



## *The Denver Police Protective Association*



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October 11, 2021

VIA ELECTRONIC TRANSMISSION AND FIRST-CLASS MAIL

Deputy Chief Barb Archer  
Denver Police Department  
1331 Cherokee Street  
Denver, CO 80204-2720

**RE: Article 16.2/Overtime  
Step 1 Grievance**

Dear Chief Archer:

Please accept this letter as the initiation of the Grievance and Arbitration Procedure as outlined in Article 30 of the Collective Bargaining Agreement of the parties for the years 2021-2012.

### **STATEMENT OF GRIEVANCE AND FACTUAL BASIS**

Most recently, it has come to the attention of the DPPA, Rich Ziegler, Bart Stark, David Ryan, and others similarly situated, are being denied compensation for obtaining a PCR COVID-19 test every five calendar days and weekly uploading the results into Workday.

As we know, on August 2, 2021, Denver Mayor Michael Hancock announced all Denver City employees would be required to be vaccinated against COVID-19 by September 30, 2021, excepting those who qualified for a religious or medical exemptions. As a result, those who were granted either and medical or religious exemption were provided guidelines regarding such accommodations, which (in part) require exempt officers to receive a negative PCR test for COVID-19 every five days and upload the results into Workday weekly, *with such testing taken outside of their regular working hours and while on accrued leave*. The DPPA believes the time spent getting tested and uploading the results is compensable and any failure to pay for such time is in violation of 16.2 of the Collective Bargaining Agreement.

Article 16.2 of the CBA provides that “hours worked” outside of an employee’s regular shift or in excess of their normal daily work shift is paid as overtime. The City is requiring its employees to be tested for COVID-19 because those employees have "significant interaction with the general public." The time they spend getting tested "is integral and indispensable to [their] work." (See Department of Labor, *COVID-19 and the Fair Labor Standards Act Questions and Answers*, available at: <https://www.dol.gov/agencies/whd/flsa/pandemic>.) This approach benefits the City, which has both an obligation and a desire to limit the spread of the coronavirus among its employees and to the general public, and which has made the testing a requirement of these police officers’ job. Federal courts have also held that time spent on mandatory medical testing and treatment is compensable. E.g., *Scott v. Raudin McCormick*, Case No. 08-4045, 2009 WL 3561301 (D. Kan. Oct. 30, 2009) (time spent outside of work on mandatory drug testing compensable); *Sehie v. City of Aurora*, 432 F.3d 749, 751-52 (7th Cir. 2005) (time spent in mandatory counseling sessions compensable).

In general, the time spent by an employee during a medical or physical examination *which the employer orders* the employee to undergo is counted as compensable time. See *Copeland v. ABB, Inc.*, 521 F.3d 1010 (8th Cir. 2008). Even if the examination occurs outside the employee’s regular working hours, the time will be considered hours worked if the employer specifically requires the employee to undergo the examination as a condition of employment. See Administrative Opinion, August 2, 1989 (Wage and Hour Division, Department of Labor). The same rules apply to make the time spent during mandatory drug tests compensable under the CBA.

### **COLLECTIVE BARGAINING SECTIONS ALLEGEDLY VIOLATED**

As indicated above, the DPPA respectfully asserts the City has denied Rich Ziegler, Bart Stark, David Ryan, and others who may be similarly situated, the ability to input the time for the overtime pay (as it is systematically being removed from Telestaff by DPD and/or City/County officials) and therefore, the ability to be paid what is due to them for complying with the Mayor’s August 2, 2021, health Order, and specifically the requirements of testing for those with medical or religious exemptions outside of their regular working hours and while on accrued leave pursuant to Article 16.2 of the Collective Bargaining Agreement.

### **REMEDY SOUGHT**

Under these circumstances, the DPPA requests that Rich Ziegler, Bart Stark, David Ryan, and others similarly situated be fully compensated for the compulsory, off-duty COVID testing and uploading the results into Workday, which is a condition of employment for those granted medical or religious exemptions/exceptions from COVID vaccination.

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Thank you in advance for your attention to this matter. Should you have any questions, please do not hesitate to call.

Very truly yours,

DENVER POLICE PROTECTIVE ASSOCIATION

A handwritten signature in black ink, appearing to read 'NR', is positioned above the name Nick Rogers.

Nick Rogers, President

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cc: Paul Pazen, Chief of Police