

FSUTA: Fairfield-Suisun Unified Teachers Association

Vaccine Mandate FAQ - November, 2021

Q. Is it legal for FSUSD to mandate a COVID vaccination as a condition of employment?

- A. Yes, the U.S. Equal Employment Opportunity Commission (EEOC) and the California Department of Fair Employment and Housing (DFEH) have both issued guidance affirming an employer's right to mandate a COVID vaccine. The Governor has issued a state wide COVID vaccine mandate that will eventually apply to staff and students in all public, charter and private schools.

Q. What is our union's position on a vaccine mandate?

- A. FSUTA has not surveyed members because the vaccine mandate is not subject to mandatory bargaining. When employees were required to provide proof of vaccination or undergo weekly mandated testing, 92% of FSUTA unit members provided proof of vaccination.

Q. I have a coworker who has said they will refuse to get vaccinated. Is FSUTA going to represent members who choose not to get vaccinated and are subject to discipline as a result?

- A. Should any member be subject to discipline, they have the right to representation by FSUTA/CTA/NEA. In the event the discipline is beyond a letter of reprimand, such as suspension or termination, FSUTA members in good standing (dues payers) have access to employment attorneys as part of their active membership. FSUTA online membership form can be found at Join.CTA.org.

Q. A coworker asked me why FSUTA isn't challenging the vaccine mandate. What can I tell them?

- A. As mentioned above, FSUSD has the legal right to implement a vaccine mandate AND such a mandate is widely supported by educators across the district. As a union we have the right to bargain with management as equals, over the terms and conditions of employment that constitute mandatory subjects of bargaining under the law. Now that there is a vaccine mandate, we also have the right to bargain over the impacts and effects of it. We do not have the legal right to bargain over the issuance of the mandate itself.

Q. Does a vaccine mandate violate our union contract?

- A. No, a vaccine mandate does not violate any provisions of our union contract. Employers have the ability under state and federal law to implement vaccine mandates.

Q. Are there any exemptions for a vaccine requirement as a condition of employment?

A. Yes, there are possible *limited* exemptions **at this time**. The EEOC has outlined two possible exemptions to a COVID vaccine mandate by an employer: 1) a medical accommodation under the Americans with Disabilities Act (ADA), based on a *qualified* disability that prevents an employee from receiving a vaccine; and 2) a religious accommodation under Title VII of the Civil Rights Act based on a sincerely-held religious beliefs. In addition to these available exemptions under federal law, employees in California can seek similar medical or religious exemptions under the state's Fair Employment and Housing Act (FEHA). Future legislation may affect which, if any, exemptions are included and the requirements to qualify for potential exemptions.

Q. Where can I find more information about medical or religious accommodations?

A. At this time we believe the interactive accommodation process will be used for an employee requesting a bonafide exemption. Further information about the process and required documentation for exemptions will be provided by FSUSD prior to the end of the school year. Currently FSUSD has not expressed an interest in accelerating the timeline for the vaccination mandate prior to July 1, 2022.

Q. I have antibodies due to prior COVID infection. Can I be exempt from the mandate?

A. FSUSD will require a vaccination as a condition of employment as of July 1, 2022. FSUTA and CTA attorneys are unaware of any vaccine mandate for which there is an exemption for acquired immunity through prior infection.

Q. Will union members and students at the Virtual Academy and other virtual educational settings be required to vaccinate under the mandate?

A. Yes, FSUTA and CTA attorneys are unaware of any vaccine mandate for which there is an exemption for virtual learning or teaching at this time.

Q. Didn't we bargain over vaccines when schools reopened?

A. Our FSUTA bargaining team negotiated, and our members successfully organized, for early access to COVID vaccinations for members choosing to receive the vaccination prior to a return to in-person instruction in April, 2021. This was part of the bargain over the impacts and effects of reopening. Now that there is a vaccine mandate, we have the right to bargain over the impacts and effects of it. We do not have the legal right to bargain over the issuance of the mandate itself.

Q. What can we bargain over as part of the impacts and effects of the mandate?

A. Examples of what we can bargain for are the protections that were in place for school reopening such as access to leave to get vaccinated or in the event of adverse reactions to the vaccine. We can also bargain for leave to take our school age children who attend FSUSD to get vaccinated.

As legislation, FSUSD policies, or other factors affect implementation of the vaccination mandate, FSUTA will continue to provide our members with updated information.