

THE HUNGERFORD LAW FIRM

RESPONSE TO BARGAINING DEMAND ON VACCINATIONS – Aug. 20, 2021

Within hours of the Governor's announcement of mandated vaccination for COVID for all K-12 school teachers and other staff members, districts are starting to receive demands to bargain. Note that weekly testing for COVID was not listed as an acceptable alternative to vaccination under the Governor's Order. We expect to see the actual OAR very soon.

Here's the law regarding the obligation to bargain at this time:

1. Because the Governor has ordered vaccination, there is no obligation to bargain over that requirement, only the obligation to bargain over the impact of the Order. Do not refuse to bargain the impact if your local association/union makes that request.
2. A demand to bargain over the vaccination mandate starts the 90-day expedited timeline under ORS 243.698 that is normally the minimum period of bargaining before the District could unilaterally implement its most recent offer.
3. However, under ERB case law, you can unilaterally implement, even if the 90 days have not been completed, due to "business necessity" (i.e., meeting the Governor's requirement of excluding employees and volunteers who are not fully vaccinated as of Oct. 18) as long as you (a) bargain in good faith over any proposals the Union makes regarding the impact before the date you implement, and (b) continue to bargain after implementation, if you haven't reached a written, signed agreement, until the end of the 90-day period, and (c) give the Union advanced notice of at least 5 days that "the District will be implementing its last offer (enclosed) on [date]."
4. Districts may want to trigger the start of the 90-day window by notifying the local association/unions: "We have been informed that the Governor has ordered that all K-12 school district employees must be fully vaccinated as early as October 18. This is to notify you that it is the District's intent to comply with that Order and require all members of your bargaining unit to provide proof of being fully vaccinated (two weeks after the second of a two-shot series or after the single Johnson & Johnson inoculation) by October 4, 2021." The association/union then has 14 days from the date of your notice to demand to bargain. (This 14-day period is part of the 90-day statutory interim bargaining period).
5. If you have received a demand to bargain, you should acknowledge in writing to the local president of the association/union that "It is the District's intent to bargain the impact of the Governor's vaccination mandate, as required under ORS 243.698. Because of the short timeline prior to Oct. 18, 2021, when the Governor's order may go into effect, we are willing to meet as soon as your team has had a chance to prepare a set of proposals, or a list of potential measures you wish to discuss. If you think you can be ready next week, we will be ready to schedule a bargaining session on [dates/times] next week."

For more assistance or guidance on bargaining, call/contact Nancy Hungerford (503-781-3458; nancy@hungerfordlaw.com) or Brian Hungerford (available after Aug. 25 at 503-805-4755; brian@hungerfordlaw.com).