



AFSCME Local 3336 DEQ Employees

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Union Response Statement to DEQ Management Step 2 Response and Appeal to Step 3

On April 28, 2021 DEQ Management denied the Step 2 grievance submitted by the Union. The grievance stated that the Agency at a minimum violated Article 22, Section 1 (Health and Safety) and Article 58 (Past Practice). The Agency rejected this assessment and stated that it is following the entirety of Article 22 and is in compliance with the OSHA temporary rules for COVID-19. The Agency also cites regular meetings between the Agency and Management related to ongoing COVID-19 concerns.

In general, even if the Agency's claim was true that the Agency was following Article 22 in its entirety, new information or opportunities for novel occupational disease prevention would mean that the Agency would need to reassess that it is doing everything that it can to protect its workers from exposure to a deadly viral pandemic. Such is the case with COVID-19. Once a vaccine became widely available the agency had an obligation to treat this disease in the same way that it treats hepatitis B. That means that it should have offered the COVID-19 vaccine series to employees who may have occupational exposures to potentially infectious materials. As stated in a National Institute of Environmental Health Sciences Worker Training Program Fact Sheet, "whether SARS-CoV-2 virus and COVID-19 disease is determined to be bloodborne or not, the precautions you should take and the protective measures your employer should use should be the same." The Union argues that the Agency should be taking the same precautions that it takes for bloodborne pathogens (and this would include providing for vaccinations) since SARS-CoV-2 can be transmitted via mucus membrane exposures to the eyes, nose and/or mouth which is similar to bloodborne pathogens.

In fact, the incidence of COVID-19 is well above the incidence of hepatitis B in Oregon which were approximately 400 cases in 2019. Outcomes are quite different as well. Hepatitis B deaths averaged 32 per year from 2009-2013 while COVID-19 has claimed over 2,500 lives in Oregon in just over 14 months with nearly 200,000 people in Oregon having been infected. Yet the Agency hides behind an esoteric legal argument that a policy is not a past practice instead of being forward-thinking and considering new ways to protect employees who are deemed essential and risk exposure every day they show up to work. That is certainly not meeting the spirit of the intention behind Article 22, Section 1. That interpretation also seemingly ignores a very clear difference between Agency employees who continue to face much higher risk of infection due to the nature of the work they perform for the Agency and those workers who are primarily teleworking.

By not providing for vaccinations and allowing for the use of miscellaneous paid leave for staff acquiring or recovering from the COVID-19 vaccine the Agency did not do all it could to responsibly prevent occupational spread of the SARS-CoV-2 virus and remains in violation of Articles 22 and 58.

Finally, the Union disagrees with the Agency implication that the existence of regular meetings between the Agency and the Union related to COVID-19 indicate tacit Union approval of any Agency decision or action related to its response to the current pandemic. The Union's position is that meetings themselves and on their own can never imply agreement among the parties and that neither party to our collective bargaining agreement should ever make that assumption.