

**In The
Supreme Court of the United States**

WOMEN OF COLOR FOR EQUAL JUSTICE, ET AL.

Applicant,

v.

MAYOR ERIC L. ADAMS, COMMISSIONER ASHWIN VASAN,
MD, PHD, IN THEIR OFFICIAL CAPITY, THE CITY OF NEW YORK,
DEPARTMENT OF HEALTH AND MENTAL HYGIENE AND
DEPARTMENT OF EDUCATION, DOES 1-20

Respondent.

**APPENDIX TO
EMERGENCY APPLICATION FOR STAY PENDING APPELLATE REVIEW
OR, IN THE ALTERNATIVE, PETITION FOR WRIT OF CERTIORARI AND
STAY PENDING RESOLUTION
IMMEDIATE RELIEF REQUESTED**

To the Honorable Sonia Sotomayor
Associate Justice of the United
States Supreme Court and
Circuit Justice for the Second Circuit

Dated: April 19, 2022

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Vaxxed from City Coercion

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Appendix A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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WOMEN OF COLOR FOR EQUAL JUSTICE et
al.,

Plaintiffs,

MEMORANDUM & ORDER
22-CV-2234 (EK) (LB)

-against-

THE CITY OF NEW YORK et al.,

Defendants.

-----x

ERIC KOMITEE, United States District Judge:

The plaintiffs here – an organization called Women of Color for Equal Justice and a number of current and former employees of the City of New York – filed this lawsuit against the City, its Mayor and Commissioner of Public Health, and its Departments of Education and of Health and Mental Hygiene. Plaintiffs challenge the City’s orders requiring certain employees to obtain a COVID-19 vaccine. They have applied for a preliminary injunction enjoining the City from enforcing those requirements. Because Plaintiffs have failed to show a sufficient likelihood on the merits, those applications are denied.¹

¹ In denying the applications, the Court expresses no view on whether Women of Color for Equal Justice has organizational standing to participate in this lawsuit. Defendants have indicated that they intend to raise this issue in their forthcoming motion to dismiss. Defs.’ PMC Request 3, ECF No. 13. Where the standing issue may “raise[] difficult issues, it need not detain the court on this expedited application for a preliminary injunction.”

I. Background

Between August and December 2021, in response to the COVID-19 pandemic, the New York City Commissioner of Health and Mental Hygiene issued a series of nine orders requiring certain individuals to be vaccinated against COVID-19. Vaccine Orders, ECF Nos. 17-19 to 17-27. These included employees and contractors of the New York City Department of Education, other City employees and contractors, childcare workers, nonpublic school staff, and employees of private businesses. *Id.*²

Plaintiffs are employees or former employees of various City agencies who allege they lost their jobs or were placed on unpaid leave for refusing the COVID-19 vaccine, or who were “coerced” into becoming vaccinated. Third Am. Compl. (TAC) ¶¶ 13-39, ECF No. 22. They filed this lawsuit alleging that the Vaccine Orders violate the Occupational Health and Safety Act of 1970 (OSHA), 29 U.S.C. §§ 651-678; the Supremacy Clause; the

Fulani v. League of Women Voters Educ. Fund, 684 F. Supp. 1185, 1194 (S.D.N.Y. 1988), *aff’d*, 882 F.2d 621 (2d Cir. 1989); *see also All. for Env’t Renewal, Inc. v. Pyramid Crossgates Co.*, 436 F.3d 82, 85, 87 (2d Cir. 2006) (Supreme Court’s “ruling that a district court must generally . . . establish that it has federal constitutional jurisdiction, including a determination that the plaintiff has Article III standing, before deciding a case on the merits,” “seeks to guard only against a definitive ruling on the merits by a court that lacks jurisdiction because of the absence of an Article III requirement”).

² The City subsequently lifted the Vaccine Order for private-sector employees effective November 1, 2022. *See City of New York, Transcript: Mayor Eric Adams Launches COVID-19 Booster Campaign, Announces Additional Flexibility for NYC Businesses, Parents* (Sept. 20, 2022), <https://www.nyc.gov/office-of-the-mayor/news/688-22/transcript-mayor-eric-adams-launches-covid-19-booster-campaign-additional-flexibility>.

First Amendment; and New York City law. *Id.* ¶¶ 88–188. They seek declaratory and injunctive relief and monetary damages. *Id.* ¶¶ 189–91.

On September 2, 2022, Plaintiffs filed a motion for a temporary restraining order (TRO) and a preliminary injunction. Pls.' Mot. for TRO & Prelim. Inj. ("Pls.' 1st Appl."), ECF No. 17. I denied the TRO on September 14, 2022. Plaintiffs then filed a second motion for a TRO and a preliminary injunction on October 26, 2022, this time packaged with a motion for class certification. Pls.' Renewed Mot. for TRO, Prelim. Inj. & Prelim./Conditional Class Certification ("Pls.' 2d Appl."), ECF No. 33. I denied the second TRO application on November 15, 2022. Memorandum & Order, ECF No. 37. Plaintiffs subsequently filed a motion seeking leave to amend its application for a preliminary injunction:

to drop the request for injunctive relief pursuant to FRCP §65 and to make clear that Plaintiffs are **not** seeking a "cause of action" under the OSH Act, but rather Plaintiffs seek Declaratory and Injunctive Relief pursuant to FRCP §57 under 28 U.S.C. § 2201 and §2202, which authorizes this Court to award as a final judgment a declaration of rights and obligations between the Plaintiffs and [Defendants] and to issue an injunction pursuant to 28 U.S.C. §2202

Pls.' Request for Leave to Amend Motion 1 (all typographical errors in original), ECF No. 38.

II. Legal Standards

A party seeking a preliminary injunction must demonstrate (1) “a likelihood of success on the merits”; (2) “a likelihood of irreparable injury in the absence of an injunction”; (3) “that the balance of hardships tips in the plaintiff’s favor”; and (4) “that the public interest would not be disserved by the issuance of an injunction.” *Benihana, Inc v. Benihana of Tokyo, LLC*, 784 F.3d 887, 895 (2d Cir. 2015).³ Where a preliminary injunction would alter the status quo, a heightened standard applies: the party seeking it must show “a clear or substantial likelihood of success on the merits.” *N. Am. Soccer League, LLC v. U.S. Soccer Fed’n, Inc.*, 883 F.3d 32, 36-37 (2d Cir. 2018). For the reasons discussed below, Plaintiffs have failed to demonstrate the requisite likelihood of success under either standard.

III. Discussion

Plaintiffs’ applications for a preliminary injunction, as they currently stand, are premised on the theories that the Vaccine Orders violate (1) the Supremacy Clause of the U.S. Constitution and OSHA; and (2) New York Public Health Law § 206. See Pls.’ 1st Appl. 4-5; Pls.’ 2d Appl. 2-4. Both arguments are

³ Unless otherwise noted, when quoting judicial decisions this order accepts all alterations and omits all citations, footnotes, and internal quotation marks.

meritless. Additionally, Plaintiffs' motion for leave to amend their preliminary injunction papers is denied because such amendment would be futile.

A. Plaintiffs' Applications for a Preliminary Injunction Are Denied

1. Neither the Supremacy Clause Nor the OSHA Act Provides a Private Right of Action

Plaintiffs rely first on the Supremacy Clause and OSHA, which they argue are inconsistent with, and preempt, the Vaccine Orders. Pls.' 1st Appl. 4-5; Pls.' 2d Appl. 2-4. But the Supremacy Clause does not provide a private right of action. *See Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 324-25 (2015) ("It is . . . apparent that the Supremacy Clause is not the source of any federal rights and certainly does not create a cause of action.").

Additionally, Plaintiffs have not shown that a private right of action exists to sue under OSHA. "Under OSHA, employees do not have a private right of action." *Donovan v. Occupational Safety & Health Rev. Comm'n*, 713 F.2d 918, 926 (2d Cir. 1983). The Second Circuit has explained that "it is apparent from [OSHA's] detailed statutory scheme that the public rights created by the Act are to be protected by the Secretary and that enforcement of the Act is the sole responsibility of the Secretary." *Id.* at 927. Relying on that holding, a district court of the Southern District of New York recently

rejected a state employee's claims that his employer failed to implement adequate COVID-19 safety protocols under the OSHA Act. See *Quirk v. DiFiore*, 582 F. Supp. 3d 109, 115 (S.D.N.Y. 2022) (citing *Donovan*, 713 F.2d at 926) ("The last of Quirk's federal law claims are for violations of OSHA regulations; these claims all fail because Quirk cannot bring a lawsuit under OSHA.").

Because no private right of action exists under either provision, the application for preliminary injunctive relief on this ground is denied. See *Joint Apprenticeship & Training Council of Loc. 363, Int'l Bhd. of Teamsters, & United Const. Contractors Ass'n v. N.Y. State Dep't of Lab.*, 829 F. Supp. 101, 104-05 (S.D.N.Y. 1993) (denying application for preliminary injunction where no private right of action existed under the relevant statute).

2. The Vaccine Orders Do Not Violate New York Public Law Section 206

Nor have Plaintiffs shown a likelihood of success on their argument that the Vaccine Orders violate New York Public Health Law § 206(1)(1). Pls. 2d Appl. 2. That statute provides that the Commissioner of Health of the State of New York "shall":

establish and operate such adult and child immunization programs as are necessary to prevent or minimize the spread of disease and to protect the public health. Such programs may include the purchase and distribution of vaccines to providers and municipalities, the operation of public immunization

programs, quality assurance for immunization related activities and other immunization related activities. The commissioner may promulgate such regulations as are necessary for the implementation of this paragraph. Nothing in this paragraph shall authorize mandatory immunization of adults or children, except as provided in [N.Y. Public Health Law §§ 2164-2165].

N.Y. Public Health Law § 206(1)(1). Although their papers in support of their applications for an injunction are sparse on the subject, the Complaint contains the assertion that this section "prohibits the [Commissioner] from establishing regulations that mandate adult vaccination." TAC ¶ 70(c).

But the prohibition in the last sentence of Section 206(1)(1) applies only to "this paragraph" – *i.e.*, to Section 206(1)(1) itself. Plaintiffs do not contend (and certainly have not shown) that the Vaccine Orders were issued under the authority of Section 206(1)(1). On the contrary, the Orders themselves cite the City's Charter and Health Code as authority for their issuance. For example, the August 24, 2021 order invokes (among other provisions) Section 3.01(d) of the New York City Health Code, which grants the City's Department of Health and Mental Hygiene the power to "issue necessary orders and take such actions as may be necessary for the health or the safety of the City and its residents" during a public health emergency. N.Y.C. Health Code § 3.01(d) (codified in Title 24 of the Rules of the City of New York). See August 24, 2021 Vaccine Order 1, ECF No. 17-19.

Thus, Section 206 is not relevant to the legality of those Orders. See *Marciano v. de Blasio*, 589 F. Supp. 3d 423, 434 (S.D.N.Y. 2022) (“[A]s the [New York] Court of Appeals explained in *Garcia [v. N.Y.C. Dep’t of Health & Mental Hygiene]*, 106 N.E.3d 1187 (2018)], [Section 206(1)(1)] [is] directed to the powers and duties of the Commissioner of the New York State Department of Health and in no way limit[s] the New York City Department or *its* Commissioner from issuing separate and independent vaccine requirements.”); see also *C.F. v. New York City Dep’t of Health & Mental Hygiene*, 139 N.Y.S.3d 273, 282, 284 (App. Div. 2d Dep’t 2020) (holding that a City order mandating vaccination against measles did not exceed the City’s authority, and observing that Section 206(1)(1) is “directed to the powers and duties of the Commissioner of the State Department of Health, not of the New York City Board,” and accordingly does not “restrict the Board’s authority to regulate vaccinations”). Therefore, Plaintiffs’ request for injunctive relief is denied on this ground as well.⁴

⁴ To the extent Plaintiffs seek to make out a claim under the Free Exercise Clause on the basis that the Vaccine Orders “are not laws of ‘general applicability,’” Pls.’ 2d Appl. 3, the Second Circuit has already considered and rejected that argument. See *Kane v. De Blasio*, 19 F.4th 152, 164 (2d Cir. 2021) (“The Vaccine Mandate, in all its iterations, is neutral and generally applicable.”).

B. Plaintiffs' Motion for Leave to Amend Their Application for a Preliminary Injunction Is Denied

As noted above, Plaintiffs' most recent filing states their wish "to make clear" that they are seeking declaratory and injunctive relief pursuant to Federal Rule of Civil Procedure 57 and 28 U.S.C. §§ 2201-2202, rather than OSHA itself. But "a request for relief in the form of a declaratory judgment does not by itself establish a case or controversy involving an adjudication of rights." *In re Joint E. & S. Dist. Asbestos Litig.*, 14 F.3d 726, 731 (2d Cir. 1993). As the Second Circuit explained:

The Declaratory Judgment Act does not expand jurisdiction. Nor does it provide an independent cause of action. Its operation is procedural only – to provide a form of relief previously unavailable. Therefore, a court may only enter a declaratory judgment in favor of a party who has a substantive claim of right to such relief.

Id.; see also *Chiste v. Hotels.com L.P.*, 756 F. Supp. 2d 382, 406 (S.D.N.Y. 2010) ("Declaratory judgments and injunctions are remedies, not causes of action."). Thus, even if permitted, such amendment would be futile. See *Ruffolo v. Oppenheimer & Co.*, 987 F.2d 129, 131 (2d Cir. 1993) (even in the context of amending pleadings, "[w]here it appears that granting leave to amend is unlikely to be productive . . . , it is not an abuse of discretion to deny leave to amend"). To the extent Plaintiffs seek declaratory relief, that relief will be granted, if at all,

only at the conclusion of the litigation process. See *B. Braun Med., Inc. v. Abbott Lab'ys*, 124 F.3d 1419, 1428 (Fed. Cir. 1997) ("Given that the [Declaratory Judgment] Act merely provides a new noncoercive remedy, it should come as no surprise that the practice in declaratory judgment actions is, on almost every point, the same as in any civil action.").⁵

IV. Conclusion

For these reasons, Plaintiffs' applications for a preliminary injunction are denied, and their request for leave to amend their preliminary injunction papers is denied. Plaintiffs are warned that any further requests for emergency or preliminary relief premised on issues that the Court has already decided will expose them to sanctions for engaging in vexatious litigation.

⁵ See also 10B Charles A. Wright & Arthur R. Miller, *Federal Practice & Procedure* § 2768, Westlaw (4th ed. Apr. 2022 Update) ("Any doubt or difficulty about the procedure in actions for a declaratory judgment disappears if the action is regarded as an ordinary civil action, as Rule 57 clearly intends. . . . As Rule 57 expressly provides, the procedure for obtaining a declaratory judgment must be in accordance with the federal rules. . . . [T]he practice in [declaratory judgment] actions is, on almost every point, the same as in any civil action.").

The Court will reserve decision on the pending motion for class certification. A briefing schedule for Defendants' motion to dismiss will be set by separate order.

SO ORDERED.

 /s/ Eric Komitee
ERIC KOMITEE
United States District Judge

Dated: November 18, 2022
Brooklyn, New York

Appendix B

**UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT**

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 15th day of February, two thousand twenty-three.

Before: Joseph F. Bianco,
Circuit Judge.

Women of Color For Equal Justice, et al.,

Plaintiffs - Appellants,

v.

City of New York, Eric L. Adams, New York
City Department of Health and Mental
Hygiene, Ashwin Vasani, MD, PhD,
Commissioner of the Department of Health
and Mental, Does 1-20, New York City
Department of Education,

Defendants - Appellees.

ORDER

Docket No. 22-3065

Appellants move to expedite the appeal and for emergency injunctive and declaratory relief.

IT IS HEREBY ORDERED that, to the extent the motion seeks temporary relief pending review by a three-Judge panel, the motion is DENIED. The motion is REFERRED to a three-Judge motions panel.

For the Court:

Catherine O'Hagan Wolfe,
Clerk of Court

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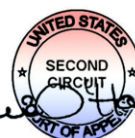
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United States Court of Appeals, Second Circuit

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Appendix #1

› Acta Biomed. 2020 Mar 19;91(1):157-160. doi: 10.23750/abm.v91i1.9397.

WHO Declares COVID-19 a Pandemic

Domenico Cucinotta ¹, Maurizio Vanelli ²

Affiliations [+](#) expand

PMID: 32191675 PMCID: [PMC7569573](#) DOI: [10.23750/abm.v91i1.9397](#)

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Abstract

The World Health Organization (WHO) on March 11, 2020, has declared the novel coronavirus (COVID-19) outbreak a global pandemic (1). At a news briefing, WHO Director-General, Dr. Tedros Adhanom Ghebreyesus, noted that over the past 2 weeks, the number of cases outside China increased 13-fold and the number of countries with cases increased threefold. Further increases are expected. He said that the WHO is "deeply concerned both by the alarming levels of spread and severity and by the alarming levels of inaction," and he called on countries to take action now to contain the virus. "We should double down," he said. "We should be more aggressive." [...].

Conflict of interest statement

The author declares that he has no commercial associations (e.g. consultancies, stock ownership, equity interest, patent/licensing arrangement etc.) that might pose a conflict of interest in connection with the submitted article

Comment in

[COVID-19 and maternal pre-eclampsia: A synopsis.](#)

Abbas AM, Ahmed OA, Shaltout AS.

Scand J Immunol. 2020 Sep;92(3):e12918. doi: 10.1111/sji.12918. Epub 2020 Jul 3.

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East Mediterr Health J. 2020 Feb 24;26(2):136-137. doi: 10.26719/2020.26.2.136.

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[Will novel virus go pandemic or be contained?](#)

Kupferschmidt K, Cohen J.

Science. 2020 Feb 7;367(6478):610-611. doi: 10.1126/science.367.6478.610.

PMID: 32029604 No abstract available.

[Pandemic potential of 2019-nCoV.](#)

Thompson R.

Lancet Infect Dis. 2020 Mar;20(3):280. doi: 10.1016/S1473-3099(20)30068-2. Epub 2020 Feb 7.

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The continued epidemic threat of SARS-CoV-2 and implications for the future of global public health.

Sheahan TP, Frieman MB.

