



Oregon

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Date: April 28, 2021

To: Eric Feeley, AFSCME Local 3336 President

From: Leah K. Feldon, DEQ Deputy Director

Re: Response to Step 2 Grievance-Covid Vaccine

This memo is written in response to the Step 2 grievance filed on behalf of all impacted represented staff by Eric Feeley. Per Article 13 (Grievance Procedure) Section 12, a grievance filed on behalf of multiple employees shall be filed at the Step 2 level. This Step 2 grievance, filed on April 14, 2021 is considered timely.

Background:

On March 24, 2021, Nancy Dickison, Employee Relations Consultant, informed DEQ frontline staff of their eligibility concerning the COVID-19 vaccine. In that email Ms. Dickison informed staff that both vaccine time and any potential side effects may be charged to an employee's accrued time (sick leave, personal business, comp time, or vacation time) or an employee could choose to use time outside of working hours. Mike Premo, Budget/Payroll/Procurement/Travel Manager, also informed employees in the March timesheet instruction message of March 23, 2021, that employees must use accrued leave for any vaccine time.

On March 25, 2021 Ms. Dickison confirmed with DAS Chief Human Resources Office that employees must use their own accrued leave for the COVID-19 vaccine and any potential side effects.

Response:

In the union's Step 2 grievance, they allege Articles 22 (Health and Safety Section 1 and Article 58 (Past Practice) were violated. In Article 22 Section 1 the contract states:

The Employer agrees to abide by standards of safety and health and develop and implement policies in accordance with the Oregon Safe Employment Act (ORS 654.001 through 654.295, and 654.991) and Oregon Administrative Rules and to implement safe work practices to prevent occupational illnesses and injuries. The Employer supports, will follow, and expects employees to follow the DEQ Health and Safety Program and DEQ Health and Safety policies. The Health and Safety Manager will review Health and Safety policies annually with the Central Safety Committee. If an employee believes s/he is in an unsafe situation, s/he is expected to invoke Section 3 and/or 4 of this Article.

I assess DEQ is following this section and the entirety of Article 22. DEQ has been in compliance with the OSHA temporary rules pertaining to COVID-19 implemented in November 2020, has supplied updated COVID-19 information to employees, been in compliance with the COVID-19 AFSCME/DAS Letter of Agreement, and Brian Boling, Central Services Administrator, and Ms. Dickison have met with the union on a monthly basis to discuss COVID-19 concerns.

The union also cites a past practice violation since select DEQ employees are permitted under the *Bloodborne Pathogen Exposure Control Policy* to receive the Hepatitis B vaccine on agency paid time. A policy that allows DEQ employees to receive a Hepatitis B vaccine, since due to their job they may be exposed to blood, is not past practice. *The Bloodborne Pathogen Exposure Control Policy* clearly outlines which employees can receive the specific vaccine. A past practice is something that is “understood and accepted way of doing things over time.” Mittenhal, Past Practices and the Administration of Collective Bargaining Agreements” 59 Mich. Law Rev. 1017 (1961). A policy is an entirely different mechanism than an accepted practice.

In closing, DEQ does not assess the collective bargaining agreement was violated when we advised staff to use their accrued leave or their own time to receive and/or recover from the COVID-19 vaccine.

Management respectfully denies the grievance.

Cc:

Nancy Dickison, Employee Relations Consultant
Mike Romero, AFSCME Local 3336 Chief Steward
Richard Whitman, DEQ Director
Grievance file