

Transportation Communications Union/IAM

International Association of Machinists and Aerospace Workers



Arthur P. Maratea
National President



Subject: Mandatory Vaccines Imposed by Rail Carriers

October 22, 2021

To All TCU/IAM Members:

As you are surely aware, employers across the United States are mandating that employees be vaccinated against Covid-19 within the next few weeks. The rail industry is no different. As of October 2021, several carriers have established vaccination mandates and we expect many other railroads to follow.

Providing a safe and healthy workplace is one of TCU's top priorities. In that regard, I encourage every member who is able to be vaccinated to do so. The impact of this virus is far reaching and severe. Unfortunately, many of you have already experienced that in your own families and workplaces. Sadly, my office has received notification of forty-eight TCU/IAM members who have passed away due to Covid-19. The loss of life of so many members and the grief their families have endured weighs heavily upon the leadership of this Union.

I have heard from some members who want to know how TCU/IAM plans to fight against the Carriers' vaccine requirements. I understand the opposition to the Carriers' harsh stance in requiring the vaccine. However, the Carriers are allowed to impose these mandates under the law. It would be dishonest for me to lead you to believe otherwise.

Sisters and Brothers, I will not mislead you by telling you we can succeed in challenging these mandates in court or that an arbitrator is likely to reinstate a member who has failed to comply with a vaccine mandate.

TCU/IAM representatives will continue to enforce our Collective Bargaining Agreements. This includes representing any member who is disciplined or terminated for not getting the vaccine or for failing to obtain a reasonable accommodation by the deadline. We will not allow the Carrier to violate our Collectively Bargained Agreements and we will ensure that our members are treated fairly and in accordance with the law.

Just as we have encouraged vaccines, we have also encouraged our members who believe

♦ 3 Research Place ♦ Rockville, Maryland 20850-3279 ♦ Email - marateaa@tcunion.org ♦
Phone - 301-840-8701 ♦ Fax - 301-948-1369 ♦ Website - www.tcunion.org ♦



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they are exempted from the vaccine mandate to seek religious or medical accommodations and to go through that process in accordance with Carrier and EEOC policies.

We continue to receive various questions about the legalities of requiring a vaccine as well as inquiries about obtaining a religious or medical exemption. In that regard, I requested TCU/IAM's General Counsel to provide a summary of the most common discussion points. That memo is attached to this letter.

I fully recognize that these are difficult and divisive times. We continue to endure a pandemic that has wreaked havoc on our industry. I am tremendously proud of TCU's members for your resilience, your bravery and your dedication to your jobs throughout this unprecedented time. We will continue to work diligently to ensure that every member has a safe work place.

In solidarity,



Arthur P. Maratea
National President

cc: Executive Council
General Counsel
National Representatives
Assistant National Representatives

TO: TCU Membership
FROM: TCU General Counsel
DATE: October 22, 2021
RE: FAQ Mandatory Vaccines imposed by Rail Carriers

I. Federal Law Does Not Prohibit Employers from Requiring Vaccinations as a Condition of Continued Employment.

The EEOC, which enforces Title VII of the Civil Rights Act of 1964 and the American with Disabilities Act, released guidance on COVID-19 on December 16, 2020, affirming that employers generally *do* have the right to mandate the COVID-19 vaccine. (<https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>).

Further, for railroads doing business with the Federal government, the move to mandate vaccinations is required by President Biden's **Executive Order 14042** which mandates that federal contractors comply with the Guidelines established by the Safer Federal Workforce Taskforce. Those Guidelines are clear: "Covered contractor employees must be fully vaccinated no later than **December 8, 2021**," unless the employee has approval for a religious or medical accommodation.

II. Vaccine Mandate Challengers are Not Winning in Court:

While we are disappointed that the Carriers have taken such a harsh position and have failed to engage labor on this issue, this is not an argument we are going to win in court and we cannot justify spending the time and resources necessary on legal battles that we cannot win.

Our legal experts and attorneys have advised that the Railroads, just like other private companies, are within their legal rights to mandate vaccination as a condition of employment, provided that they allow for religious and medical accommodations as defined by law.

Workers and advocacy groups have filed at least 39 federal cases this year, challenging vaccination requirements imposed by employers or governments. Courts have denied requests for temporary orders against mandates in 12 of the suits, while 7 have ended with dismissals.

Some recent decisions include *Bridges v. Houston Methodist Hosp.* which was decided just this past June and *Beckerich v. St. Elizabeth Med. Ctr.* which was decided last month. In both those cases, the Courts upheld a private employer's

right to modify its employment conditions to require employees to be vaccinated in response to an unprecedented global pandemic.

What these cases have demonstrated is that vaccine mandates are not new and they are sound and judicially supported.

III. Religious and Medical Accommodations:

While the Union has strongly encouraged our membership to get the vaccine, we have also encouraged those with religious or medical exemptions to seek accommodations through the appropriate carrier department or office. However, when applying for a religious or medical accommodation under Title VII of the Civil Rights Act or the American with Disabilities Act, this is a process that does not arise under our Collective Bargaining Agreements, but is between an individual employee and the Carrier that must be handled in accordance with the regulations set forth by the U.S. Equal Employment Opportunity Commission (“EEOC”).

In applying for a religious accommodation, the EEOC has said that employers that have developed an objective basis for questioning either the religious nature or the sincerity of a particular belief can ask the employee for supporting information, as necessary, to make a reasonable business decision.

When inquiring about the sincerity of a religious objection to the vaccine, the EEOC has said employers should consider four factors in its questions and answers on religious discrimination in the workplace (<https://www.eeoc.gov/laws/guidance/questions-and-answers-religious-discrimination-workplace>). These factors might undermine an employee's assertion that he or she sincerely holds the religious belief at issue and include whether:

- The employee has behaved in a manner markedly inconsistent with the professed belief.
- The accommodation sought is a particularly desirable benefit that is likely to be sought for secular reasons.
- The timing of the request renders it suspect—for example, it follows an earlier request by the employee for the same benefit for secular reasons.
- The employer otherwise has reason to believe the accommodation is not sought for religious reasons.

If you wish to challenge the denial of an accommodation or the type of accommodation offered to you by your Railroad employer, based on a medical condition or religious objection, you have the individual right to file a Charge with the U.S. Equal Employment Opportunity Commission (“EEOC”). There are no fees or costs for filing an EEOC Charge and hiring an attorney is not required.

Instructions on the Charge filing process can be found at the following link:

<https://www.eeoc.gov/how-file-charge-employment-discrimination>

Charges can be filed online using the EEOC’s Public Portal:

<https://publicportal.eeoc.gov/Portal/Login.aspx>