Curr Opin Virol. 2020 Feb;40:37-40. doi: 10.1016/j.coviro.2020.05.010. Epub 2020 Jun 4.

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Postepy Biochem. 2020 May 9;66(2):83-90. doi: 10.18388/pb.2020_321.

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Daru. 2022 Sep 2. doi: 10.1007/s40199-022-00446-8. Online ahead of print.

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AIDS Behav. 2022 Sep 1. doi: 10.1007/s10461-022-03789-0. Online ahead of print.

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Comput Intell Neurosci. 2022 Aug 20;2022:2728866. doi: 10.1155/2022/2728866. eCollection 2022.

PMID: 36039344 [Free PMC article.](#)

Postoperative outcomes that matter to patients undergoing inguinal hernia repair: A qualitative study.

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Appendix #2



Scientific Brief: SARS-CoV-2 Transmission

Updated May 7, 2021 [Print](#)

COVID-19 Science Briefs provide a summary of the scientific evidence used to inform specific CDC guidance and recommendations. The Science Briefs reflect the scientific evidence, and CDC's understanding of it, on a specific topic at the time of the Brief's publication. Though CDC seeks to update Science Briefs when and as appropriate, given ongoing changes in scientific evidence an individual Science Brief might not reflect CDC's current understanding of that topic. As scientific evidence and available information on COVID-19 change, Science Briefs will be systematically archived as historic reference materials.

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SARS-CoV-2 is transmitted by exposure to infectious respiratory fluids

The principal mode by which people are infected with SARS-CoV-2 (the virus that causes COVID-19) is through exposure to respiratory fluids carrying infectious virus. Exposure occurs in three principal ways: (1) inhalation of very fine respiratory droplets and aerosol particles, (2) deposition of respiratory droplets and particles on exposed mucous membranes in the mouth, nose, or eye by direct splashes and sprays, and (3) touching mucous membranes with hands that have been soiled either directly by virus-containing respiratory fluids or indirectly by touching surfaces with virus on them.

People release respiratory fluids during exhalation (e.g., quiet breathing, speaking, singing, exercise, coughing, sneezing) in the form of droplets across a spectrum of sizes.¹⁻⁹ These droplets carry virus and transmit infection.

- The largest droplets settle out of the air rapidly, within seconds to minutes.
- The smallest very fine droplets, and aerosol particles formed when these fine droplets rapidly dry, are small enough that they can remain suspended in the air for minutes to hours.

Infectious exposures to respiratory fluids carrying SARS-CoV-2 occur in three principal ways (not mutually exclusive):

1. **Inhalation** of air carrying very small fine droplets and aerosol particles that contain infectious virus. Risk of transmission is greatest within three to six feet of an infectious source where the concentration of these very fine droplets and particles is greatest.
2. **Deposition** of virus carried in exhaled droplets and particles onto exposed mucous membranes (i.e., “splashes and sprays”, such as being coughed on). Risk of transmission is likewise greatest close to an infectious source where the concentration of these exhaled droplets and particles is greatest.
3. **Touching** mucous membranes with hands soiled by exhaled respiratory fluids containing virus or from touching inanimate surfaces contaminated with virus.

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The risk of SARS–CoV–2 infection varies according to the amount of virus to which a person is exposed

Once infectious droplets and particles are exhaled, they move outward from the source. The risk for infection decreases with increasing distance from the source and increasing time after exhalation. Two principal processes determine the amount of virus to which a person is exposed in the air or by touching a surface contaminated by virus:

1. **Decreasing concentration of virus in the air** as larger and heavier respiratory droplets containing virus fall to the ground or other surfaces under the force of gravity and the very fine droplets and aerosol particles that remain in the airstream progressively mix with, and become diluted within, the growing volume and streams of air they encounter. This mixing is not necessarily uniform and can be influenced by thermal layering and initial jetting of exhalations.
2. **Progressive loss of viral viability and infectiousness** over time influenced by environmental factors such as temperature, humidity, and ultraviolet radiation (e.g., sunlight).

Transmission of SARS–CoV–2 from inhalation of virus in the air farther than six feet from an infectious source can occur

With increasing distance from the source, the role of inhalation likewise increases. Although infections through inhalation at distances greater than six feet from an infectious source are less likely than at closer distances, the phenomenon has been repeatedly documented under certain preventable circumstances.¹⁰⁻²¹ These transmission events have involved the presence of an infectious person exhaling virus indoors for an extended time (more than 15 minutes and in some cases hours) leading to virus concentrations in the air space sufficient to transmit infections to people more than 6 feet away, and in some cases to people who have passed through that space soon after the infectious person left. Per published reports, factors that increase the risk of SARS-CoV-2 infection under these circumstances include:

- **Enclosed spaces with inadequate ventilation or air handling** within which the concentration of exhaled respiratory fluids, especially very fine droplets and aerosol particles, can build-up in the air space.
- **Increased exhalation** of respiratory fluids if the infectious person is engaged in physical exertion or raises their voice (e.g., exercising, shouting, singing).
- **Prolonged exposure** to these conditions, typically more than 15 minutes.

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Prevention of COVID–19 transmission

The infectious dose of SARS-CoV-2 needed to transmit infection has not been established. Current evidence strongly suggests [transmission from contaminated surfaces](#) does not contribute substantially to new infections. Although animal studies²²⁻²⁴ and epidemiologic investigations²⁵ (in addition to those described above) indicate

that inhalation of virus can cause infection, the relative contributions of inhalation of virus and deposition of virus on mucous membranes remain unquantified and will be difficult to establish. Despite these knowledge gaps, the available evidence continues to demonstrate that existing recommendations to prevent SARS-CoV-2 transmission remain effective. These include physical distancing, community use of well-fitting masks (e.g., barrier face coverings, procedure/surgical masks), adequate ventilation, and avoidance of crowded indoor spaces. These methods will reduce transmission both from inhalation of virus and deposition of virus on exposed mucous membranes. [Transmission through soiled hands and surfaces](#) can be prevented by practicing good [hand hygiene](#) and by [environmental cleaning](#).

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[Science & Research](#)

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COVID-19 Vaccines and Vaccination

SARS-CoV-2 Transmission

SARS-CoV-2 and Surface (Fomite) Transmission for Indoor Community Environments

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Appendix #3



Healthcare

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Infectious Diseases

Healthcare workers (HCWs) are occupationally exposed to a variety of infectious diseases during the performance of their duties. The delivery of healthcare services requires a broad range of workers, such as physicians, nurses, technicians, clinical laboratory workers, first responders, building maintenance, security and administrative personnel, social workers, food service, housekeeping, and mortuary personnel. Moreover, these workers can be found in a variety of workplace settings, including hospitals, nursing care facilities, outpatient clinics (e.g., medical and dental offices, and occupational health clinics), ambulatory care centers, and emergency response settings. The diversity among HCWs and their workplaces makes occupational exposure to infectious diseases especially challenging. For example, not all workers in the same healthcare facility, not all individuals with the same job title, and not all healthcare facilities will be at equal risk of occupational exposure to infectious agents.

The primary routes of infectious disease transmission in U.S. healthcare settings are contact, droplet, and airborne. Contact transmission can be sub-divided into direct and indirect contact. Direct contact transmission involves the transfer of infectious agents to a susceptible individual through physical contact with an infected individual (e.g., direct skin-to-skin contact). Indirect contact transmission occurs when infectious agents are transferred to a susceptible individual when the individual makes physical contact with contaminated items and surfaces (e.g., door knobs, patient-care instruments or equipment, bed rails, examination table). Two examples of contact transmissible infectious agents include Methicillin-resistant *Staphylococcus aureus* (MRSA) and Vancomycin-resistant enterococcus (VRE).

Droplets containing infectious agents are generated when an infected person coughs, sneezes, or talks, or during certain medical procedures, such as suctioning or endotrachea intubation. Transmission occurs when droplets generated in this way come into direct contact with the mucosal surfaces of the eyes, nose, or mouth of a susceptible individual. Droplets are too large to be airborne for long periods of time, and droplet transmission does not occur through the air over long distances. Two examples of droplet transmissible infectious agents are the influenza virus which causes the seasonal flu and *Bordetella pertussis* which causes pertussis (i.e., whooping cough).

Airborne transmission occurs through very small particles or droplet nuclei that contain infectious agents and can remain suspended in air for extended periods of time. When they are inhaled by a susceptible individual, they enter the respiratory tract and can cause infection. Since air currents can disperse these particles or droplet nuclei over long distances, airborne transmission does not require face-to-face contact with an infected individual. Airborne transmission only occurs with infectious agents that are capable of surviving and retaining infectivity for relatively long periods of time in airborne particles or droplet nuclei. Only a limited number of diseases are transmissible via the airborne route. Two examples of agents that can be spread through the airborne route include *Mycobacterium tuberculosis* which causes tuberculosis (TB) and the **measles virus** (*Measles morbillivirus*), which causes measles (sometimes called "rubeola," among other names).

Several OSHA standards and directives are directly applicable to protecting workers against transmission of infectious agents. These include OSHA's **Bloodborne Pathogens standard (29 CFR 1910.1030)** which provides protection of workers from exposures to blood and body fluids that may contain bloodborne infectious agents; OSHA's **Personal Protective Equipment standard (29 CFR 1910.132)** and **Respiratory Protection standard (29 CFR 1910.134)** which provide protection for workers when exposed to contact, droplet and airborne transmissible infectious agents; and OSHA's *TB compliance directive* which protects

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workers against exposure to TB through enforcement of existing applicable OSHA standards and the General Duty Clause of the OSH Act.

CDC Guidelines

Below is an abbreviated list of CDC resources available to assist HCWs in assessing and reducing their risks for occupational exposure to infectious diseases.

- [Hand Hygiene in Healthcare Settings](#). This web page provides HCWs and patients with a variety of resources including guidelines for providers, patient empowerment materials, the latest technological advances in hand hygiene adherence measurement, frequently asked questions, and links to promotional and educational tools published by the World Health Organization (WHO), universities, and health departments.
- [Guide to Infection Prevention for Outpatient Settings: Minimum Expectations for Safe Care](#). This document is a summary guide of infection prevention recommendations for outpatient (ambulatory care) settings.
- [Infection Control: Guideline for Disinfection and Sterilization in Healthcare Facilities](#). Includes a link to a document (Guideline for Disinfection and Sterilization in Healthcare Facilities) that presents evidence-based recommendations on the preferred methods for cleaning, disinfection and sterilization of patient-care medical devices and for cleaning and disinfecting the healthcare environment. This document supersedes the relevant sections contained in the 1985 Centers for Disease Control and Prevention (CDC) Guideline for Handwashing and Environmental Control.
- [Isolation Precautions](#). Includes a link to a document (Guideline for Isolation Precautions: Preventing Transmission of Infectious Agents in Healthcare Settings) intended for use by infection control (IC) staff, healthcare epidemiologists, healthcare administrators, nurses, other healthcare providers, and persons responsible for developing, implementing, and evaluating IC programs for healthcare settings across the continuum of care.
- [Multidrug-resistant organisms Management](#). All healthcare settings are affected by the emergence and transmission of antimicrobial-resistant microbes. Provides information for the prevention of transmission of Multidrug Resistant Organisms (MDROs).
- [Guidelines for Environmental Infection Control in Health-Care Facilities](#). (June 6, 2003). This web page provides guidelines, recommendations and strategies for preventing environment-associated infections in healthcare facilities.
- [Guideline for Infection Control in Health Care Personnel, 1998](#). These guidelines address infection control procedures to protect workers from occupational exposure to infectious agents.
- [Healthcare Workers](#). National Institute for Occupational Safety and Health (NIOSH) Workplace Safety and Health Topic. Healthcare is the fastest-growing sector of the U.S. economy, employing over 18 million workers. Women represent nearly 80% of this work force. Healthcare workers face a wide range of hazards on the job, including needlestick injuries, back injuries, latex allergy, violence, and stress.
- [Eye Safety— Eye Protection for Infection Control](#). National Institute for Occupational Safety and Health (NIOSH) Workplace Safety and Health Topic. NIOSH recommends eye protection for a variety of potential exposure settings where workers may be at risk of acquiring infectious diseases via ocular exposure.

Specific Diseases

Bloodborne Pathogens

- [Bloodborne Pathogens and Needlestick Injuries](#). OSHA Safety and Health Topics Page.

Cytomegalovirus (CMV)

- [Cytomegalovirus \(CMV\)](#). OSHA Safety and Health Topics Page.

Ebola

- [Ebola](#). OSHA Safety and Health Topics Page.

Seasonal Flu

- [Seasonal Flu](#). OSHA Safety and Health Topics Page.

Pandemic Flu

- [Pandemic Influenza](#) OSHA Safety and Health Topics Page.

Measles

- [Measles](#). OSHA Safety and Health Topics Page.

MERS

- [MERS](#). OSHA Safety and Health Topics Page.

MRSA

- [Methicillin-resistant Staphylococcus Aureus \(MRSA\) Infections](#). Centers for Disease Control and Prevention (CDC). Methicillin-resistant *Staphylococcus Aureus* (MRSA) is a type of staph bacteria that is resistant to certain antibiotics which include methicillin and other more common antibiotics such as oxacillin, penicillin, and amoxicillin. This web site has links to numerous other web sites that provide information for protection of healthcare workers from MRSA infections.



- [MDRO - Multidrug-Resistant Organisms – MRSA](#). OSHA. This is the Methicillin-resistant *Staphylococcus aureus* (MRSA) portion of the multi-drug resistant organism module of OSHA's [Hospitals eTool](#). This electronic aid provides information to help stop the spread of MRSA among employees and others working in healthcare and other industries. Your local public health agency has information on what your community is doing to prevent the spread of MRSA.

Norovirus

- [A Norovirus Outbreak Control Resource Toolkit for Healthcare Settings](#). Centers for Disease Control and Prevention (CDC). Because of high levels of contact and vulnerable patient populations, healthcare settings can be particularly susceptible to outbreaks of norovirus. To help address the challenges of managing and controlling norovirus gastroenteritis outbreaks in healthcare settings, the CDC offers a toolkit for healthcare professionals including up-to-date information, recommended infection control measures, and tools for outbreak response coordination and reporting.
- [Noroviruses](#). (May 2008). OSHA Fact Sheet. Although noroviruses are currently more of a concern to the general public than to workers, the increasing incidence of norovirus outbreaks exposes many different worker groups, especially healthcare workers (HCWs).

SARS

- [Information Regarding Severe Acute Respiratory Syndrome \(SARS\)](#). OSHA.

Tuberculosis

- [Tuberculosis](#). OSHA Safety and Health Topics Page.

Zika

- [Zika](#). OSHA Safety and Health Topics Page.

Additional Biological Agents

- [Biological Agents](#). OSHA Safety and Health Topics Page.

State Legislation

- [California Code of Regulations, Title 8, Section 5199. Aerosol Transmissible Diseases](#). Cal-OSHA's ATD standard protects laboratory workers, as well as, healthcare workers, emergency responders, and many others from exposure to droplet and airborne transmissible diseases when engaged in the performance of their duties.

Workers' Rights >



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By [Standard Number](#) / 1910.9 - Compliance duties owed to each employee.

- **Part Number:** 1910
- **Part Number Title:** Occupational Safety and Health Standards
- **Subpart:** 1910 Subpart A
- **Subpart Title:** General
- **Standard Number:** [1910.9](#)
- **Title:** Compliance duties owed to each employee.
- **GPO Source:** [eCFR](#)

1910.9(a)

Personal protective equipment. Standards in this part requiring the employer to provide personal protective equipment (PPE), including respirators and other types of PPE, because of hazards to employees impose a separate compliance duty with respect to each employee covered by the requirement. The employer must provide PPE to each employee required to use the PPE, and each failure to provide PPE to an employee may be considered a separate violation.

1910.9(b)

Training. Standards in this part requiring training on hazards and related matters, such as standards requiring that employees receive training or that the employer train employees, provide training to employees, or institute or implement a training program, impose a separate compliance duty with respect to each employee covered by the requirement. The employer must train each affected employee in the manner required by the standard, and each failure to train an employee may be considered a separate violation.

[73 FR 75583, Dec. 12, 2008]



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By [Standard Number](#) / 1910.132 - General requirements.

- **Part Number:** 1910
- **Part Number Title:** Occupational Safety and Health Standards
- **Subpart:** 1910 Subpart I
- **Subpart Title:** Personal Protective Equipment
- **Standard Number:** [1910.132](#)
- **Title:** General requirements.
- **GPO Source:** [e-CFR](#)

[1910.132\(a\)](#)

Application. Protective equipment, including personal protective equipment for eyes, face, head, and extremities, protective clothing, respiratory devices, and protective shields and barriers, shall be provided, used, and maintained in a sanitary and reliable condition wherever it is necessary by reason of hazards of processes or environment, chemical hazards, radiological hazards, or mechanical irritants encountered in a manner capable of causing injury or impairment in the function of any part of the body through absorption, inhalation or physical contact.

[1910.132\(b\)](#)

Employee-owned equipment. Where employees provide their own protective equipment, the employer shall be responsible to assure its adequacy, including proper maintenance, and sanitation of such equipment.

[1910.132\(c\)](#)

Design. All personal protective equipment shall be of safe design and construction for the work to be performed.

[1910.132\(d\)](#)

Hazard assessment and equipment selection.

[1910.132\(d\)\(1\)](#)

The employer shall assess the workplace to determine if hazards are present, or are likely to be present, which necessitate the use of personal protective equipment (PPE). If such hazards are present, or likely to be present, the employer shall:

[1910.132\(d\)\(1\)\(i\)](#)

Select, and have each affected employee use, the types of PPE that will protect the affected employee from the hazards identified in the hazard assessment;

[1910.132\(d\)\(1\)\(ii\)](#)

Communicate selection decisions to each affected employee; and,

[1910.132\(d\)\(1\)\(iii\)](#)

Select PPE that properly fits each affected employee.

Note:

Non-mandatory appendix B contains an example of procedures that would comply with the requirement for a hazard assessment.

