



# LOCAL S/6, INDUSTRIAL UNION of MARINE & SHIPBUILDING WORKERS OF AMERICA / I.A.M.A.W.

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## LEADERSHIP ALERT:

### VACCINE MANDATE

Tuesday, October 19, 2021

Brothers and Sisters,

As we continue to address any and all questions the membership has through the town hall-style meetings we feel it is imperative to provide you with all the pertinent information we have available. The importance of this issue is apparent. We are fully committed to advocating for our members. We are not against vaccinations. We are prochoice. We also believe the vaccine is good for public health and safety. However, we must stand and protect our memberships jobs as best as we can.

As such, we disagree with the vaccine mandate. Forcing our membership to choose between their beliefs or their livelihood is unfair. We will be entering into effects bargaining over the vaccine mandate to negotiate all working conditions. We cannot encourage a wildcat strike, work stoppage, or a planned walkout in any form due to the no-strike/no-lockout clause in our CBA; Article 25. However, we can engage in protected concerted activities. This includes marching, protesting, sign waiving, or noise making. These activities must occur during non-working hours.

As we are fully committed to doing anything within our power to represent our membership, we have enclosed a questions and answers memorandum directly from IAM Legal (attached). In addition, you will find contact information for our local politicians below. Please reach out to them and express your concerns in regards to the Presidential Vaccine Mandate and how this decision may impact you, your family, your livelihood, and national security if we lose approximately 30% of our workforce.

Senator Collins  
Collins.senate.gov  
Main: (202) 224-2523  
Augusta (207) 622-8414

Rep. Golden CD 2  
Golden.house.gov  
Main: (202) 225-2943  
Portland (207) 774-5019

Senator King  
King.senate.gov  
Main: (202) 224-5344  
Augusta (207) 622-8292

Governor Mills  
maine.gov/governor/mills/contact  
Augusta: 207-287-3531

Rep. Pingree CD 1  
Pingree.house.gov  
Main: (202) 225-6116  
Portland (207) 774-5019

### In Solidarity, Local S6 Leadership

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President

*Jamie Lavallee*  
Vice President

*Ray Gauthier*  
Chief Steward Bath/EBMF

*Scott McFadden*  
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*Kevin Gayton*  
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*Andy James*  
Trustee

*Bill Barrows*  
Trustee

*Shawn Tardif*  
Conductor-Sentinel

*Tim Switter* *Chris Williams*  
Communicator Educator

# MEMORANDUM

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Over the past few weeks, the Legal Department has encountered numerous questions on potential legal challenges to COVID-19 vaccine mandates and related issues. These questions have multiplied in the US since the announcement of the Biden Administration's federal vaccine mandate and planned OSHA rule requiring mandatory vaccination policies for certain employers. Likewise, Canadian members' questions have increased since the Trudeau administration has implemented a vaccine policy for all federal agencies and federally-regulated sectors. What follows is a summary of those questions and their answers.

***Given the speed at which new laws, regulations and policies have been implemented to control the COVID-19 pandemic, this document will be updated frequently, as circumstances change. [updated 10/08/2021]***

As always, please contact the Legal Department if you have any questions, or if you would like to talk through any strategy/issues you may encounter on this subject.

**Q: *Can an employer mandate that employees be vaccinated?***

**A:** Subject to the terms of the CBA, there is substantial legal precedent across the United States allowing employers to require vaccines as a term or condition of employment. The EEOC has also stated that vaccine mandates do not necessarily violate the ADA or Title VII, as long as employers provide certain accommodations.<sup>1</sup> So far, President Biden has mandated COVID vaccines for federal employees and employees of federal contractors, and has announced a planned OSHA rule for private-sector employers with 100 employees or more.

In Canada, subject to consultation with a union representing the workforce, vaccination mandates are also valid under supporting case law, assuming the terms of such a mandate do not violate relevant human rights and employment laws. Prime Minister Justin Trudeau

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<sup>1</sup> See, e.g., <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws> at K.1.

has mandated COVID vaccines for federal workers as well as employees and passengers in the federally-regulated air, rail and marine transportation sectors.

**Q: *Are there any exceptions or exemptions?***

**A:** In the US, yes. Employees may seek, and possibly be granted, accommodations to a vaccine mandate at work for medical reasons/disabilities, or for sincerely held religious beliefs. Each request must be evaluated on an individualized basis. Keep in mind that management may counter such requests for accommodation by stating that it poses an undue hardship on the workplace, or that unvaccinated employees pose a “direct threat” that cannot be accommodated. Such claims cannot be made in a blanket way, but must be considered on a case-by-case basis (as different employees may have different means of accommodation that must be evaluated).

