



August 25, 2021

**VIA EMAIL**

Dave Foster, President  
Denver Firefighters Local 858

Nick Rogers, President  
Denver Police Protective Association

James Sanford, President  
Denver Sheriff Union/International Union of Police Associations Local #830

John Quincy Adams, President/Business Agent  
Amalgamated Transit Union Local 1563

Ed Bagwell, President  
Teamsters Local 17

**Re: August 2, 2021 Public Health Order – Mandatory COVID-19 Vaccinations**

Gentlemen:

We are in receipt of your August 19, 2021 letter in which you pose a number of questions associated with the August 2, 2021 Public Health Order mandating COVID-19 vaccinations for all City employees. Given the legal nature of many of your questions, I have been asked to respond on behalf of the City Attorney's Office. Your questions, and the responses thereto, are outlined below:

**Medical and Religious Exemption Requests**

1. Is there an appeal process to review any exemption denials? If so, what is the appeal process for the denial? If there isn't an appeal process, we are requesting an appeal process for review.

*There is not an administrative appeal process for denials of medical or religious exemption requests. Exemption requests are thoroughly reviewed on a case-by-case basis and additional information is requested if needed before making a reasoned decision.*

2. Who makes the decision regarding the religious or medical exemptions?

*Generally speaking, these determinations will be made by the Office of Human Resources or Department of Safety Human Resources, in consultation with the City Attorney's Office.*

3. What is the accommodation for those employees whose medical or religious exemption is denied during the appeal process?

*The question is moot as there is no administrative appeal process for employees whose exemption requests are denied.*

4. What is the accommodation for those who are granted a religious or medical exemption?

*Generally speaking, the accommodation provided will require masking while at work (except while eating or drinking) and a PCR test every five days. PCR tests will have to be conducted on the employee's own time. The conditions of the provided accommodation may change over time, depending on existing circumstances.*

### **Non-Compliance of the Health Order**

1. If an employee chooses not to become vaccinated and does not qualify for a medical or religious exemption from vaccination, will the employee be subject to discipline? If so:

- a. Will progressive discipline be followed?

*Yes.*

- b. If progressive discipline is imposed, what will be the discipline?

*First Offenses: For employees who refuse to become fully vaccinated under any circumstances, the presumptive discipline will be dismissal. For all other employees, the presumptive discipline will be a 10-day suspension without pay.*

*Second Offenses: For employees who remain non-compliant, the presumptive discipline will be dismissal.*

- c. What rules would the employer allege have been violated?

*The pertinent alleged rule violations will be dependent on whether the employee is a career service or civil service employee and the applicable code of conduct/personnel rules.*

- d. What disciplinary process will be followed?

*The existing disciplinary processes will be followed.*

## **Worker's Compensation Act and Employees Who Comply with this Order**

1. Will all employees be fully covered should they experience any adverse reaction to the vaccine, regardless of what facility is utilized for administration?

*Employees experiencing what they believe to be vaccine related reactions (for those vaccinated after the August 2, 2021 mandatory vaccine Public Health Order) continue to be encouraged seek medical treatment by filing a workers' compensation claim. A health professional at the OUCH Line will provide health advice, which will include provider choice recommendations if medical care is recommended. Initial treatment through a designated provider is always covered by the City for any/all reported workers' compensation claims. A determination as to whether any new medical condition is directly related to the vaccine will initially be made by the designated provider. The City will cover all compensable treatment determined to be directly related to the vaccine.*

2. Will all employees be covered for any long-term side effects of the vaccine?

*A determination as to whether any new medical condition is directly related to the vaccine will initially be made by the designated provider. The City will cover all compensable treatment determined to be directly related to the vaccine.*

3. Will all employees be covered for any future vascular, heart, neurological damage, or any adverse health issues, including death due to this vaccine?

*A determination as to whether any new medical condition is directly related to the vaccine will initially be made by the designated provider. The City will cover all compensable treatment determined to be directly related to the vaccine.*

4. Will the City agree to a rebuttable presumption of coverage under the Worker's Compensation Act of Colorado if an employee experiences an adverse reaction to the COVID-19 vaccine within 14-days of it being administered?

*The City will adhere to any presumptions contained in the Workers' Compensation Act of Colorado.*

Hopefully, this response adequately addresses all of your questions above, but if further questions remain, please know that the City Attorney's Office is staffing a help line for questions regarding the various COVID-19 public health orders. Additional inquiries may be directed to [COAResponseTeam@denvergov.org](mailto:COAResponseTeam@denvergov.org).

All of you are invited to partner with the City and encourage all the members of your respective organizations to comply with the Public Health Order and the vaccine mandate. As public servants, we all have a responsibility to do everything necessary to keep our residents and ourselves safe and healthy.

Respectfully,

*/s/ Robert D. Nespor*

Robert D. Nespor  
Director – Employment & Labor Law Section  
City Attorney's Office

cc: Alan Salazar, Mayor's Chief of Staff  
Kristin Bronson, City Attorney  
James Fisher, Deputy City Attorney