[1910.132\(d\)\(2\)](#)

The employer shall verify that the required workplace hazard assessment has been performed through a written certification that identifies the workplace evaluated; the person certifying that the evaluation has been performed; the date(s) of the hazard assessment; and, which identifies the document as a certification of hazard assessment.

[1910.132\(e\)](#)

Defective and damaged equipment. Defective or damaged personal protective equipment shall not be used.

[1910.132\(f\)](#)

Training.

[1910.132\(f\)\(1\)](#)

The employer shall provide training to each employee who is required by this section to use PPE. Each such employee shall be trained to know at

least the following:

1910.132(f)(1)(i)

When PPE is necessary;

1910.132(f)(1)(ii)

What PPE is necessary;

1910.132(f)(1)(iii)

How to properly don, doff, adjust, and wear PPE;

1910.132(f)(1)(iv)

The limitations of the PPE; and,

1910.132(f)(1)(v)

The proper care, maintenance, useful life and disposal of the PPE.

1910.132(f)(2)

Each affected employee shall demonstrate an understanding of the training specified in paragraph (f)(1) of this section, and the ability to use PPE properly, before being allowed to perform work requiring the use of PPE.

1910.132(f)(3)

When the employer has reason to believe that any affected employee who has already been trained does not have the understanding and skill required by paragraph (f)(2) of this section, the employer shall retrain each such employee. Circumstances where retraining is required include, but are not limited to, situations where:

1910.132(f)(3)(i)

Changes in the workplace render previous training obsolete; or

1910.132(f)(3)(ii)

Changes in the types of PPE to be used render previous training obsolete; or

1910.132(f)(3)(iii)

Inadequacies in an affected employee's knowledge or use of assigned PPE indicate that the employee has not retained the requisite understanding or skill.

1910.132(g)

Paragraphs (d) and (f) of this section apply only to §§ 1910.133, 1910.135, 1910.136, 1910.138, and 1910.140. Paragraphs (d) and (f) of this section do not apply to §§ 1910.134 and 1910.137.

1910.132(h)

Payment for protective equipment.

1910.132(h)(1)

Except as provided by paragraphs (h)(2) through (h)(6) of this section, the protective equipment, including personal protective equipment (PPE), used to comply with this part, shall be provided by the employer at no cost to employees.

1910.132(h)(2)

The employer is not required to pay for non-specialty safety-toe protective footwear (including steel-toe shoes or steel-toe boots) and non-specialty prescription safety eyewear, provided that the employer permits such items to be worn off the job-site.

1910.132(h)(3)

When the employer provides metatarsal guards and allows the employee, at his or her request, to use shoes or boots with built-in metatarsal protection, the employer is not required to reimburse the employee for the shoes or boots.

1910.132(h)(4)

The employer is not required to pay for:

1910.132(h)(4)(i)

The logging boots required by 29 CFR 1910.266(d)(1)(v);

1910.132(h)(4)(ii)

Everyday clothing, such as long-sleeve shirts, long pants, street shoes, and normal work boots; or

1910.132(h)(4)(iii)

Ordinary clothing, skin creams, or other items, used solely for protection from weather, such as winter coats, jackets, gloves, parkas, rubber boots, hats, raincoats, ordinary sunglasses, and sunscreen.

1910.132(h)(5)

The employer must pay for replacement PPE, except when the employee has lost or intentionally damaged the PPE.

1910.132(h)(6)

Where an employee provides adequate protective equipment he or she owns pursuant to paragraph (b) of this section, the employer may allow the employee to use it and is not required to reimburse the employee for that equipment. The employer shall not require an employee to provide or pay for his or her own PPE, unless the PPE is excepted by paragraphs (h)(2) through (h)(5) of this section.

1910.132(h)(7)

This paragraph (h) shall become effective on February 13, 2008. Employers must implement the PPE payment requirements no later than May 15, 2008.

Note to §1910.132(h):

When the provisions of another OSHA standard specify whether or not the employer must pay for specific equipment, the payment provisions of that standard shall prevail.

[39 FR 23502, June 27, 1974, as amended at 59 FR 16334, April 6, 1994; 59 FR 33910, July 1, 1994; 59 FR 34580, July 6, 1994; 72 FR 64428, Nov. 15, 2007; 76 FR 33606, June 8, 2011; 81 FR 82999, Nov. 18, 2016]



UNITED STATES DEPARTMENT OF LABOR

Occupational Safety & Health
Administration

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By [Standard Number](#) / 1910.134 - Respiratory protection.

- **Part Number:** 1910
- **Part Number Title:** Occupational Safety and Health Standards
- **Subpart:** 1910 Subpart I
- **Subpart Title:** Personal Protective Equipment
- **Standard Number:** [1910.134](#)
- **Title:** Respiratory protection.
- **Appendix:** [A](#); [B-1](#); [B-2](#); [C](#); [D](#)
- **GPO Source:** [e-CFR](#)

This section applies to General Industry (part 1910), Shipyards (part 1915), Marine Terminals (part 1917), Longshoring (part 1918), and Construction (part 1926).

[1910.134\(a\)](#)

Permissible practice.

[1910.134\(a\)\(1\)](#)

In the control of those occupational diseases caused by breathing air contaminated with harmful dusts, fogs, fumes, mists, gases, smokes, sprays, or vapors, the primary objective shall be to prevent atmospheric contamination. This shall be accomplished as far as feasible by accepted engineering control measures (for example, enclosure or confinement of the operation, general and local ventilation, and substitution of less toxic materials). When effective engineering controls are not feasible, or while they are being instituted, appropriate respirators shall be used pursuant to this section.

[1910.134\(a\)\(2\)](#)

A respirator shall be provided to each employee when such equipment is necessary to protect the health of such employee. The employer shall provide the respirators which are applicable and suitable for the purpose intended. The employer shall be responsible for the establishment and maintenance of a respiratory protection program, which shall include the requirements outlined in paragraph (c) of this section. The program shall cover each employee required by this section to use a respirator.

[1910.134\(b\)](#)

Definitions. The following definitions are important terms used in the respiratory protection standard in this section.

Air-purifying respirator means a respirator with an air-purifying filter, cartridge, or canister that removes specific air contaminants by passing ambient air through the air-purifying element.

Assigned protection factor (APF) means the workplace level of respiratory protection that a respirator or class of respirators is expected to provide to employees when the employer implements a continuing, effective respiratory protection program as specified by this section.

Atmosphere-supplying respirator means a respirator that supplies the respirator user with breathing air from a source independent of the ambient atmosphere, and includes supplied-air respirators (SARs) and self-contained breathing apparatus (SCBA) units.

Canister or cartridge means a container with a filter, sorbent, or catalyst, or combination of these items, which removes specific contaminants from the air passed through the container.

Demand respirator means an atmosphere-supplying respirator that admits breathing air to the facepiece only when a negative pressure is created inside the facepiece by inhalation.

permitted scope of practice (i.e., license, registration, or certification) allows him or her to independently provide, or be delegated the responsibility to provide, some or all of the health care services required by paragraph (e) of this section.

Positive pressure respirator means a respirator in which the pressure inside the respiratory inlet covering exceeds the ambient air pressure outside the respirator.

Powered air-purifying respirator (PAPR) means an air-purifying respirator that uses a blower to force the ambient air through air-purifying elements to the inlet covering.

Pressure demand respirator means a positive pressure atmosphere-supplying respirator that admits breathing air to the facepiece when the positive pressure is reduced inside the facepiece by inhalation.

Qualitative fit test (QLFT) means a pass/fail fit test to assess the adequacy of respirator fit that relies on the individual's response to the test agent.

Quantitative fit test (QNFT) means an assessment of the adequacy of respirator fit by numerically measuring the amount of leakage into the respirator.

Respiratory inlet covering means that portion of a respirator that forms the protective barrier between the user's respiratory tract and an air-purifying device or breathing air source, or both. It may be a facepiece, helmet, hood, suit, or a mouthpiece respirator with nose clamp.

Self-contained breathing apparatus (SCBA) means an atmosphere-supplying respirator for which the breathing air source is designed to be carried by the user.

Service life means the period of time that a respirator, filter or sorbent, or other respiratory equipment provides adequate protection to the wearer.

Supplied-air respirator (SAR) or airline respirator means an atmosphere-supplying respirator for which the source of breathing air is not designed to be carried by the user.

This section means this respiratory protection standard.

Tight-fitting facepiece means a respiratory inlet covering that forms a complete seal with the face.

User seal check means an action conducted by the respirator user to determine if the respirator is properly seated to the face.

1910.134(c)

Respiratory protection program. This paragraph requires the employer to develop and implement a written respiratory protection program with required worksite-specific procedures and elements for required respirator use. The program must be administered by a suitably trained program administrator. In addition, certain program elements may be required for voluntary use to prevent potential hazards associated with the use of the respirator. The Small Entity Compliance Guide contains criteria for the selection of a program administrator and a sample program that meets the requirements of this paragraph. Copies of the Small Entity Compliance Guide will be available on or about April 8, 1998 from the Occupational Safety and Health Administration's Office of Publications, Room N 3101, 200 Constitution Avenue, NW, Washington, DC, 20210 (202-219-4667).

1910.134(c)(1)

In any workplace where respirators are necessary to protect the health of the employee or whenever respirators are required by the employer, the employer shall establish and implement a written respiratory protection program with worksite-specific procedures. The program shall be updated as necessary to reflect those changes in workplace conditions that affect respirator use. The employer shall include in the program the following provisions of this section, as applicable:

1910.134(c)(1)(i)

Procedures for selecting respirators for use in the workplace;

1910.134(c)(1)(ii)

Medical evaluations of employees required to use respirators;



Occupational Safety and Health Administration

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Table of Contents General Duty Clause Complete OSH Act Version ("All-in-One")

SEC. 5. Duties

(a) Each employer --

(1) shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees;

29 USC 654

(2) shall comply with occupational safety and health standards promulgated under this Act.

(b) Each employee shall comply with occupational safety and health standards and all rules, regulations, and orders issued pursuant to this Act which are applicable to his own actions and conduct.



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Appendix #4

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The Roots of Public Health and CDC

[Print](#)

Marine Hospital Service



The nation's first public health agency, the Marine Hospital Service (MHS), formed in 1798 to care for sick and injured seamen. The agency consisted of a series of hospitals with personnel who provided medical care.

The Rules and Orders from one of those hospitals, the Charlestown Marine Hospital, gives a glimpse into the conditions and challenges in hospitals during this time. Among the fifteen rules for the hospital, printed on a thin plaque are the words: "every patient is to be shaved Sunday and Wednesday," and "every patient is forbidden to spit on the floor."

The large wooden seal of this program stands two feet in diameter. The round seal is made of polished, carved wood and consists of three symbols: 1) a caduceus, 2) a fouled anchor, and 3) the year 1798. The caduceus depicts two snakes wrapped around a winged staff, or stick, and it symbolizes medicine. The fouled anchor, or anchor wrapped with chain, symbolizes a seaman in

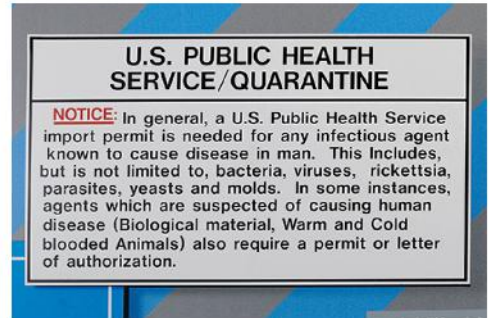
distress. The year 1798 is when the MHS was formed, and it is written below the crossed images.

Over time, the Marine Hospital Service's duties increased outside of the seamen population, and it became responsible for preventing the spread of contagious diseases throughout the United States. A contagious disease is any disease that can spread from one person to another, such as flu or the common cold. In 1902, the agency's name changed to Public Health and Marine Hospital Service, and finally in 1912, to reflect its growing responsibilities, the agency was renamed the [United States Public Health Service \(USPHS\)](#). The wooden seal discussed earlier remained the same through the name changes and is still used today.



The Expanding Mission of Public Health

Initially, the [USPHS](#)'s primary task was [quarantining](#) persons on ships. Quarantine separates and restricts the movement of people who were exposed to a contagious disease to see if they become sick. The word itself means "forty days," which was the length of time quarantine lasted at first, but soon changed to twenty-one days. Quarantine was critical before antibiotics were developed and remains critical today for the prevention of certain diseases that have no treatments.



Artifacts pictured in this section that relate to the U.S. Public Health Service's quarantine work include a medical kit and a large metal sign from Atlanta's Hartsfield Jackson International Airport. The kit is a metal cube shaped box, with a handle on the top and words USPHS QUARANTINE stenciled in black, capitalized, letters. This is an example of a medical kit a USPHS Officer around 1920 may have used to evaluate a potentially sick person. The large metal sign is from the airport [quarantine station](#). The quarantine station at Atlanta's airport is one of the United States' twenty quarantine stations located at every entry port, border crossing, and San Juan, Puerto Rico. These stations help monitor the movement of potentially sick persons between countries and are critical during epidemics, when a disease spreads rapidly through a community, country, or across several countries. Both objects show the long-standing importance of quarantine activities inside the United States and at the borders.





Here are two photographs: one of women making cloth flowers in a factory in 1910 and another of a copper miner hauling overloaded carts out of a mine. Both images show the grim environments in which many people worked and are further examples of the changing role of the USPHS. The U.S. Public Health Service tried to improve these workplaces by identifying unsafe working and living conditions and making recommendations for how to keep these workers safe and healthy.

While the USPHS continues to work to improve the health of the U.S. today, one USPHS program created in 1942 – the [Malaria Control in War Areas program \(MCWA\)](#) — is very important to CDC's history.



At its founding, CDC had around 400 employees, most of whom formerly worked in the MCWA. The CDC office, pictured here, was in the former MCWA headquarters, the eight-story "Volunteer Building" on the corner of Peachtree Street and 7th Street. CDC occupied two floors in this building and was present at a few other sites throughout the Atlanta area, including Chamblee and Lawrenceville.

Photographs also show the Chamblee satellite campus consisting of reconfigured one-story, light-colored, old barracks and portable buildings, which housed the majority of the fledgling CDC's laboratories. To consolidate multiple campuses into one, Robert Woodruff, Coca-Cola chairman and long-time board member of neighboring Emory University, made possible the deeding of 15 acres to the U.S. Public Health Service in 1947 for CDC.



According to agency folklore, CDC employees each contributed ten cents for a token payment of \$10 – a bargain, even then. Over time, CDC's name has officially changed several times, and the number of staff has grown to between 15 and 16 thousand, but the mission of protecting the health of the US has remained the same, and the initials have remained CDC.

Dr. Mountin's Uniform



Seen here is Dr. Mountin's ceremonial USPHS uniform, which was worn at formal events. The uniform consists of a long-sleeved, blue wool coat, a white and blue hat, leather belt, and ceremonial sword. The U.S. Public Health Service uniform is based on a naval uniform but is decorated with the USPHS seal described earlier in the exhibit. The seal demonstrates that the U.S. Public Health Service is its own branch of the United States uniformed services alongside the Navy, Army, Coast Guard, Marines, Air Force, Space Force, and NOAA – the National Oceanic and Atmospheric Administration.

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Appendix #5

(56 Stat. 147), as amended (56 Stat. 1093; 50 App., U. S. C., Supp. III, 1015), and payments under the retroactive provisions of such amendments are authorized to be paid from appropriations currently available.

Approved July 1, 1944.

[CHAPTER 372]

AN ACT

July 1, 1944
[H. R. 4466]
[Public Law 409]

To amend section 18 of the Pay Readjustment Act of 1942 to provide additional pay for personnel who are required to participate in regular and frequent glider flights.

56 Stat. 368.
37 U. S. C., Supp.
III, § 118.
Post, p. 730.

Personnel making
glider flights.
Additional pay.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 18 of the Pay Readjustment Act of 1942, as amended, is hereby amended by adding a new paragraph at the end thereof to read as follows:

“Any officer, warrant officer, nurse, or enlisted man of any of the services mentioned in the title of this Act, not in flying-pay or parachute-jumping-pay status, who is required by orders of competent authority to participate in regular and frequent glider flights as an essential part of his military or naval duty and training, as defined under such regulations as may be prescribed by the President, shall receive an increase of 50 per centum of their pay when in consequence of such orders they do participate in such flights: *Provided,* That such increase shall not exceed \$100 per month in the case of any such officer, warrant officer or nurse, nor \$50 per month in the case of any such enlisted man.”

Limitation.

Approved July 1, 1944.

[CHAPTER 373]

AN ACT

July 1, 1944
[H. R. 4624]
[Public Law 410]

To consolidate and revise the laws relating to the Public Health Service, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—SHORT TITLE AND DEFINITIONS

SHORT TITLE

Public Health Service Act.

SECTION 1. Titles I to V, inclusive, of this Act may be cited as the “Public Health Service Act”.

DEFINITIONS

SEC. 2. When used in this Act—

“Service.”
“Surgeon General.”
“Administrator.”
“Regulations.”
“Executive department.”
“State.”

(a) The term “Service” means the Public Health Service;
(b) The term “Surgeon General” means the Surgeon General of the Public Health Service;
(c) The term “Administrator” means the Federal Security Administrator;
(d) The term “regulations”, except when otherwise specified, means rules and regulations made by the Surgeon General with the approval of the Administrator;
(e) The term “executive department” means any executive department, agency, or independent establishment of the United States or any corporation wholly owned by the United States;
(f) The term “State” means a State or the District of Columbia, Hawaii, Alaska, Puerto Rico, or the Virgin Islands, except that as

corps of the Service to be a military service. Upon such declaration, and during the period of such war or such part thereof as the President shall prescribe, the commissioned corps (1) shall constitute a branch of the land and naval forces of the United States, and (2) to the extent prescribed by regulations of the President, shall be subject to the Articles of War and to the Articles for the Government of the Navy: *Provided*, That during such period or part thereof the commissioned corps shall continue to operate as part of the Service except to the extent that the President may direct as Commander in Chief.