In Canada, exemptions are similarly limited. Prime Minister Trudeau announced on October 6 that vaccinations will be mandatory for federal employees, and while there will be exemptions made for “certified medical contraindications,” as well as for religious reasons, these accommodations will only be granted under certain parameters, including providing documented proof of the requirement for the exemption. For private sector employees, provincial and federal laws grant limited exemptions for medical or religious reasons.

**Q: *What can the Union do in response/ to stop this?***

**A:** The Union likely cannot stop the implementation of a vaccine policy issued pursuant to a State or Federal order or rule, but it can demand that the employer bargain over the effects of the decision to implement the policy.

In Canada, employers must consult with Unions prior to implementing policies that address health and safety issues, which would therefore apply to a vaccination mandate.

**Q: *Can an employer be liable for injuries resulting from vaccination that the employer mandated?***

**A:** An employer would probably not be directly liable, because employers are likely not administering the vaccine themselves. However, if an employee gets the vaccine because of a mandatory vaccination policy, and suffers an injury as a result, workers' compensation coverage would likely kick in. Some states' compensation guidelines address this issue more directly.

In Canada, if certain standards are met to show that the vaccine was taken to comply with a condition of employment or a condition of continued employment, workers' compensation claims could be successful; A Vaccine Injury Support Program has been announced by the federal government, and will provide financial support in the rare case someone is seriously and permanently injured as a result of receiving a Health Canada-approved vaccine after December 8, 2020

**Q:** *Where do federal employees and employees of federal contractors fit into all this?*

**A:** In the United States, Federal government employees must be fully vaccinated by November 22, 2021. There is no longer an option to undergo regular testing instead of vaccination.

Covered contractor employees must be fully vaccinated no later than December 8, 2021. Note that this deadline assumes the contractor has successfully negotiated language with the government regarding this issue to be included in their contracts, otherwise the terms of the mandate likely would not apply until the existing contract is extended or renewed. In addition, the Executive Order does not apply to "contracts, contract-like instruments, or agreements with Indian Tribes under the Indian Self-Determination and Education Assistance Act (Public Law 93-638)," so if your contractor's agreements with the Government fall under the ISDEAA, the contractor employees may be excluded from this requirement.

In Canada, Prime Minister Trudeau announced on October 6 that "core" federal public servants will have to attest to being fully vaccinated against COVID-19 by October 29 or face being put on leave without pay by November 15. The mandatory vaccination policy includes the RCMP, but excludes staff at several public-facing service departments including Service Canada, Veterans Affairs Canada, and

the Canada Revenue Agency. The new rules also do not apply to members of the Canadian Armed Forces or “locally-engaged staff” posted abroad. Furthermore, employees and passengers in the federally-regulated air, rail and marine transportation sectors will have to be fully vaccinated as of October 30. Immediately after Prime Minister Trudeau announced the mandatory vaccination policy for federal public servants, Transport Canada followed suit, issuing a notice to all employers in the transportation sector, including contractors to ensure a mandatory vaccination policy is in effect. Following this announcement, airport authorities across Canada implemented their own mandatory policies, requiring all workers who enter airport premises to be vaccinated, including passengers. These requirements also apply to those traveling on interprovincial trains and cruise ships.

**Q: *Isn't this premature, since there is so little data/ since the FDA hasn't fully authorized vaccines?***

**A:** In the United States, no. First, one of the vaccines has now received FDA authorization. In any event, while it is true that the three vaccines available in the US were initially granted an Emergency Use Authorization (EUA) by the Food and Drug Administration (FDA), the COVID-19 vaccines' EUA status does *not* prohibit public and private entities from requiring vaccines as a condition of employment, education, or receipt of services.

In Canada, Moderna, Pfizer, AstraZeneca, and Johnson & Johnson have received final authorization and approval by Health Canada.

**Q: *Isn't a mandatory vaccine unconstitutional?***

**A:** In the United States, no, the federal government's ability to mandate vaccinations is completely within its constitutional authority. In 1905, the US Supreme Court reviewed the case of *Jacobson v. Massachusetts*, which centered around the plaintiff Pastor Henning Jacobson's refusal to comply with a state law requiring residents to be vaccinated against smallpox following a localized outbreak. The Court sided with the state, affirming that the law was a legitimate exercise of the state's power and right to ensure the safety of its citizens. 17 years later, officials in San Antonio, Texas prevented a young woman from

attending a public school because she also refused a vaccine against smallpox. Arguing that she was deprived of her 14th Amendment rights, the woman's case continued to the Supreme Court, where they again sided with the state. The Court noted that, like in *Jacobson*, it was within the police power of the state to enforce compulsory immunization in order to ensure widespread public health and safety.

