vaccinated after the 8/13 mandate came out should be able to do so on work time.
- Workers who cannot receive the vaccine(s) during their regular work hours will be compensated pursuant to Article 32 – Overtime, if applicable, for the time it takes to receive the vaccine(s).
- If you are denied the leave for the vaccine, keep in mind for violations of the contract, we have 30 days to file a grievance.

Resignation Agreement Tips

- Workers who are not planning to get the vaccine and do not qualify for an exception may resign. They can do that on their own, or they can work with a steward to do a resignation agreement. There is no leverage to get concessions in the agreement so they will be boilerplate about the agreed upon effective date.
- As a union we never give advice on whether someone will or will not receive unemployment as that is up to the Employment Department. Sometimes in resignation agreements we win language that says the employer will not contest unemployment, but the Employment Department still may deny it. In these instances it is unlikely the employer agrees to that language.
- Also it is important to know that the Employment Department has announced that vaccine requirements during a global pandemic are reasonable policies and that workers who refuse to follow that policy may not qualify for benefits.



If you do need to file a grievance, here is the form:

Sample Communications

Grieving Terminations

Peter Parker <Peter.Parker@state.or.us>

Mon, Nov 8, 12:53 PM

to Bruce Wayne <Bruce.Wayne@state.or.us>

Hi Bruce,

I wanted to share with you that I have reviewed the termination you received on 10/29. I also reviewed the information you provided and looked over the employers evidence that you did not meet the requirements of policy 50.000.03. You provided me documentation that appears to show you received the J&J vaccine on 10/17/21. For a grievance to be successful we have to be able to show management did not have just cause. In your situation you met the criteria of the policy, and I believe they did not have just cause. I will be filing a grievance on Article 20 and will be asking they reinstate you to your position, and to make you whole.

In Unity,

Peter Parker he/him/his

Sub-Local 500 Steward

503 Royal Court

Salem, OR 97301

503-555-7634

Not Grieving Termination

Peter Parker <Peter.Parker@state.or.us>

Mon, Nov 8, 12:53 PM

to Bruce Wayne <Bruce.Wayne@state.or.us>

Hi Bruce,

I wanted to share with you that I have reviewed the termination you received on 10/29. I also reviewed the information you provided and looked over the employers evidence that you did not meet the requirements of policy 50.000.03. You were unable to show you have received the vaccines, and did not apply for an exception. For a grievance to be successful we have to be able to show management did not have just cause. In your situation, though, they did have just cause because the expectation on the policy was clear, and you did not meet it. Therefore, I will not be filing a grievance on your behalf as there is not a path to reversing their decision.

In Unity,

Peter Parker he/him/his

Sub-Local 500 Steward

503 Royal Court

Salem, OR 97301

503-555-7634