41 Stat. 787; 12 Stat. 600.
10 U. S. C. § 1471
et seq.; Supp. III, ch. 36; 34 U. S. C. § 1200;
Supp. III, ch. 21.

NATIONAL ADVISORY HEALTH AND CANCER COUNCILS

SEC. 217. (a) The National Advisory Health Council shall consist of fourteen members. The Director of the National Institute of Health, and three experts, one each from the Army, the Navy, and the Bureau of Animal Industry, to be detailed by the Secretary of War, the Secretary of the Navy, and the Secretary of Agriculture, respectively, shall be *ex officio* members of the Council. The Surgeon General, with the approval of the Administrator, shall appoint, without regard to the civil-service laws, ten members of the Council who shall be persons, not otherwise in the employ of the United States, skilled in the sciences related to health. Each appointed member shall hold office for a term of five years, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term. An appointed member shall not be eligible to serve continuously for more than five years but shall be eligible for reappointment if he has not served immediately preceding his reappointment.

National Advisory
Health Council.
Members.

(b) The National Advisory Health Council shall advise, consult with, and make recommendations to, the Surgeon General on matters relating to health activities and functions of the Service. The Surgeon General is authorized to utilize the services of any member or members of the Council, and where appropriate, any member or members of the National Advisory Cancer Council in connection with matters related to the work of the Service, for such periods, in addition to conference periods, as he may determine.

Duties.

(c) The National Advisory Cancer Council shall consist of the Surgeon General *ex officio*, who shall be Chairman, and of six members to be appointed without regard to the civil-service laws by the Surgeon General with the approval of the Administrator. The six appointed members shall be selected from leading medical or scientific authorities who are outstanding in the study, diagnosis, or treatment of cancer. Each appointed member shall hold office for a term of three years, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term. An appointed member shall not be eligible to serve continuously for more than three years but shall be eligible for reappointment if he has not served immediately preceding his reappointment.

National Advisory
Cancer Council.
Members.

TITLE III—GENERAL POWERS AND DUTIES OF PUBLIC HEALTH SERVICE

PART A—RESEARCH AND INVESTIGATIONS

IN GENERAL

SEC. 301. The Surgeon General shall conduct in the Service, and encourage, cooperate with, and render assistance to other appropriate

Duties and authority
of Surgeon General.

public authorities, scientific institutions, and scientists in the conduct of, and promote the coordination of, research, investigations, experiments, demonstrations, and studies relating to the causes, diagnosis, treatment, control, and prevention of physical and mental diseases and impairments of man, including water purification, sewage treatment, and pollution of lakes and streams. In carrying out the foregoing the Surgeon General is authorized to—

Collection and dissemination of information.

(a) Collect and make available through publications and other appropriate means, information as to, and the practical application of, such research and other activities;

Research facilities.

(b) Make available research facilities of the Service to appropriate public authorities, and to health officials and scientists engaged in special study;

Research fellowships.

(c) Establish and maintain research fellowships in the Service with such stipends and allowances, including traveling and subsistence expenses, as he may deem necessary to procure the assistance of the most brilliant and promising research fellows from the United States and abroad;

Grants in aid to institutions and individuals.

(d) Make grants in aid to universities, hospitals, laboratories, and other public or private institutions, and to individuals for such research projects as are recommended by the National Advisory Health Council, or, with respect to cancer, recommended by the National Advisory Cancer Council;

Assistance of experts.

(e) Secure from time to time and for such periods as he deems advisable, the assistance and advice of experts, scholars, and consultants from the United States or abroad;

Admission of cases for study.

(f) For purposes of study, admit and treat at institutions, hospitals, and stations of the Service, persons not otherwise eligible for such treatment; and

Adoption of additional means for research and investigations.

(g) Adopt, upon recommendation of the National Advisory Health Council, or, with respect to cancer, upon recommendation of the National Advisory Cancer Council, such additional means as he deems necessary or appropriate to carry out the purposes of this section.

NARCOTICS

Studies and investigations.

SEC. 302. (a) In carrying out the purposes of section 301 with respect to narcotics, the studies and investigations shall include the use and misuse of narcotic drugs, the quantities of crude opium, coca leaves, and their salts, derivatives, and preparations, together with reserves thereof, necessary to supply the normal and emergency medicinal and scientific requirements of the United States. The results of studies and investigations of the quantities of crude opium, coca leaves, or other narcotic drugs, together with such reserves thereof, as are necessary to supply the normal and emergency medicinal and scientific requirements of the United States, shall be reported not later than the 1st day of September each year to the Secretary of the Treasury, to be used at his discretion in determining the amounts of crude opium and coca leaves to be imported under the Narcotic Drugs Import and Export Act, as amended.

Reports.

(b) The Surgeon General shall cooperate with States for the purpose of aiding them to solve their narcotic drug problems and shall give authorized representatives of the States the benefit of his experience in the care, treatment, and rehabilitation of narcotic addicts to the end that each State may be encouraged to provide adequate facilities and methods for the care and treatment of its narcotic addicts.

35 Stat. 614.
21 U. S. C. §§ 171-184.
Post, p. 721.
Cooperation with States.

PART B—FEDERAL-STATE COOPERATION

IN GENERAL

SEC. 311. The Surgeon General is authorized to accept from State and local authorities any assistance in the enforcement of quarantine regulations made pursuant to this Act which such authorities may be able and willing to provide. The Surgeon General shall also assist States and their political subdivisions in the prevention and suppression of communicable diseases, shall cooperate with and aid State and local authorities in the enforcement of their quarantine and other health regulations and in carrying out the purposes specified in section 314, and shall advise the several States on matters relating to the preservation and improvement of the public health.

Enforcement of quarantine regulations.

Prevention of communicable diseases.
Post, p. 857.

HEALTH CONFERENCES

SEC. 312. A conference of the health authorities of the several States shall be called annually by the Surgeon General. Whenever in his opinion the interests of the public health would be promoted by a conference, the Surgeon General may invite as many of such health authorities to confer as he deems necessary or proper. Upon the application of health authorities of five or more States it shall be the duty of the Surgeon General to call a conference of all State and Territorial health authorities joining in the request. Each State represented at any conference shall be entitled to a single vote.

COLLECTION OF VITAL STATISTICS

SEC. 313. To secure uniformity in the registration of mortality, morbidity, and vital statistics the Surgeon General shall prepare and distribute suitable and necessary forms for the collection and compilation of such statistics which shall be published as a part of the health reports published by the Surgeon General.

GRANTS AND SERVICES TO STATES

SEC. 314. (a) To enable the Surgeon General to carry out the purposes of section 301 with respect to developing more effective measures for the prevention, treatment, and control of venereal diseases, and to assist, through grants and as otherwise provided in this section, States, counties, health districts, and other political subdivisions of the States in establishing and maintaining adequate measures for the prevention, treatment, and control of such diseases, including the training of personnel for State and local health work, and to enable him to prevent and control the spread of the venereal diseases in interstate traffic, and to meet the cost of pay, allowances, and traveling expenses of commissioned officers and other personnel of the Service detailed to assist in carrying out the purposes of this section with respect to the venereal diseases, and to administer this section with respect to such diseases, there is hereby authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this subsection.

Control of venereal diseases.
Ante, p. 691.

Appropriations authorized.

(b) To enable the Surgeon General to carry out the purposes of section 301 with respect to developing more effective measures for the prevention, treatment, and control of tuberculosis, and to assist, through grants and as otherwise provided in this section, States, counties, health districts, and other political subdivisions of the States in establishing and maintaining adequate measures for the prevention, treatment, and control of such disease, including the

Control of tuberculosis.
Ante, p. 691.
Post, p. 857.

- provision of appropriate facilities for care and treatment and including the training of personnel for State and local health work, and to enable him to prevent and control the spread of tuberculosis in interstate traffic, and to meet the cost of pay, allowances, and traveling expenses of commissioned officers and other personnel of the Service detailed to assist in carrying out the purposes of this section with respect to tuberculosis, and to administer this section with respect to such disease, there is hereby authorized to be appropriated for the fiscal year ending June 30, 1945, the sum of \$10,000,000, and for each fiscal year thereafter a sum sufficient to carry out the purposes of this subsection.
- Appropriation authorized.
State and local health services.
- (c) To enable the Surgeon General to assist, through grants and as otherwise provided in this section, States, counties, health districts, and other political subdivisions of the States in establishing and maintaining adequate public health services, including grants for demonstrations and for the training of personnel for State and local health work, there is hereby authorized to be appropriated for each fiscal year a sum not to exceed \$20,000,000. Of the sum appropriated for each fiscal year pursuant to this subsection there shall be available an amount, not to exceed \$2,000,000, to enable the Surgeon General to provide demonstrations and to train personnel for State and local health work and to meet the cost of pay, allowances, and traveling expenses of commissioned officers and other personnel of the Service detailed to assist States in carrying out the purposes of this subsection.
- Appropriation authorized.
Demonstrations and training of personnel.
- (d) For each fiscal year, the Surgeon General, with the approval of the Administrator, shall determine the total sum from the appropriation under subsection (a), the total sum from the appropriation under subsection (b), and, within the limits specified in subsection (c), the total sum from the appropriation under that subsection which shall be available for allotment among the several States. He shall, in accordance with regulations, from time to time make allotments from such sums to the several States on the basis of (1) the population, (2) the size of the venereal-disease problem, the size of the tuberculosis problem, and the size of other special health problems, respectively, and (3) the financial need of the respective States. Upon making such allotments the Surgeon General shall notify the Secretary of the Treasury of the amounts thereof.
- Determination of State allotments.
- (e) The Surgeon General, with the approval of the Administrator, shall from time to time determine the amounts to be paid to each State from the allotments to such State, and shall certify to the Secretary of the Treasury, the amounts so determined, reduced or increased, as the case may be, by the amounts by which he finds that estimates of required expenditures with respect to any prior period were greater or less than the actual expenditures for such period. Upon receipt of such certification, the Secretary of the Treasury shall, through the Division of Disbursement of the Treasury Department and prior to audit or settlement by the General Accounting Office, pay in accordance with such certification.
- Certification and payment.
- (f) The moneys so paid to any State shall be expended solely in carrying out the purposes specified in subsection (a), or subsection (b), or subsection (c) of this section, as the case may be, and in accordance with plans presented by the health authority of such State and approved by the Surgeon General.
- Method of expenditure.
- (g) Money so paid shall be paid upon the condition that there shall be spent in such State for the same general purpose from funds of such State and its political subdivisions an amount determined in accordance with regulations.
- Local contributions.

(h) Whenever the Surgeon General, after reasonable notice and opportunity for hearing to the health authority of the State, finds that, with respect to money paid to the State out of appropriations under subsection (a), or subsection (b), or subsection (c), as the case may be, there is a failure to comply substantially with either—

- (1) the provisions of this section;
- (2) the plan submitted under subsection (f); or
- (3) the regulations;

the Surgeon General shall notify such State health authority either that further payments will not be made to the State from appropriations under such subsection (or in his discretion that further payments will not be made to the State from such appropriations for activities in which there is such failure), until he is satisfied that there will no longer be any such failure. Until he is so satisfied the Surgeon General shall make no further certification for payment to such State from appropriations under such subsection, or shall limit payment to activities in which there is no such failure.

(i) All regulations and amendments thereto with respect to grants to States under this section shall be made after consultation with a conference of the State health authorities. Insofar as practicable, the Surgeon General shall obtain the agreement of the State health authorities prior to the issuance of any such regulations or amendments.

(j) Funds appropriated under subsection (a) and funds appropriated under subsection (b), in addition to being available for payments to States, shall also be available for expenditure by the Surgeon General in otherwise carrying out the respective subsections, including expenditures for printing and binding of the findings of investigations, and for pay and allowances and traveling expenses of personnel of the Service engaged in activities authorized by the respective subsections.

Failure to comply with requirements.

Consultations with State health authorities.

Expenditures by Surgeon General.

HEALTH EDUCATION AND INFORMATION

SEC. 315. From time to time the Surgeon General shall issue information related to public health, in the form of publications or otherwise, for the use of the public, and shall publish weekly reports of health conditions in the United States and other countries and other pertinent health information for the use of persons and institutions engaged in work related to the functions of the Service.

PART C—HOSPITALS, MEDICAL EXAMINATIONS, AND MEDICAL CARE

HOSPITALS

SEC. 321. The Surgeon General, pursuant to regulations, shall—

(a) Control, manage, and operate all institutions, hospitals, and stations of the Service, and provide for the care, treatment and hospitalization of patients, including the furnishing of prosthetic and orthopedic devices; and from time to time, with the approval of the President, select suitable sites for and establish such additional institutions, hospitals, and stations in the States and possessions of the United States as in his judgment are necessary to enable the Service to discharge its functions and duties;

(b) Provide for the transfer of Public Health Service patients, in the care of attendants where necessary, between hospitals and stations operated by the Service or between such hospitals and stations and other hospitals and stations in which Public Health

Functions and duties. General.

Transfer of patients.

Service patients may be received, and the payment of expenses of such transfer;

Disposal of articles produced by patients.

(c) Provide for the disposal of articles produced by patients in the course of their curative treatment, either by allowing the patient to retain such articles or by selling them and depositing the money received therefor to the credit of the appropriation from which the materials for making the articles were purchased; and

Deceased patients.

(d) Provide for the disposal of money and effects, in the custody of the hospitals or stations, of deceased patients.

CARE AND TREATMENT OF SEAMEN AND CERTAIN OTHER PERSONS

Persons entitled to free treatment.

SEC. 322. (a) The following persons shall be entitled, in accordance with regulations, to medical, surgical, and dental treatment and hospitalization without charge at hospitals and other stations of the Service:

(1) Seamen employed on vessels of the United States registered, enrolled, and licensed under the maritime laws thereof, other than canal boats engaged in the coasting trade;

(2) Seamen employed on United States or foreign flag vessels as employees of the United States through the War Shipping Administration;

(3) Seamen, not enlisted or commissioned in the military or naval establishments, who are employed on State school ships or on vessels of the United States Government of more than five tons' burden;

(4) Cadets at State maritime academies or on State training ships;

(5) Seamen on vessels of the Mississippi River Commission and, upon application of their commanding officers, officers and crews of vessels of the Fish and Wildlife Service;

(6) Enrollees in the United States Maritime Service on active duty and members of the Merchant Marine Cadet Corps; and

(7) Employees and noncommissioned officers in the field service of the Public Health Service when injured or taken sick in line of duty.

Seamen on foreign-flag vessels. Treatment.

(b) When suitable accommodations are available, seamen on foreign-flag vessels may be given medical, surgical, and dental treatment and hospitalization on application of the master, owner, or agent of the vessel at hospitals and other stations of the Service at rates fixed by regulations. All expenses connected with such treatment, including burial in the event of death, shall be paid by such master, owner, or agent. No such vessel shall be granted clearance until such expenses are paid or their payment appropriately guaranteed to the Collector of Customs.

Persons under quarantine etc.

(c) Any person when detained in accordance with quarantine laws, or, at the request of the Immigration and Naturalization Service, any person detained by that Service, may be treated and cared for by the Public Health Service.

Temporary treatment in case of emergency.

(d) Persons not entitled to treatment and care at institutions, hospitals, and stations of the Service may, in accordance with regulations of the Surgeon General, be admitted thereto for temporary treatment and care in case of emergency.

Care and treatment at non-Service facilities.

(e) Persons entitled to care and treatment under subsection (a) of this section may, in accordance with regulations, receive such care and treatment at the expense of the Service from public or private medical or hospital facilities other than those of the Service, when authorized by the officer in charge of the station at which the application is made.

CARE AND TREATMENT OF FEDERAL PRISONERS

SEC. 323. The Service shall supervise and furnish medical treatment and other necessary medical, psychiatric, and related technical and scientific services, authorized by the Act of May 13, 1930, as amended (U. S. C., 1940 edition, title 18, secs. 751, 752), in penal and correctional institutions of the United States.

46 Stat. 273.

EXAMINATION AND TREATMENT OF FEDERAL EMPLOYEES

SEC. 324. The Surgeon General is authorized to provide at institutions, hospitals, and stations of the Service medical, surgical, and hospital services and supplies for persons entitled to treatment under the United States Employees' Compensation Act and extensions thereof. The Surgeon General may also provide for making medical examinations of—

Medical, etc., services and supplies.

39 Stat. 742.
5 U. S. C. §§ 751-791,
793; Supp. III, ch. 15.
Post, pp. 712, 887.

- (a) employees of the Alaska Railroad and employees of the Federal Government for retirement purposes;
- (b) employees in the Federal classified service, and applicants for appointment, as requested by the Civil Service Commission for the purpose of promoting health and efficiency;
- (c) seamen for purposes of qualifying for certificates of service; and
- (d) employees eligible for benefits under the Longshoremen's and Harbor Workers' Compensation Act, as amended (U. S. C., 1940 edition, title 33, chapter 18), as requested by any deputy commissioner thereunder.

44 Stat. 1424.
33 U. S. C., Supp.
III, ch. 18 note.

EXAMINATION OF ALIENS

SEC. 325. The Surgeon General shall provide for making, at places within the United States or in other countries, such physical and mental examinations of aliens as are required by the immigration laws, subject to administrative regulations prescribed by the Attorney General and medical regulations prescribed by the Surgeon General with the approval of the Administrator.

SERVICES TO COAST GUARD, COAST AND GEODETIC SURVEY, AND PUBLIC HEALTH SERVICE

SEC. 326. (a) Subject to regulations of the President—

(1) commissioned officers, chief warrant officers, warrant officers, cadets, and enlisted personnel of the Regular Coast Guard, including those on shore duty and those on detached duty, whether on active duty or retired; and Regular and temporary members of the United States Coast Guard Reserve when on active duty or when retired for disability;

Regular Coast Guard.

Coast Guard Reserve.

(2) commissioned officers, ships' officers, and members of the crews of vessels of the United States Coast and Geodetic Survey, including those on shore duty and those on detached duty, whether on active duty or retired; and

Coast and Geodetic Survey.

(3) commissioned officers of the Regular Corps of the Public Health Service, whether on active duty or retired, and commissioned officers of the Reserve Corps when on active duty or when retired for disability;

Public Health Service.

shall be entitled to medical, surgical, and dental treatment and hospitalization by the Service. The Surgeon General may detail commissioned officers for duty aboard vessels of the Coast Guard or the Coast and Geodetic Survey.