In Canada, Section 1 of the Charter says "all of the rights and freedoms in the charter are subject to such reasonable limits as can be demonstrably justified in a free and democratic society." That translates to proportional, reasonable approaches that governments can use to limit people's rights so long as they have a very good reason and can demonstrate why. A global pandemic is likely one of those reasons, and a carefully-implemented vaccine policy will likely not violate these laws. The Ontario Human Rights Commission and BC's Office of the Human Rights Commissioner, in conjunction with Provincial Health Officers, have created guidelines for such policies.

**Q: *Doesn't a mandatory vaccine violate people's human rights/ the Nuremburg code/ the Geneva Conventions?***

**A:** No, a vaccine or mask mandate issued by an employer doesn't violate any of those things.<sup>2</sup> It would be unconstitutional in both Canada and the United States for the government to hold people down and force them to get the vaccine. But outside of those circumstances, the government and private businesses are free to impose all sorts of restrictions, including basic public health and safety measures—before people access institutions or avail themselves of services. Airlines can deny passage to people who will not show proper identification. Bars can deny patrons a drink without proper ID. Restaurants can deny business to those who refuse to wear a shirt or shoes or both. In short, the government isn't mandating the vaccine; rather, if an employee does not want to be part of a mandatory vaccination policy, they may seek other employment where it is not required.

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<sup>2</sup> The Nuremberg Code is a set of research ethics principles for human experimentation created as one result of the Nuremberg trials at the end of the Second World War. These trials were conducted because of the horrific Nazi treatment of civilians, including medical and scientific "experimentation" (really torture) on civilian populations. They set ethical standards, not legal consequences. The Geneva Conventions are four treaties, and three additional protocols, that establish international legal standards for humanitarian treatment in war.

**Q: *Doesn't asking me about my vaccination status violate HIPAA/HIPPA/HIPPAA/ the ADA/ other laws?***

**A:** No. HIPAA rarely does what anyone thinks it does. The concept of what HIPAA actually covers is so misunderstood, politicians and lawyers alike regularly get it wrong. But HIPAA only prevents **medical providers** from disclosing patient information to other parties—an employer likely is not covered by HIPAA.

Likewise, asking whether someone has been vaccinated does not violate the ADA. Asking questions about *why* someone has not been vaccinated *might*, but the mere question regarding vaccination status does not violate the law. However, a handful of states have issued prohibitions on inquiring about vaccination status, so look to your state's laws first before asking.

In Canada, privacy laws include several provisions that authorize the collection, use and disclosure of personal information in the context of a public health crisis. However, the Personal Information Protection and Electronic Documents Act (PIPEDA) sets out the ground rules for how businesses subject to the law must handle such personal information in the course of commercial activities, and medical documents like proof of COVID vaccination must be treated with the utmost confidentiality. Alberta, British Columbia and Quebec have their own private-sector privacy laws that have been deemed substantially similar to PIPEDA.

**Q: *Isn't there a US Supreme Court case saying that once someone is vaccinated, they are no longer a human being/ they are "patented"/ they are owned by Pfizer or Moderna?***

**A:** No. There is misinformation circulating online that states that a recent Supreme Court case says if you were to change a human's genome using mRNA vaccines, then the person can be patented and "owned."

In fact, there is no case stating that someone ceases to be human or that someone becomes patentable after any medical intervention. The Supreme Court case referred to as part of this false claim, *Association*

*for Molecular Pathology v. Myriad Genetics*, is not related to the question of determining who or what is human. It has nothing to do with vaccination, including mRNA vaccines (which include the available COVID-19 vaccines). The Court stated that isolated pieces of human DNA cannot be patented, and allows companies to patent their development of synthetic DNA-like matter. The misinformation also relies on the false claim that mRNA modifies human DNA.

In short, human beings, including the DNA in their bodies, cannot be patented—even if they have received an mRNA vaccine.

**Q: *Can we challenge this in Court?***

**A:** In the United States, such a challenge would likely be unsuccessful. As discussed above, many courts have upheld employer-issued vaccine mandates. Recently, a federal court in Texas rejecting a challenge to a mandatory COVID-19 vaccination requirement in the employment context. See *Bridges, et al. v. Houston Methodist Hospital et al.*

In Canada, several challenges have been announced, primarily in the university/college setting, but they will likely meet similar hurdles under Canadian case law, which has a lengthy precedent for permitting vaccine mandates if the workplace circumstances call for it.

**Q: *Can we file a grievance or a ULP charge?***

**A:** In the United States, this may be a viable option depending on the language in your contract, and on the employer's actions to implement such a policy.

In Canada, if there was no consultation with the Union on the development of the policy, or if the employer does not follow the appropriate processes under the CBA or its own applicable internal policies, a grievance would be a viable option. Furthermore, if the policy infringes upon a worker's legally-protected rights, or discriminates against workers, a grievance could also be a viable option.