Duty aboard designated vessels.

(b) Subject to regulations of the President, the dependent members of families (as defined in such regulations) of persons specified

Dependent members of families of specified persons.
Treatment.

in subsection (a), other than temporary members of the United States Coast Guard Reserve, shall be furnished medical advice and out-patient treatment by the Service at its hospitals and relief stations, and they shall also be furnished hospitalization at hospitals of the Service, if suitable accommodations are available, at a per diem cost to the officer, enlisted person, or member of a crew concerned. Such cost shall be at such uniform rate as may be prescribed from time to time by the President for the hospitalization of dependents of naval and Marine Corps personnel at any naval hospital, pursuant to section 2 of the Act of May 10, 1943 (57 Stat. 80).

24 U. S. C., Supp. III, § 32.
Services required by Coast Guard.

Aid to crews of designated American vessels.

(c) The Service shall provide all services referred to in subsection (a) required by the Coast Guard and shall perform all duties prescribed by statute in connection with the examinations to determine physical or mental condition for purposes of appointment, enlistment, and reenlistment, promotion and retirement, and officers of the Service assigned to duty on Coast Guard vessels may extend aid to the crews of American vessels engaged in deep-sea fishing.

INTERDEPARTMENTAL WORK

SEC. 327. Nothing contained in this part shall affect the authority of the Service to furnish any materials, supplies, or equipment, or perform any work or services, requested in accordance with section 7 of the Act of May 21, 1920, as amended (U. S. C., 1940 edition, title 31, sec. 686), or the authority of any other executive department to furnish any materials, supplies, or equipment, or perform any work or services, requested by the Federal Security Agency for the Service in accordance with that section.

41 Stat. 613.
31 U. S. C., Supp. III, § 686.

PART D—LEPERS

RECEIPT OF LEPERS

SEC. 331. The Service shall, in accordance with regulations, receive into any hospital of the Service suitable for his accommodation any person afflicted with leprosy who presents himself for care, detention, or treatment, or who may be apprehended under section 332 or 361 of this Act, and any person afflicted with leprosy duly consigned to the care of the Service by the proper health authority of any State, Territory, or the District of Columbia. The Surgeon General is authorized, upon the request of any health authority, to send for any person within the jurisdiction of such authority who is afflicted with leprosy and to convey such person to the appropriate hospital for detention and treatment. When the transportation of any such person is undertaken for the protection of the public health the expense of such removal shall be met from funds available for the maintenance of hospitals of the Service.

Admission into appropriate Service hospitals.

Infra.
Post, p. 703.

APPREHENSION, DETENTION, TREATMENT, AND RELEASE

SEC. 332. The Surgeon General may provide by regulation for the apprehension, detention, treatment, and release of persons being treated by the Service for leprosy.

PART E—NARCOTICS ADDICTS

CARE AND TREATMENT

SEC. 341. The Surgeon General is authorized to provide for the confinement, care, protection, treatment, and discipline of persons addicted to the use of habit-forming narcotic drugs who voluntarily

Accomplices.

(c) Any person who procures the escape of any person admitted to a hospital of the Service at which addicts are treated and cared for, or who advises, connives at, aids, or assists in such escape, or who conceals any such inmate after such escape, shall be punished upon conviction in a United States court by imprisonment in the penitentiary for not more than three years.

PART F—BIOLOGICAL PRODUCTS

REGULATION OF BIOLOGICAL PRODUCTS

Sale, barter, or exchange in D. C., etc.

SEC. 351. (a) No person shall sell, barter, or exchange, or offer for sale, barter, or exchange in the District of Columbia, or send, carry, or bring for sale, barter, or exchange from any State or possession into any other State or possession or into any foreign country, or from any foreign country into any State or possession, any virus, therapeutic serum, toxin, antitoxin, or analogous product, or arsphenamine or its derivatives (or any other trivalent organic arsenic compound), applicable to the prevention, treatment, or cure of diseases or injuries of man, unless (1) such virus, serum, toxin, antitoxin, or other product has been propagated or manufactured and prepared at an establishment holding an unsuspended and unrevoked license, issued by the Administrator as hereinafter authorized, to propagate or manufacture, and prepare such virus, serum, toxin, antitoxin, or other product for sale in the District of Columbia, or for sending, bringing, or carrying from place to place aforesaid; and (2) each package of such virus, serum, toxin, antitoxin, or other product is plainly marked with the proper name of the article contained therein, the name, address, and license number of the manufacturer, and the date beyond which the contents cannot be expected beyond reasonable doubt to yield their specific results. The suspension or revocation of any license shall not prevent the sale, barter, or exchange of any virus, serum, toxin, antitoxin, or other product aforesaid which has been sold and delivered by the licensee prior to such suspension or revocation, unless the owner or custodian of such virus, serum, toxin, antitoxin, or other product aforesaid has been notified by the Administrator not to sell, barter, or exchange the same.

Manufacturers of virus, etc. License requirement.

Package marking requirement.

Effect of license suspension, etc.

False labels, etc.

(b) No person shall falsely label or mark any package or container of any virus, serum, toxin, antitoxin, or other product aforesaid; nor alter any label or mark on any package or container of any virus, serum, toxin, antitoxin, or other product aforesaid so as to falsify such label or mark.

Inspection of establishments for manufacture of virus, etc.

(c) Any officer, agent, or employee of the Federal Security Agency, authorized by the Administrator for the purpose, may during all reasonable hours enter and inspect any establishment for the propagation or manufacture and preparation of any virus, serum, toxin, antitoxin, or other product aforesaid for sale, barter, or exchange in the District of Columbia, or to be sent, carried, or brought from any State or possession into any other State or possession or into any foreign country, or from any foreign country into any State or possession.

Issuance of licenses. Standards required.

(d) Licenses for the maintenance of establishments for the propagation or manufacture and preparation of products described in subsection (a) of this section may be issued only upon a showing that the establishment and the products for which a license is desired meet standards, designed to insure the continued safety, purity, and potency of such products, prescribed in regulations made jointly by the Surgeon General, the Surgeon General of the Army, and the Surgeon General of the Navy, and approved by the Administrator,

and licenses for new products may be issued only upon a showing that they meet such standards. All such licenses shall be issued, suspended, and revoked as prescribed by regulations and all licenses issued for the maintenance of establishments for the propagation or manufacture and preparation, in any foreign country, of any such products for sale, barter, or exchange in any State or possession shall be issued upon condition that the licensees will permit the inspection of their establishments in accordance with subsection (c) of this section.

Conditions.

(e) No person shall interfere with any officer, agent, or employee of the Service in the performance of any duty imposed upon him by this section or by regulations made by authority thereof.

Interference with Service officer, etc.

(f) Any person who shall violate, or aid or abet in violating, any of the provisions of this section shall be punished upon conviction by a fine not exceeding \$500 or by imprisonment not exceeding one year, or by both such fine and imprisonment, in the discretion of the court.

Punishment for violations.

(g) Nothing contained in this Act shall be construed as in any way affecting, modifying, repealing, or superseding the provisions of the Federal Food, Drug, and Cosmetic Act (U. S. C., 1940 edition, title 21, ch. 9).

52 Stat. 1040.
21 U. S. C. § 301
et seq.; Supp. III, ch. 9.

PREPARATION OF BIOLOGICAL PRODUCTS

SEC. 352. (a) The Service may prepare for its own use any product described in section 351 and any product necessary to carrying out any of the purposes of section 301.

Ante, p. 702.

(b) The Service may prepare any product described in section 351 for the use of other Federal departments or agencies, and public or private agencies and individuals engaged in work in the field of medicine when such product is not available from establishments licensed under such section.

Ante, p. 691.

PART G—QUARANTINE AND INSPECTION

CONTROL OF COMMUNICABLE DISEASES

SEC. 361. (a) The Surgeon General, with the approval of the Administrator, is authorized to make and enforce such regulations as in his judgment are necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the States or possessions, or from one State or possession into any other State or possession. For purposes of carrying out and enforcing such regulations, the Surgeon General may provide for such inspection, fumigation, disinfection, sanitation, pest extermination, destruction of animals or articles found to be so infected or contaminated as to be sources of dangerous infection to human beings, and other measures, as in his judgment may be necessary.

Regulations.

(b) Regulations prescribed under this section shall not provide for the apprehension, detention, or conditional release of individuals except for the purpose of preventing the introduction, transmission, or spread of such communicable diseases as may be specified from time to time in Executive orders of the President upon the recommendation of the National Advisory Health Council and the Surgeon General.

Limitation on apprehension, etc., of individuals.

(c) Except as provided in subsection (d), regulations prescribed under this section, insofar as they provide for the apprehension, detention, examination, or conditional release of individuals, shall be applicable only to individuals coming into a State or possession from a foreign country, the Territory of Hawaii, or a possession.

Applicability.

Interstate spread of
diseases.

(d) On recommendation of the National Advisory Health Council, regulations prescribed under this section may provide for the apprehension and examination of any individual reasonably believed to be infected with a communicable disease in a communicable stage and (1) to be moving or about to move from a State to another State; or (2) to be a probable source of infection to individuals who, while infected with such disease in a communicable stage, will be moving from a State to another State. Such regulations may provide that if upon examination any such individual is found to be infected, he may be detained for such time and in such manner as may be reasonably necessary.

SUSPENSION OF ENTRIES AND IMPORTS FROM DESIGNATED PLACES

SEC. 362. Whenever the Surgeon General determines that by reason of the existence of any communicable disease in a foreign country there is serious danger of the introduction of such disease into the United States, and that this danger is so increased by the introduction of persons or property from such country that a suspension of the right to introduce such persons and property is required in the interest of the public health, the Surgeon General, in accordance with regulations approved by the President, shall have the power to prohibit, in whole or in part, the introduction of persons and property from such countries or places as he shall designate in order to avert such danger, and for such period of time as he may deem necessary for such purpose.

SPECIAL POWERS IN TIME OF WAR

SEC. 363. To protect the military and naval forces and war workers of the United States, in time of war, against any communicable disease specified in Executive orders as provided in subsection (b) of section 361, the Surgeon General, on recommendation of the National Advisory Health Council, is authorized to provide by regulations for the apprehension and examination, in time of war, of any individual reasonably believed (1) to be infected with such disease in a communicable stage and (2) to be a probable source of infection to members of the armed forces of the United States or to individuals engaged in the production or transportation of arms, munitions, ships, food, clothing, or other supplies for the armed forces. Such regulations may provide that if upon examination any such individual is found to be so infected, he may be detained for such time and in such manner as may be reasonably necessary.

QUARANTINE STATIONS

Control, etc.
40 Stat. 220.
50 U. S. C., Supp.
III, § 192.

Additional stations.

Quarantine inspection.

SEC. 364. (a) Except as provided in title II of the Act of June 15, 1917, as amended (U. S. C., 1940 edition, title 50, secs. 191-194), the Surgeon General shall control, direct, and manage all United States quarantine stations, grounds, and anchorages, designate their boundaries, and designate the quarantine officers to be in charge thereof. With the approval of the President he shall from time to time select suitable sites for and establish such additional stations, grounds, and anchorages in the States and possessions of the United States as in his judgment are necessary to prevent the introduction of communicable diseases into the States and possessions of the United States.

(b) The Surgeon General shall establish the hours during which quarantine service shall be performed at each quarantine station, and, upon application by any interested party, may establish quar-

antine inspection during the twenty-four hours of the day, or any fraction thereof, at such quarantine stations as, in his opinion, require such extended service. He may restrict the performance of quarantine inspection to hours of daylight for such arriving vessels as cannot, in his opinion, be satisfactorily inspected during hours of darkness. No vessel shall be required to undergo quarantine inspection during the hours of darkness, unless the quarantine officer at such quarantine station shall deem an immediate inspection necessary to protect the public health. Uniformity shall not be required in the hours during which quarantine inspection may be obtained at the various ports of the United States.

CERTAIN DUTIES OF CONSULAR AND OTHER OFFICERS

SEC. 365. (a) Any consular or medical officer of the United States, designated for such purpose by the Administrator, shall make reports to the Surgeon General, on such forms and at such intervals as the Surgeon General may prescribe, of the health conditions at the port or place at which such officer is stationed.

Reports of health conditions.

(b) It shall be the duty of the customs officers and of Coast Guard officers to aid in the enforcement of quarantine rules and regulations; but no additional compensation, except actual and necessary traveling expenses, shall be allowed any such officer by reason of such services.

Enforcement of regulations.

BILLS OF HEALTH

SEC. 366. (a) Except as otherwise prescribed in regulations, any vessel at any foreign port or place clearing or departing for any port or place in a State or possession shall be required to obtain from the consular officer of the United States or from the Public Health Service officer, or other medical officer of the United States designated by the Surgeon General, at the port or place of departure, a bill of health in duplicate, in the form prescribed by the Surgeon General. The President, from time to time, shall specify the ports at which a medical officer shall be stationed for this purpose. Such bill of health shall set forth the sanitary history and condition of said vessel, and shall state that it has in all respects complied with the regulations prescribed pursuant to subsection (c). Before granting such duplicate bill of health, such consular or medical officer shall be satisfied that the matters and things therein stated are true. The consular officer shall be entitled to demand and receive the fees for bills of health and such fees shall be established by regulation.

Procurement by vessel at port of departure.

Contents.

Fees.

(b) Original bills of health shall be delivered to the collectors of customs at the port of entry. Duplicate copies of such bills of health shall be delivered at the time of inspection to quarantine officers at such port. The bills of health herein prescribed shall be considered as part of the ship's papers, and when duly certified to by the proper consular or other officer of the United States, over his official signature and seal, shall be accepted as evidence of the statements therein contained in any court of the United States.

Delivery of originals and duplicates.

(c) The Surgeon General shall from time to time prescribe regulations, applicable to vessels referred to in subsection (a) of this section for the purpose of preventing the introduction into the States or possessions of the United States of any communicable disease by securing the best sanitary condition of such vessels, their cargoes, passengers, and crews. Such regulations shall be observed by such vessels prior to departure, during the course of the voyage, and also during inspection, disinfection, or other quarantine procedure upon arrival at any United States quarantine station.

Regulations.

Excepted vessels.

(d) The provisions of subsections (a) and (b) of this section shall not apply to vessels plying between such foreign ports on or near the frontiers of the United States and ports of the United States as are designated by treaty.

Certificate of quarantine officer.

(e) It shall be unlawful for any vessel to enter any port in any State or possession of the United States to discharge its cargo, or land its passengers, except upon a certificate of the quarantine officer that regulations prescribed under subsection (c) have in all respects been complied with by such officer, the vessel, and its master. The master of every such vessel shall deliver such certificate to the collector of customs at the port of entry, together with the original bill of health and other papers of the vessel. The certificate required by this subsection shall be procurable from the quarantine officer, upon arrival of the vessel at the quarantine station and satisfactory inspection thereof, at any time within which quarantine services are performed at such station.

CIVIL AIR NAVIGATION AND CIVIL AIRCRAFT

SEC. 367. The Surgeon General is authorized to provide by regulations for the application to air navigation and aircraft of any of the provisions of sections 364, 365, and 366 and regulations prescribed thereunder (including penalties and forfeitures for violations of such sections and regulations), to such extent and upon such conditions as he deems necessary for the safeguarding of the public health.

PENALTIES

Unlawful entry or departure.

SEC. 368. (a) Any person who violates any regulation prescribed under sections 361, 362, or 363, or any provision of section 366 or any regulation prescribed thereunder, or who enters or departs from the limits of any quarantine station, ground, or anchorage in disregard of quarantine rules and regulations or without permission of the quarantine officer in charge, shall be punished by a fine of not more than \$1,000 or by imprisonment for not more than one year, or both.

Forfeitures.

(b) Any vessel which violates section 366, or any regulations thereunder or under section 364, or which enters within or departs from the limits of any quarantine station, ground, or anchorage in disregard of the quarantine rules and regulations or without permission of the officer in charge, shall forfeit to the United States not more than \$5,000, the amount to be determined by the court, which shall be a lien on such vessel, to be recovered by proceedings in the proper district court of the United States. In all such proceedings the United States district attorney shall appear on behalf of the United States; and all such proceedings shall be conducted in accordance with the rules and laws governing cases of seizure of vessels for violation of the revenue laws of the United States.

Proceedings.

Remission or mitigation.

(c) With the approval of the Administrator, the Surgeon General may, upon application therefor, remit or mitigate any forfeiture provided for under subsection (b) of this section, and he shall have authority to ascertain the facts upon all such applications.

ADMINISTRATION OF OATHS

SEC. 369. Medical officers of the United States, when performing duties as quarantine officers at any port or place within the United States, are authorized to take declarations and administer oaths in matters pertaining to the administration of the quarantine laws and regulations of the United States.

Appendix #5a

cian assistant, pharmacy, behavioral and mental health, public health, and nursing students that are comparable to those for medical students under this section, including service obligations, tuition support, and stipend support. The Surgeon General shall give priority to health professions training institutions that train medical, dental, physician assistant, pharmacy, behavioral and mental health, public health, and nursing students for some significant period of time together, but at a minimum have a discrete and shared core curriculum.

(e) Elite Federal disaster teams

The Surgeon General, in consultation with the Secretary, the Director of the Centers for Disease Control and Prevention, and other appropriate military and Federal government agencies, shall develop criteria for the appointment of highly qualified Track faculty, medical, dental, physician assistant, pharmacy, behavioral and mental health, public health, and nursing students, and graduates to elite Federal disaster preparedness teams to train and to respond to public health emergencies, natural disasters, bioterrorism events, and other emergencies.

(f) Student dropped from Track in affiliate school

A medical, dental, physician assistant, pharmacy, behavioral and mental health, public health, or nursing student who, under regulations prescribed by the Surgeon General, is dropped from the Track in an affiliated school for deficiency in conduct or studies, or for other reasons, shall be liable to the United States for all tuition and stipend support provided to the student.

(July 1, 1944, ch. 373, title II, § 273, as added Pub. L. 111-148, title V, § 5315, Mar. 23, 2010, 124 Stat. 639.)

§ 239f-3. Funding

Beginning with fiscal year 2010, the Secretary shall transfer from the Public Health and Social Services Emergency Fund such sums as may be necessary to carry out this part.

(July 1, 1944, ch. 373, title II, § 274, as added Pub. L. 111-148, title V, § 5315, Mar. 23, 2010, 124 Stat. 642.)

SUBCHAPTER II—GENERAL POWERS AND DUTIES

PART A—RESEARCH AND INVESTIGATIONS

§ 241. Research and investigations generally

(a) Authority of Secretary

The Secretary shall conduct in the Service, and encourage, cooperate with, and render assistance to other appropriate public authorities, scientific institutions, and scientists in the conduct of, and promote the coordination of, research, investigations, experiments, demonstrations, and studies relating to the causes, diagnosis, treatment, control, and prevention of physical and mental diseases and impairments of man, including water purification, sewage treatment, and pollution of lakes and streams. In carrying out the foregoing the Secretary is authorized to—

(1) collect and make available through publications and other appropriate means, information as to, and the practical application of, such research and other activities;

(2) make available research facilities of the Service to appropriate public authorities, and to health officials and scientists engaged in special study;

(3) make grants-in-aid to universities, hospitals, laboratories, and other public or private institutions, and to individuals for such research projects as are recommended by the advisory council to the entity of the Department supporting such projects and make, upon recommendation of the advisory council to the appropriate entity of the Department, grants-in-aid to public or nonprofit universities, hospitals, laboratories, and other institutions for the general support of their research;

(4) secure from time to time and for such periods as he deems advisable, the assistance and advice of experts, scholars, and consultants from the United States or abroad;

(5) for purposes of study, admit and treat at institutions, hospitals, and stations of the Service, persons not otherwise eligible for such treatment;

(6) make available, to health officials, scientists, and appropriate public and other nonprofit institutions and organizations, technical advice and assistance on the application of statistical methods to experiments, studies, and surveys in health and medical fields;

(7) enter into contracts, including contracts for research in accordance with and subject to the provisions of law applicable to contracts entered into by the military departments under sections 2353 and 2354 of title 10, except that determination, approval, and certification required thereby shall be by the Secretary of Health and Human Services; and

(8) adopt, upon recommendations of the advisory councils to the appropriate entities of the Department or, with respect to mental health, the National Advisory Mental Health Council, such additional means as the Secretary considers necessary or appropriate to carry out the purposes of this section.

The Secretary may make available to individuals and entities, for biomedical and behavioral research, substances and living organisms. Such substances and organisms shall be made available under such terms and conditions (including payment for them) as the Secretary determines appropriate.

(b) Testing for carcinogenicity, teratogenicity, mutagenicity, and other harmful biological effects; consultation

(1) The Secretary shall conduct and may support through grants and contracts studies and testing of substances for carcinogenicity, teratogenicity, mutagenicity, and other harmful biological effects. In carrying out this paragraph, the Secretary shall consult with entities of the Federal Government, outside of the Department of Health and Human Services, engaged in comparable activities. The Secretary, upon request of such an entity and under appropriate arrangements for the payment of expenses, may conduct for such entity studies and testing of substances

for carcinogenicity, teratogenicity, mutagenicity, and other harmful biological effects.

(2)(A) The Secretary shall establish a comprehensive program of research into the biological effects of low-level ionizing radiation under which program the Secretary shall conduct such research and may support such research by others through grants and contracts.

(B) The Secretary shall conduct a comprehensive review of Federal programs of research on the biological effects of ionizing radiation.

(3) The Secretary shall conduct and may support through grants and contracts research and studies on human nutrition, with particular emphasis on the role of nutrition in the prevention and treatment of disease and on the maintenance and promotion of health, and programs for the dissemination of information respecting human nutrition to health professionals and the public. In carrying out activities under this paragraph, the Secretary shall provide for the coordination of such of these activities as are performed by the different divisions within the Department of Health and Human Services and shall consult with entities of the Federal Government, outside of the Department of Health and Human Services, engaged in comparable activities. The Secretary, upon request of such an entity and under appropriate arrangements for the payment of expenses, may conduct and support such activities for such entity.

(4) The Secretary shall publish a biennial report which contains—

(A) a list of all substances (i) which either are known to be carcinogens or may reasonably be anticipated to be carcinogens and (ii) to which a significant number of persons residing in the United States are exposed;

(B) information concerning the nature of such exposure and the estimated number of persons exposed to such substances;

(C) a statement identifying (i) each substance contained in the list under subparagraph (A) for which no effluent, ambient, or exposure standard has been established by a Federal agency, and (ii) for each effluent, ambient, or exposure standard established by a Federal agency with respect to a substance contained in the list under subparagraph (A), the extent to which, on the basis of available medical, scientific, or other data, such standard, and the implementation of such standard by the agency, decreases the risk to public health from exposure to the substance; and

(D) a description of (i) each request received during the year involved—

(I) from a Federal agency outside the Department of Health and Human Services for the Secretary, or

(II) from an entity within the Department of Health and Human Services to any other entity within the Department,

to conduct research into, or testing for, the carcinogenicity of substances or to provide information described in clause (ii) of subparagraph (C), and (ii) how the Secretary and each such other entity, respectively, have responded to each such request.

(5) The authority of the Secretary to enter into any contract for the conduct of any study,

testing, program, research, or review, or assessment under this subsection shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance in appropriation Acts.

(c) Diseases not significantly occurring in United States

The Secretary may conduct biomedical research, directly or through grants or contracts, for the identification, control, treatment, and prevention of diseases (including tropical diseases) which do not occur to a significant extent in the United States.

(d) Protection of privacy of individuals who are research subjects

The Secretary may authorize persons engaged in biomedical, behavioral, clinical, or other research (including research on mental health, including research on the use and effect of alcohol and other psychoactive drugs) to protect the privacy of individuals who are the subject of such research by withholding from all persons not connected with the conduct of such research the names or other identifying characteristics of such individuals. Persons so authorized to protect the privacy of such individuals may not be compelled in any Federal, State, or local civil, criminal, administrative, legislative, or other proceedings to identify such individuals.

(e) Preterm labor and delivery and infant mortality

The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall expand, intensify, and coordinate the activities of the Centers for Disease Control and Prevention with respect to preterm labor and delivery and infant mortality.

(July 1, 1944, ch. 373, title III, §301, 58 Stat. 691; July 3, 1946, ch. 538, §7(a), (b), 60 Stat. 423; June 16, 1948, ch. 481, §4(e), (f), 62 Stat. 467; June 24, 1948, ch. 621, §4(e), (f), 62 Stat. 601; June 25, 1948, ch. 654, §1, 62 Stat. 1017; July 3, 1956, ch. 510, §4, 70 Stat. 490; Pub. L. 86-798, Sept. 15, 1960, 74 Stat. 1053; Pub. L. 87-838, §2, Oct. 17, 1962, 76 Stat. 1073; Pub. L. 89-115, §3, Aug. 9, 1965, 79 Stat. 448; Pub. L. 90-174, §9, Dec. 5, 1967, 81 Stat. 540; Pub. L. 91-513, title I, §3(a), Oct. 27, 1970, 84 Stat. 1241; Pub. L. 91-515, title II, §292, Oct. 30, 1970, 84 Stat. 1308; Pub. L. 92-218, §6(a)(2), Dec. 23, 1971, 85 Stat. 785; Pub. L. 92-423, §7(b), Sept. 19, 1972, 86 Stat. 687; Pub. L. 93-282, title I, §122(b), May 14, 1974, 88 Stat. 132; Pub. L. 93-348, title I, §104(a)(1), July 12, 1974, 88 Stat. 346; Pub. L. 93-352, title I, §111, July 23, 1974, 88 Stat. 360; Pub. L. 94-278, title I, §111, Apr. 22, 1976, 90 Stat. 405; Pub. L. 95-622, title II, §§261, 262, Nov. 9, 1978, 92 Stat. 3434; Pub. L. 96-88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 99-158, §3(a)(5), Nov. 20, 1985, 99 Stat. 879; Pub. L. 99-570, title IV, §4021(b)(2), Oct. 27, 1986, 100 Stat. 3207-124; Pub. L. 99-660, title I, §104, Nov. 14, 1986, 100 Stat. 3751; Pub. L. 100-607, title I, §163(1), (2), Nov. 4, 1988, 102 Stat. 3062; Pub. L. 103-43, title XX, §2009, June 10, 1993, 107 Stat. 213; Pub. L. 109-450, §3(a), Dec. 22, 2006, 120 Stat. 3341.)

AMENDMENTS

2006—Subsec. (e). Pub. L. 109-450 added subsec. (e).
1993—Subsec. (b)(4). Pub. L. 103-43 substituted “a biennial report” for “an annual report” in introductory provisions.

(2) for which the factors of medical risk or type of medical intervention are different for women, or for which there is reasonable evidence that indicates that such factors or types may be different for women.

(d) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2010 through 2014.

(July 1, 1944, ch. 373, title III, § 310A, as added Pub. L. 111-148, title III, § 3509(b), Mar. 23, 2010, 124 Stat. 533.)

PRIOR PROVISIONS

A prior section 310A of act July 1, 1944, was renumbered section 226 and transferred to section 235 of this title.

PART B—FEDERAL-STATE COOPERATION

§ 243. General grant of authority for cooperation

(a) Enforcement of quarantine regulations; prevention of communicable diseases

The Secretary is authorized to accept from State and local authorities any assistance in the enforcement of quarantine regulations made pursuant to this chapter which such authorities may be able and willing to provide. The Secretary shall also assist States and their political subdivisions in the prevention and suppression of communicable diseases and with respect to other public health matters, shall cooperate with and aid State and local authorities in the enforcement of their quarantine and other health regulations, and shall advise the several States on matters relating to the preservation and improvement of the public health.

(b) Comprehensive and continuing planning; training of personnel for State and local health work; fees

The Secretary shall encourage cooperative activities between the States with respect to comprehensive and continuing planning as to their current and future health needs, the establishment and maintenance of adequate public health services, and otherwise carrying out public health activities. The Secretary is also authorized to train personnel for State and local health work. The Secretary may charge only private entities reasonable fees for the training of their personnel under the preceding sentence.

(c) Development of plan to control epidemics and meet emergencies or problems resulting from disasters; cooperative planning; temporary assistance; reimbursement of United States

(1) The Secretary is authorized to develop (and may take such action as may be necessary to implement) a plan under which personnel, equipment, medical supplies, and other resources of the Service and other agencies under the jurisdiction of the Secretary may be effectively used to control epidemics of any disease or condition and to meet other health emergencies or problems. The Secretary may enter into agreements providing for the cooperative planning between the Service and public and private community health programs and agencies to cope with

health problems (including epidemics and health emergencies).

(2) The Secretary may, at the request of the appropriate State or local authority, extend temporary (not in excess of six months) assistance to States or localities in meeting health emergencies of such a nature as to warrant Federal assistance. The Secretary may require such reimbursement of the United States for assistance provided under this paragraph as he may determine to be reasonable under the circumstances. Any reimbursement so paid shall be credited to the applicable appropriation for the Service for the year in which such reimbursement is received.

(July 1, 1944, ch. 373, title III, § 311, 58 Stat. 693; Pub. L. 89-749, § 5, Nov. 3, 1966, 80 Stat. 1190; Pub. L. 90-174, § 4, Dec. 5, 1967, 81 Stat. 536; Pub. L. 91-515, title II, § 282, Oct. 30, 1970, 84 Stat. 1308; Pub. L. 94-317, title II, § 202(b), (c), June 23, 1976, 90 Stat. 703; Pub. L. 97-35, title IX, § 902(c), Aug. 13, 1981, 95 Stat. 559; Pub. L. 97-414, § 8(d), Jan. 4, 1983, 96 Stat. 2060; Pub. L. 99-117, § 11(a), Oct. 7, 1985, 99 Stat. 494.)

AMENDMENTS

1985—Subsec. (c)(1). Pub. L. 99-117 struck out “referred to in section 247b(f) of this title” after “epidemics of any disease or condition”, “involving or resulting from disasters or any such disease” after “health emergencies or problems” in first sentence, and struck out “resulting from disasters or any disease or condition referred to in section 247b(f) of this title” after “(including epidemics and health emergencies)” in second sentence.

1983—Subsec. (c)(2). Pub. L. 97-414 substituted “six months” for “forty-five days” after “not in excess of”.
1981—Subsec. (a). Pub. L. 97-35, § 902(c)(1), inserted applicability to other public health matters, and struck out reference to section 246 of this title.

Subsec. (b). Pub. L. 97-35, § 902(c)(2), substituted “public health activities” for “the purposes of section 246 of this title”.

1976—Subsec. (b). Pub. L. 94-317, § 202(c), inserted provision authorizing Secretary to charge only private entities reasonable fees for training of their personnel.

Subsec. (c). Pub. L. 94-317, § 202(b), made changes in phraseology and restructured provisions into pars. (1) and (2) and, in par. (1), as so restructured, inserted provisions authorizing Secretary to develop a plan utilizing Public Health Service personnel, equipment, medical supplies and other resources to control epidemics of any disease referred to in section 247b of this title.

1970—Subsecs. (a), (b). Pub. L. 91-515 substituted “Secretary” for “Surgeon General” wherever appearing.

1967—Subsec. (c). Pub. L. 90-174 added subsec. (c).

1966—Pub. L. 89-749 designated existing provisions as subsec. (a), added subsec. (b), and amended subsec. (b) to permit Surgeon General to train personnel for State and local health work.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 effective Oct. 1, 1981, see section 902(h) of Pub. L. 97-35, set out as a note under section 238f of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Section 5(a) of Pub. L. 89-749 provided that subsec. (b) of this section is effective July 1, 1966.

Section 5(b) of Pub. L. 89-749 provided that the amendment of subsec. (b) of this section, permitting the Surgeon General to train personnel for State and local health work, is effective July 1, 1967.

FOOD ALLERGENS IN THE FOOD CODE

Pub. L. 108-282, title II, § 209, Aug. 2, 2004, 118 Stat. 910, provided that: “The Secretary of Health and

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ation program authorized by this section to determine if the program has resulted in improvement of quality and accessibility of mammography services, and if the program has reduced the frequency of poor quality mammography and improved early detection of breast cancer, with Comptroller General, not later than 3 years from Oct. 27, 1992, submit to Congress an interim report of results of study and, not later than 5 years from such date to submit a final report.

PART G—QUARANTINE AND INSPECTION

§ 264. Regulations to control communicable diseases

(a) Promulgation and enforcement by Surgeon General

The Surgeon General, with the approval of the Secretary, is authorized to make and enforce such regulations as in his judgment are necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the States or possessions, or from one State or possession into any other State or possession. For purposes of carrying out and enforcing such regulations, the Surgeon General may provide for such inspection, fumigation, disinfection, sanitation, pest extermination, destruction of animals or articles found to be so infected or contaminated as to be sources of dangerous infection to human beings, and other measures, as in his judgment may be necessary.

(b) Apprehension, detention, or conditional release of individuals

Regulations prescribed under this section shall not provide for the apprehension, detention, or conditional release of individuals except for the purpose of preventing the introduction, transmission, or spread of such communicable diseases as may be specified from time to time in Executive orders of the President upon the recommendation of the Secretary, in consultation with the Surgeon General.¹

(c) Application of regulations to persons entering from foreign countries

Except as provided in subsection (d) of this section, regulations prescribed under this section, insofar as they provide for the apprehension, detention, examination, or conditional release of individuals, shall be applicable only to individuals coming into a State or possession from a foreign country or a possession.

(d) Apprehension and examination of persons reasonably believed to be infected

(1) Regulations prescribed under this section may provide for the apprehension and examination of any individual reasonably believed to be infected with a communicable disease in a qualifying stage and (A) to be moving or about to move from a State to another State; or (B) to be a probable source of infection to individuals who, while infected with such disease in a qualifying stage, will be moving from a State to another State. Such regulations may provide that if upon examination any such individual is found to be infected, he may be detained for such time and in such manner as may be reason-

ably necessary. For purposes of this subsection, the term "State" includes, in addition to the several States, only the District of Columbia.

(2) For purposes of this subsection, the term "qualifying stage", with respect to a communicable disease, means that such disease—

(A) is in a communicable stage; or

(B) is in a precommunicable stage, if the disease would be likely to cause a public health emergency if transmitted to other individuals.

(e) Preemption

Nothing in this section or section 266 of this title, or the regulations promulgated under such sections, may be construed as superseding any provision under State law (including regulations and including provisions established by political subdivisions of States), except to the extent that such a provision conflicts with an exercise of Federal authority under this section or section 266 of this title.

(July 1, 1944, ch. 373, title III, § 361, 58 Stat. 703; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Pub. L. 86-624, § 29(c), July 12, 1960, 74 Stat. 419; Pub. L. 94-317, title III, § 301(b)(1), June 23, 1976, 90 Stat. 707; Pub. L. 107-188, title I, § 142(a)(1), (2), (b)(1), (c), June 12, 2002, 116 Stat. 626, 627.)

AMENDMENTS

2002—Pub. L. 107-188, § 142(a)(1), (2), (b)(1), and (c), which directed certain amendments to section 361 of the Public Health Act, was executed by making the amendments to this section, which is section 361 of the Public Health Service Act, to reflect the probable intent of Congress. See below.

Subsec. (b). Pub. L. 107-188, § 142(a)(1), substituted "Executive orders of the President upon the recommendation of the Secretary, in consultation with the Surgeon General," for "Executive orders of the President upon the recommendation of the National Advisory Health Council and the Surgeon General".

Subsec. (d). Pub. L. 107-188, § 142(a)(2), (b)(1), substituted in first sentence "Regulations" for "On recommendation of the National Advisory Health Council, regulations", "in a qualifying stage" for "in a communicable stage" in two places, designated existing text as par. (1) and substituted "(A)" and "(B)" for "(1)" and "(2)", respectively, and added par. (2).

Subsec. (e). Pub. L. 107-188, § 142(c), added subsec. (e).

1976—Subsec. (d). Pub. L. 94-317 inserted provision defining "State" to include, in addition to the several States, only the District of Columbia.

1960—Subsec. (c). Pub. L. 86-624 struck out reference to Territory of Hawaii.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86-624 effective Aug. 21, 1959, see section 47(f) of Pub. L. 86-624, set out as a note under section 201 of this title.

TRANSFER OF FUNCTIONS

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96-88 which is classified to section 3508(b) of Title 20, Education.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by

¹ So in original. Comma probably should not appear.

section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96-88 which is classified to section 3508(b) of Title 20.

EVALUATION OF PUBLIC HEALTH AUTHORITIES

Pub. L. 110-392, title I, § 121, Oct. 13, 2008, 122 Stat. 4200, provided that:

“(a) IN GENERAL.—Not later than 180 days after the date of enactment of the Comprehensive Tuberculosis Elimination Act of 2008 [Oct. 13, 2008], the Secretary of Health and Human Services shall prepare and submit to the appropriate committees of Congress a report that evaluates and provides recommendations on changes needed to Federal and State public health authorities to address current disease containment challenges such as isolation and quarantine.

“(b) CONTENTS OF EVALUATION.—The report described in subsection (a) shall include—

- “(1) an evaluation of the effectiveness of current policies to detain patients with active tuberculosis;
- “(2) an evaluation of whether Federal laws should be strengthened to expressly address the movement of individuals with active tuberculosis; and
- “(3) specific legislative recommendations for changes to Federal laws, if any.

“(c) UPDATE OF QUARANTINE REGULATIONS.—Not later than 240 days after the date of enactment of this Act [Oct. 13, 2008], the Secretary of Health and Human Services shall promulgate regulations to update the current interstate and foreign quarantine regulations found in parts 70 and 71 of title 42, Code of Federal Regulations.”

EXECUTIVE ORDER No. 12452

Ex. Ord. No. 12452, Dec. 22, 1983, 48 F.R. 56927, which specified certain communicable diseases for regulations providing for the apprehension, detention, or conditional release of individuals to prevent the introduction, transmission, or spread of such diseases, was revoked by Ex. Ord. No. 13295, § 5, Apr. 4, 2003, 68 F.R. 17255, set out below.

EX. ORD. NO. 13295. REVISED LIST OF QUARANTINABLE COMMUNICABLE DISEASES

Ex. Ord. No. 13295, Apr. 4, 2003, 68 F.R. 17255, as amended by Ex. Ord. No. 13375, § 1, Apr. 1, 2005, 70 F.R. 17299, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 361(b) of the Public Health Service Act (42 U.S.C. 264(b)), it is hereby ordered as follows:

SECTION 1. Based upon the recommendation of the Secretary of Health and Human Services (the “Secretary”), in consultation with the Surgeon General, and for the purpose of specifying certain communicable diseases for regulations providing for the apprehension, detention, or conditional release of individuals to prevent the introduction, transmission, or spread of suspected communicable diseases, the following communicable diseases are hereby specified pursuant to section 361(b) of the Public Health Service Act:

(a) Cholera; Diphtheria; infectious Tuberculosis; Plague; Smallpox; Yellow Fever; and Viral Hemorrhagic Fevers (Lassa, Marburg, Ebola, Crimean-Congo, South American, and others not yet isolated or named).

(b) Severe Acute Respiratory Syndrome (SARS), which is a disease associated with fever and signs and symptoms of pneumonia or other respiratory illness, is transmitted from person to person predominantly by the aerosolized or droplet route, and, if spread in the population, would have severe public health consequences.

(c) Influenza caused by novel or reemergent influenza viruses that are causing, or have the potential to cause, a pandemic.

SEC. 2. The Secretary, in the Secretary’s discretion, shall determine whether a particular condition constitutes a communicable disease of the type specified in section 1 of this order.

SEC. 3. The functions of the President under sections 362 and 364(a) of the Public Health Service Act (42 U.S.C. 265 and 267(a)) are assigned to the Secretary.

SEC. 4. This order is not intended to, and does not, create any right or benefit enforceable at law or equity by any party against the United States, its departments, agencies, entities, officers, employees or agents, or any other person.

SEC. 5. Executive Order 12452 of December 22, 1983, is hereby revoked.

GEORGE W. BUSH.

§ 265. Suspension of entries and imports from designated places to prevent spread of communicable diseases

Whenever the Surgeon General determines that by reason of the existence of any communicable disease in a foreign country there is serious danger of the introduction of such disease into the United States, and that this danger is so increased by the introduction of persons or property from such country that a suspension of the right to introduce such persons and property is required in the interest of the public health, the Surgeon General, in accordance with regulations approved by the President, shall have the power to prohibit, in whole or in part, the introduction of persons and property from such countries or places as he shall designate in order to avert such danger, and for such period of time as he may deem necessary for such purpose.

(July 1, 1944, ch. 373, title III, § 362, 58 Stat. 704.)

TRANSFER OF FUNCTIONS

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96-88 which is classified to section 3508(b) of Title 20, Education.

DELEGATION OF FUNCTIONS

For assignment of functions of President under this section, see section 3 of Ex. Ord. No. 13295, Apr. 4, 2003, 68 F.R. 17255, set out as a note under section 264 of this title.

§ 266. Special quarantine powers in time of war

To protect the military and naval forces and war workers of the United States, in time of war, against any communicable disease specified in Executive orders as provided in subsection (b) of section 264 of this title, the Secretary, in consultation with the Surgeon General, is authorized to provide by regulations for the apprehension and examination, in time of war, of any individual reasonably believed (1) to be infected with such disease and (2) to be a probable source of infection to members of the armed forces of the United States or to individuals engaged in the production or transportation of arms, munitions, ships, food, clothing, or other supplies for the armed forces. Such regulations may provide that if upon examination any such individual is found to be so infected, he may be detained for such time and in such manner as may be reasonably necessary.

(July 1, 1944, ch. 373, title III, § 363, 58 Stat. 704; Pub. L. 107-188, title I, § 142(a)(3), (b)(2), June 12, 2002, 116 Stat. 626, 627.)

AMENDMENTS

2002—Pub. L. 107-188, which directed substitution of “the Secretary, in consultation with the Surgeon General,” for “the Surgeon General, on recommendation of the National Advisory Health Council,” and striking out of “in a communicable stage” after “(1) to be infected with such disease”, in section 363 of the Public Health Act, was executed to this section, which is section 363 of the Public Health Service Act, to reflect the probable intent of Congress.

TRANSFER OF FUNCTIONS

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96-88 which is classified to section 3508(b) of Title 20, Education.

TERMINATION OF WAR AND EMERGENCIES

Joint Res. July 25, 1947, ch. 327, § 3, 61 Stat. 451, provided that in the interpretation of this section, the date July 25, 1947, shall be deemed to be the date of termination of any state of war theretofore declared by Congress and of the national emergencies proclaimed by the President on Sept. 8, 1939, and May 27, 1941.

§ 267. Quarantine stations, grounds, and anchorages

(a) Control and management

Except as provided in title II of the Act of June 15, 1917, as amended [50 U.S.C. 191 et seq.], the Surgeon General shall control, direct, and manage all United States quarantine stations, grounds, and anchorages, designate their boundaries, and designate the quarantine officers to be in charge thereof. With the approval of the President he shall from time to time select suitable sites for and establish such additional stations, grounds, and anchorages in the States and possessions of the United States as in his judgment are necessary to prevent the introduction of communicable diseases into the States and possessions of the United States.

(b) Hours of inspection

The Surgeon General shall establish the hours during which quarantine service shall be performed at each quarantine station, and, upon application by any interested party, may establish quarantine inspection during the twenty-four hours of the day, or any fraction thereof, at such quarantine stations as, in his opinion, require such extended service. He may restrict the performance of quarantine inspection to hours of daylight for such arriving vessels as cannot, in his opinion, be satisfactorily inspected during hours of darkness. No vessel shall be required to undergo quarantine inspection during the hours of darkness, unless the quarantine officer at such quarantine station shall deem an immediate inspection necessary to protect the public health. Uniformity shall not be required in the hours during which quarantine inspection may be obtained at the various ports of the United States.

(c) Overtime pay for employees of Service

The Surgeon General shall fix a reasonable rate of extra compensation for overtime services of employees of the United States Public Health Service, Foreign Quarantine Division, performing overtime duties including the operation of vessels, in connection with the inspection or quarantine treatment of persons (passengers and crews), conveyances, or goods arriving by land, water, or air in the United States or any place subject to the jurisdiction thereof, hereinafter referred to as “employees of the Public Health Service”, when required to be on duty between the hours of 6 o’clock postmeridian and 6 o’clock antemeridian (or between the hours of 7 o’clock postmeridian and 7 o’clock antemeridian at stations which have a declared workday of from 7 o’clock antemeridian to 7 o’clock postmeridian), or on Sundays or holidays, such rate, in lieu of compensation under any other provision of law, to be fixed at two times the basic hourly rate for each hour that the overtime extends beyond 6 o’clock (or 7 o’clock as the case may be) postmeridian, and two times the basic hourly rate for each overtime hour worked on Sundays or holidays. As used in this subsection, the term “basic hourly rate” shall mean the regular basic rate of pay which is applicable to such employees for work performed within their regular scheduled tour of duty.

(d) Payment of extra compensation to United States; bond or deposit to assure payment; deposit of moneys to credit of appropriation

(1) The said extra compensation shall be paid to the United States by the owner, agent, consignee, operator, or master or other person in charge of any conveyance, for whom, at his request, services as described in this subsection (hereinafter referred to as overtime service) are performed. If such employees have been ordered to report for duty and have so reported, and the requested services are not performed by reason of circumstances beyond the control of the employees concerned, such extra compensation shall be paid on the same basis as though the overtime services had actually been performed during the period between the time the employees were ordered to report for duty and did so report, and the time they were notified that their services would not be required, and in any case as though their services had continued for not less than one hour. The Surgeon General with the approval of the Secretary of Health and Human Services may prescribe regulations requiring the owner, agent, consignee, operator, or master or other person for whom the overtime services are performed to file a bond in such amounts and containing such conditions and with such sureties, or in lieu of a bond, to deposit money or obligations of the United States in such amount, as will assure the payment of charges under this subsection, which bond or deposit may cover one or more transactions or all transactions during a specified period: *Provided*, That no charges shall be made for services performed in connection with the inspection of (1) persons arriving by international highways, ferries, bridges, or tunnels, or the conveyances in which they arrive, or (2) persons arriving by aircraft or railroad trains, the operations of which

are covered by published schedules, or the aircraft or trains in which they arrive, or (3) persons arriving by vessels operated between Canadian ports and ports on Puget Sound or operated on the Great Lakes and connecting waterways, the operations of which are covered by published schedules, or the vessels in which they arrive.

(2) Moneys collected under this subsection shall be deposited in the Treasury of the United States to the credit of the appropriation charged with the expense of the services, and the appropriations so credited shall be available for the payment of such compensation to the said employees for services so rendered.

(July 1, 1944, ch. 373, title III, § 364, 58 Stat. 704; Pub. L. 85-58, ch. VII, § 701, June 21, 1957, 71 Stat. 181; Pub. L. 85-580, title II, § 201, Aug. 1, 1958, 72 Stat. 467; Pub. L. 96-88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

AMENDMENTS

1958—Subsec. (c). Pub. L. 85-580 increased rate of pay for each hour that overtime extends beyond 6 o'clock (or 7 o'clock as the case may be) postmeridian from one and one-half times the basic hourly rate to two times the basic hourly rate.

1957—Subsecs. (c), (d). Pub. L. 85-58 added subsecs. (c) and (d).

TRANSFER OF FUNCTIONS

“Secretary of Health and Human Services” substituted for “Secretary of Health, Education, and Welfare” in subsec. (d) pursuant to section 509(b) of Pub. L. 96-88 which is classified to section 3508(b) of Title 20, Education.

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96-88 which is classified to section 3508(b) of Title 20.

DELEGATION OF FUNCTIONS

Functions of President delegated to Secretary of Health and Human Services, see Ex. Ord. No. 11140, Jan. 30, 1964, 29 F.R. 1637, as amended, set out as a note under section 202 of this title.

For assignment of functions of President under subsec. (a) of this section, see section 3 of Ex. Ord. No. 13295, Apr. 4, 2003, 68 F.R. 17255, set out as a note under section 264 of this title.

§ 268. Quarantine duties of consular and other officers

(a) Any consular or medical officer of the United States, designated for such purpose by the Secretary, shall make reports to the Surgeon General, on such forms and at such intervals as the Surgeon General may prescribe, of the health conditions at the port or place at which such officer is stationed.

(b) It shall be the duty of the customs officers and of Coast Guard officers to aid in the enforcement of quarantine rules and regulations; but no additional compensation, except actual and necessary traveling expenses, shall be allowed any such officer by reason of such services.

(July 1, 1944, ch. 373, title III, § 365, 58 Stat. 705; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631.)

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96-88 which is classified to section 3508(b) of Title 20, Education.

Reference to Secretary of Health, Education, and Welfare substituted for reference to Federal Security Administrator pursuant to section 5 of Reorg. Plan No. 1, of 1953, set out as a note under section 3501 of this title, which transferred functions of Federal Security Administrator to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency to Department of Health, Education, and Welfare. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96-88 which is classified to section 3508(b) of Title 20.

§ 269. Bills of health

(a) Detail of medical officer; conditions precedent to issuance; consular officer to receive fees

Except as otherwise prescribed in regulations, any vessel at any foreign port or place clearing or departing for any port or place in a State or possession shall be required to obtain from the consular officer of the United States or from the Public Health Service officer, or other medical officer of the United States designated by the Surgeon General, at the port or place of departure, a bill of health in duplicate, in the form prescribed by the Surgeon General. The President, from time to time, shall specify the ports at which a medical officer shall be stationed for this purpose. Such bill of health shall set forth the sanitary history and condition of said vessel, and shall state that it has in all respects complied with the regulations prescribed pursuant to subsection (c) of this section. Before granting such duplicate bill of health, such consular or medical officer shall be satisfied that the matters and things therein stated are true. The consular officer shall be entitled to demand and receive the fees for bills of health and such fees shall be established by regulation.

(b) Collectors of customs to receive originals; duplicate copies as part of ship's papers

Original bills of health shall be delivered to the collectors of customs at the port of entry. Duplicate copies of such bills of health shall be delivered at the time of inspection to quarantine officers at such port. The bills of health herein prescribed shall be considered as part of the ship's papers, and when duly certified to by the proper consular or other officer of the United States, over his official signature and seal, shall be accepted as evidence of the statements therein contained in any court of the United States.

(c) Regulations to secure sanitary conditions of vessels

The Surgeon General shall from time to time prescribe regulations, applicable to vessels referred to in subsection (a) of this section for the purpose of preventing the introduction into the States or possessions of the United States of any communicable disease by securing the best sanitary condition of such vessels, their cargoes, passengers, and crews. Such regulations shall be observed by such vessels prior to departure, during the course of the voyage, and also during inspection, disinfection, or other quarantine procedure upon arrival at any United States quarantine station.

(d) Vessels from ports near frontier

The provisions of subsections (a) and (b) of this section shall not apply to vessels plying between such foreign ports on or near the frontiers of the United States and ports of the United States as are designated by treaty.

(e) Compliance with regulations

It shall be unlawful for any vessel to enter any port in any State or possession of the United States to discharge its cargo, or land its passengers, except upon a certificate of the quarantine officer that regulations prescribed under subsection (c) of this section have in all respects been complied with by such officer, the vessel, and its master. The master of every such vessel shall deliver such certificate to the collector of customs at the port of entry, together with the original bill of health and other papers of the vessel. The certificate required by this subsection shall be procurable from the quarantine officer, upon arrival of the vessel at the quarantine station and satisfactory inspection thereof, at any time within which quarantine services are performed at such station.

(July 1, 1944, ch. 373, title III, § 366, 58 Stat. 705.)

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96-88 which is classified to section 3508(b) of Title 20, Education.

All offices of collector of customs, comptroller of customs, surveyor of customs, and appraiser of merchandise of Bureau of Customs of Department of the Treasury to which appointments were required to be made by the President with the advice and consent of the Senate ordered abolished, with such offices to be terminated not later than December 31, 1966, by Reorg. Plan No. 1, of 1965, eff. May 25, 1965, 30 F.R. 7035, 79 Stat. 1317, set out in the Appendix to Title 5, Government Organization and Employees. All functions of offices eliminated were already vested in Secretary of the Treasury by Reorg. Plan No. 26 of 1950, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in the Appendix to Title 5.

§ 270. Quarantine regulations governing civil air navigation and civil aircraft

The Surgeon General is authorized to provide by regulations for the application to air naviga-

tion and aircraft of any of the provisions of sections 267 to 269 of this title and regulations prescribed thereunder (including penalties and forfeitures for violations of such sections and regulations), to such extent and upon such conditions as he deems necessary for the safeguarding of the public health.

(July 1, 1944, ch. 373, title III, § 367, 58 Stat. 706.)

ABOLITION OF OFFICE OF SURGEON GENERAL

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96-88 which is classified to section 3508(b) of Title 20, Education.

§ 271. Penalties for violation of quarantine laws**(a) Penalties for persons violating quarantine laws**

Any person who violates any regulation prescribed under sections 264 to 266 of this title, or any provision of section 269 of this title or any regulation prescribed thereunder, or who enters or departs from the limits of any quarantine station, ground, or anchorage in disregard of quarantine rules and regulations or without permission of the quarantine officer in charge, shall be punished by a fine of not more than \$1,000 or by imprisonment for not more than one year, or both.

(b) Penalties for vessels violating quarantine laws

Any vessel which violates section 269 of this title, or any regulations thereunder or under section 267 of this title, or which enters within or departs from the limits of any quarantine station, ground, or anchorage in disregard of the quarantine rules and regulations or without permission of the officer in charge, shall forfeit to the United States not more than \$5,000, the amount to be determined by the court, which shall be a lien on such vessel, to be recovered by proceedings in the proper district court of the United States. In all such proceedings the United States attorney shall appear on behalf of the United States; and all such proceedings shall be conducted in accordance with the rules and laws governing cases of seizure of vessels for violation of the revenue laws of the United States.

(c) Remittance or mitigation of forfeitures

With the approval of the Secretary, the Surgeon General may, upon application therefor, remit or mitigate any forfeiture provided for under subsection (b) of this section, and he shall have authority to ascertain the facts upon all such applications.

(July 1, 1944, ch. 373, title III, § 368, 58 Stat. 706; June 25, 1948, ch. 646, § 1, 62 Stat. 909; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631.)

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, substituted "United States attorney" for "United States district attorney". See section 541 of Title 28, Judiciary and Ju-

dicial Procedure, and Historical and Revision note thereunder.

TRANSFER OF FUNCTIONS

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96-88 which is classified to section 3508(b) of Title 20, Education.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96-88 which is classified to section 3508(b) of Title 20.

§ 272. Administration of oaths by quarantine officers

Medical officers of the United States, when performing duties as quarantine officers at any port or place within the United States, are authorized to take declarations and administer oaths in matters pertaining to the administration of the quarantine laws and regulations of the United States.

(July 1, 1944, ch. 373, title III, § 369, 58 Stat. 706.)

PART H—ORGAN TRANSPLANTS

PRIOR PROVISIONS

A prior part H related to grants to Alaska for mental health, prior to the general revision of part H by Pub. L. 98-507, title II, § 201, Oct. 19, 1984, 98 Stat. 2342.

Another prior part H, entitled "National Library of Medicine", as added by act Aug. 3, 1956, ch. 907, 70 Stat. 960, was redesignated part I and classified to section 275 et seq. of this title, prior to repeal by Pub. L. 99-158.

§ 273. Organ procurement organizations

(a) Grant authority of Secretary

(1) The Secretary may make grants for the planning of qualified organ procurement organizations described in subsection (b) of this section.

(2) The Secretary may make grants for the establishment, initial operation, consolidation, and expansion of qualified organ procurement organizations described in subsection (b) of this section.

(b) Qualified organizations

(1) A qualified organ procurement organization for which grants may be made under subsection (a) of this section is an organization which, as determined by the Secretary, will carry out the functions described in paragraph (2)¹ and—

(A) is a nonprofit entity,

(B) has accounting and other fiscal procedures (as specified by the Secretary) necessary to assure the fiscal stability of the organization,

(C) has an agreement with the Secretary to be reimbursed under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.] for the procurement of kidneys,

(D) notwithstanding any other provision of law, has met the other requirements of this section and has been certified or recertified by the Secretary within the previous 4-year period as meeting the performance standards to be a qualified organ procurement organization through a process that either—

(i) granted certification or recertification within such 4-year period with such certification or recertification in effect as of January 1, 2000, and remaining in effect through the earlier of—

(I) January 1, 2002; or

(II) the completion of recertification under the requirements of clause (ii); or

(ii) is defined through regulations that are promulgated by the Secretary by not later than January 1, 2002, that—

(I) require recertifications of qualified organ procurement organizations not more frequently than once every 4 years;

(II) rely on outcome and process performance measures that are based on empirical evidence, obtained through reasonable efforts, of organ donor potential and other related factors in each service area of qualified organ procurement organizations;

(III) use multiple outcome measures as part of the certification process; and

(IV) provide for a qualified organ procurement organization to appeal a decertification to the Secretary on substantive and procedural grounds;²

(E) has procedures to obtain payment for non-renal organs provided to transplant centers,

(F) has a defined service area that is of sufficient size to assure maximum effectiveness in the procurement and equitable distribution of organs, and that either includes an entire metropolitan statistical area (as specified by the Director of the Office of Management and Budget) or does not include any part of the area,

(G) has a director and such other staff, including the organ donation coordinators and organ procurement specialists necessary to effectively obtain organs from donors in its service area, and

(H) has a board of directors or an advisory board which—

(i) is composed of—

(I) members who represent hospital administrators, intensive care or emergency room personnel, tissue banks, and voluntary health associations in its service area,

(II) members who represent the public residing in such area,

(III) a physician with knowledge, experience, or skill in the field of histocompatibility³ or an individual with

² So in original. The semicolon probably should be a comma.

³ So in original. Probably should be "histocompatibility".

¹ See References in Text note below.

Appendix #6

244

S. 6196.

DEPARTMENT OF STATE
OFFICE OF
ROLLS & LIBRARY
JUL 2 1902

DEPARTMENT OF STATE

Fifty-seventh Congress of the United States of America;

JUL 2 12 31 PM '02

CHIEF CLERK'S OFFICE

At the First Session,

SENT

Began and held at the City of Washington on Monday, the second day of December, one thousand nine hundred and one.

AN ACT

To regulate the sale of viruses, serums, toxins, and analogous products in the District of Columbia, to regulate interstate traffic in said articles, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after six months after the promulgation of the regulations authorized by section four of this Act no person shall sell, barter, or exchange, or offer for sale, barter, or exchange in the District of Columbia, or send, carry, or bring for sale, barter, or exchange from any State, Territory, or the District of Columbia into any State, Territory, or the District of Columbia, or from any foreign country into the United States, or from the United States into any foreign country, any virus, therapeutic serum, toxin, antitoxin, or analogous product applicable to the prevention and cure of diseases of man, unless (a) such virus, serum, toxin, antitoxin, or product has been propagated and prepared at an establishment holding an unsuspended and unrevoked license, issued by the Secretary of the Treasury as hereinafter authorized, to propagate and prepare such virus, serum, toxin, antitoxin, or product for sale in the District of Columbia, or for sending, bringing, or carrying from place to place aforesaid; nor (b) unless each package of such virus, serum, toxin, antitoxin, or product is plainly marked with the proper name of the article contained therein, the name, address, and license number of the manufacturer, and the date beyond which the contents can not be expected beyond reasonable doubt to yield their specific results: *Provided,* That the suspension or revocation of any license shall not prevent the sale, barter, or exchange of any virus, serum, toxin, antitoxin, or product aforesaid which has been sold and delivered by the licentiate prior to such suspension or revocation, unless the owner or custodian of such virus, serum, toxin, antitoxin, or product aforesaid has been notified by the Secretary of the Treasury not to sell, barter, or exchange the same.

SEC. 2. That no person shall falsely label or mark any package or container of any virus, serum, toxin, antitoxin, or product aforesaid; nor alter any label or mark on any package or container of any virus, serum, toxin, antitoxin, or product aforesaid so as to falsify such label or mark.

SEC. 3. That any officer, agent, or employee of the Treasury Department, duly detailed by the Secretary of the Treasury for that purpose, may during all reasonable hours enter and inspect any establishment for the propagation and preparation of any virus, serum, toxin, antitoxin, or product aforesaid for sale, barter, or exchange in the District of Columbia, or to be sent, carried, or brought from any State, Territory, or the District of Columbia into any other State or Territory or the District of Columbia, or from the United States into any foreign country, or from any foreign country into the United States.

SEC. 4. That the Surgeon-General of the Army, the Surgeon-General of the Navy, and the supervising Surgeon-General of the Marine-Hospital Service, be, and they are hereby, constituted a board with authority, subject to the approval of the Secretary of the Treasury, to promulgate from time to time such rules as may be necessary in the judgment of said board to govern the issue, suspension, and revocation of licenses for the maintenance of establishments for the propagation and preparation of viruses, serums, toxins, antitoxins, and analogous products, applicable to the prevention and cure of diseases of man, intended for sale in the District of Columbia, or to be sent, carried, or brought for sale from any State, Territory, or the District of Columbia, into any other State, Territory, or the District of Columbia, or from the United States into any foreign country, or from any foreign country into the United States: *Provided*, That all licenses issued for the maintenance of establishments for the propagation and preparation in any foreign country of any virus, serum, toxin, antitoxin, or product aforesaid, for sale, barter, or exchange in the United States, shall be issued upon condition that the licentiates will permit the inspection of the establishments where said articles are propagated and prepared, in accordance with section three of this Act.

SEC. 5. That the Secretary of the Treasury be, and he is hereby, authorized and directed to enforce the provisions of this Act and of such rules and regulations as may be made by authority thereof; to issue, suspend, and revoke licenses for the maintenance of establishments aforesaid, and to detail for the discharge of such duties such officers, agents, and employees of the Treasury Department as may in his judgment be necessary.

SEC. 6. That no person shall interfere with any officer, agent, or employee of the Treasury Department in the performance of any duty imposed upon him by this Act or by regulations made by authority thereof.

SEC. 7. That any person who shall violate, or aid or abet in violating, any of the provisions of this Act shall be punished by a fine not exceeding five hundred dollars or by imprisonment not exceeding one year, or by both such fine and imprisonment, in the discretion of the court.

SEC. 8. That all Acts and parts of Acts inconsistent with the provisions of this Act be, and the same are hereby, repealed.

W. A. Henderson
Speaker of the House of Representatives.

Approved,
July 1, 1902.

John G. Spooner
President of the Senate pro tempore.

Theodore Roosevelt

I certify that this Act originated in the Senate.

John B. ...
Secretary

Appendix #7



OSH Act of 1970

[Table of Contents](#)
[General Duty Clause](#)
[Complete OSH Act Version \("All-in-One"\)](#)

Public Law 91-596
84 STAT. 1590
91st Congress, S.2193
December 29, 1970,
as amended through January 1, 2004. (1)

An Act

To assure safe and healthful working conditions for working men and women; by authorizing enforcement of the standards developed under the Act; by assisting and encouraging the States in their efforts to assure safe and healthful working conditions; by providing for research, information, education, and training in the field of occupational safety and health; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Occupational Safety and Health Act of 1970."

Footnote (1) See Historical notes at the end of this document for changes and amendments affecting the OSH Act since its passage in 1970 through January 1, 2004.

SEC. 2. Congressional Findings and Purpose

(a) The Congress finds that personal injuries and illnesses arising out of work situations impose a substantial burden upon, and are a hindrance to, interstate commerce in terms of lost production, wage loss, medical expenses, and disability compensation payments.

29 USC 651

(b) The Congress declares it to be its purpose and policy, through the exercise of its powers to regulate commerce among the several States and with foreign nations and to provide for the general welfare, to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources –

(1) by encouraging employers and employees in their efforts to reduce the number of occupational safety and health hazards at their places of employment, and to stimulate employers and employees to institute new and to perfect existing programs for providing safe and healthful working conditions

(2) by providing that employers and employees have separate but dependent responsibilities and rights with respect to achieving safe and healthful working conditions;

(3) by authorizing the Secretary of Labor to set mandatory occupational safety and health standards applicable to businesses affecting interstate commerce, and by creating an Occupational Safety and Health Review Commission for carrying out adjudicatory functions under the Act;

(4) by building upon advances already made through employer and employee initiative for providing safe and healthful working conditions;

(5) by providing for research in the field of occupational safety and health, including the psychological factors involved, and by developing innovative methods, techniques, and approaches for dealing with occupational safety and health problems;

(6) by exploring ways to discover latent diseases, establishing causal connections between diseases and work in environmental conditions, and conducting other research relating to health problems, in recognition of the fact that occupational health standards present problems often different from those involved in occupational safety;

(7) by providing medical criteria which will assure insofar as practicable that no employee will suffer diminished health, functional capacity, or life expectancy as a result of his work experience;

- (8) by providing for training programs to increase the number and competence of personnel engaged in the field of occupational safety and health; affecting the OSH Act since its passage in 1970 through January 1, 2004.
- (9) by providing for the development and promulgation of occupational safety and health standards;
- (10) by providing an effective enforcement program which shall include a prohibition against giving advance notice of any inspection and sanctions for any individual violating this prohibition;
- (11) by encouraging the States to assume the fullest responsibility for the administration and enforcement of their occupational safety and health laws by providing grants to the States to assist in identifying their needs and responsibilities in the area of occupational safety and health, to develop plans in accordance with the provisions of this Act, to improve the administration and enforcement of State occupational safety and health laws, and to conduct experimental and demonstration projects in connection therewith;
- (12) by providing for appropriate reporting procedures with respect to occupational safety and health which procedures will help achieve the objectives of this Act and accurately describe the nature of the occupational safety and health problem;
- (13) by encouraging joint labor-management efforts to reduce injuries and disease arising out of employment.

SEC. 3. Definitions

For the purposes of this Act --

29 USC 652

- (1) The term "Secretary" means the Secretary of Labor.
- (2) The term "Commission" means the Occupational Safety and Health Review Commission established under this Act.
- (3) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between a State and any place outside thereof, or within the District of Columbia, or a possession of the United States (other than the Trust Territory of the Pacific Islands), or between points in the same State but through a point outside thereof.
- (4) The term "person" means one or more individuals, partnerships, associations, corporations, business trusts, legal representatives, or any organized group of persons.
- (5) The term "employer" means a person engaged in a business affecting commerce who has employees, but does not include the United States (not including the United States Postal Service) or any State or political subdivision of a State.
- (6) The term "employee" means an employee of an employer who is employed in a business of his employer which affects commerce.
- (7) The term "State" includes a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands.
- (8) The term "occupational safety and health standard" means a standard which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment.
- (9) The term "national consensus standard" means any occupational safety and health standard or modification thereof which (1), has been adopted and promulgated by a nationally recognized standards-producing organization under procedures whereby it can be determined by the Secretary that persons interested and affected by the scope or provisions of the standard have reached substantial agreement on its adoption, (2) was formulated in a manner which afforded an opportunity for diverse views to be considered and (3) has been designated as such a standard by the Secretary, after consultation with other appropriate Federal agencies.
- (10) The term "established Federal standard" means any operative occupational safety and health standard established by any agency of the United States and presently in effect, or contained in any Act of Congress in force on the date of enactment of this Act.
- (11) The term "Committee" means the National Advisory Committee on Occupational Safety and Health

For Trust Territory coverage, including the Northern Mariana Islands, see [Historical notes](#)

Pub. L. 105-241 United States Postal Service is an employer subject to the Act. See [Historical notes](#).

established under this Act.

(12) The term "Director" means the Director of the National Institute for Occupational Safety and Health.

(13) The term "Institute" means the National Institute for Occupational Safety and Health established under this Act.

(14) The term "Workmen's Compensation Commission" means the National Commission on State Workmen's Compensation Laws established under this Act.

SEC. 4. Applicability of This Act

- (a) This Act shall apply with respect to employment performed in a workplace in a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Trust Territory of the Pacific Islands, Wake Island, Outer Continental Shelf Lands defined in the Outer Continental Shelf Lands Act, Johnston Island, and the Canal Zone. The Secretary of the Interior shall, by regulation, provide for judicial enforcement of this Act by the courts established for areas in which there are no United States district courts having jurisdiction.

29 USC 653

For Canal Zone and Trust Territory coverage, including the Northern Mariana Islands, see Historical notes.

- (b)
- (1) Nothing in this Act shall apply to working conditions of employees with respect to which other Federal agencies, and State agencies acting under section 274 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2021), exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health.
- (2) The safety and health standards promulgated under the Act of June 30, 1936, commonly known as the Walsh-Healey Act (41 U.S.C. 35 et seq.), the Service Contract Act of 1965 (41 U.S.C. 351 et seq.), Public Law 91-54, Act of August 9, 1969 (40 U.S.C. 333), Public Law 85-742, Act of August 23, 1958 (33 U.S.C. 941), and the National Foundation on Arts and Humanities Act (20 U.S.C. 951 et seq.) are superseded on the effective date of corresponding standards, promulgated under this Act, which are determined by the Secretary to be more effective. Standards issued under the laws listed in this paragraph and in effect on or after the effective date of this Act shall be deemed to be occupational safety and health standards issued under this Act, as well as under such other Acts.
- (3) The Secretary shall, within three years after the effective date of this Act, report to the Congress his recommendations for legislation to avoid unnecessary duplication and to achieve coordination between this Act and other Federal laws.
- (4) Nothing in this Act shall be construed to supersede or in any manner affect any workmen's compensation law or to enlarge or diminish or affect in any other manner the common law or statutory rights, duties, or liabilities of employers and employees under any law with respect to injuries, diseases, or death of employees arising out of, or in the course of, employment.

SEC. 5. Duties

- (a) Each employer —
- (1) shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees;
- (2) shall comply with occupational safety and health standards promulgated under this Act.
- (b) Each employee shall comply with occupational safety and health standards and all rules, regulations, and orders issued pursuant to this Act which are applicable to his own actions and conduct.

29 USC 654

SEC. 6. Occupational Safety and Health Standards

- (a) Without regard to chapter 5 of title 5, United States Code, or to the other subsections of this section, the Secretary shall, as soon as practicable during the period beginning with the effective date of this Act and ending two years after such date, by rule promulgate as an occupational safety or health standard any national consensus standard, and any established Federal standard, unless he determines that the promulgation of such a standard would not result in improved safety or health for specifically designated employees. In the event of conflict among any such standards, the Secretary shall promulgate the standard which assures the greatest protection of the safety or health of the affected employees.
- (b) The Secretary may by rule promulgate, modify, or revoke any occupational safety or health standard in the following manner:
- (1) Whenever the Secretary, upon the basis of information submitted to him in writing by an interested person, a

29 USC 655

representative of any organization of employers or employees, a nationally recognized standards-producing organization, the Secretary of Health and Human Services, the National Institute for Occupational Safety and Health, or a State or political subdivision, or on the basis of information developed by the Secretary or otherwise available to him, determines that a rule should be promulgated in order to serve the objectives of this Act, the Secretary may request the recommendations of an advisory committee appointed under section 7 of this Act. The Secretary shall provide such an advisory committee with any proposals of his own or of the Secretary of Health and Human Services together with all pertinent factual information developed by the Secretary or the Secretary of Health and Human Services, or otherwise available, including the results of research, demonstrations, and experiments. An advisory committee shall submit to the Secretary its recommendations regarding the rule to be promulgated within ninety days from the date of its appointment or within such longer or shorter period as may be prescribed by the Secretary, but in no event for a period which is longer than two hundred and seventy days.

(2) The Secretary shall publish a proposed rule promulgating, modifying, or revoking an occupational safety or health standard in the Federal Register and shall afford interested persons a period of thirty days after publication to submit written data or comments. Where an advisory committee is appointed and the Secretary determines that a rule should be issued, he shall publish the proposed rule within sixty days after the submission of the advisory committee's recommendations or the expiration of the period prescribed by the Secretary for such submission.

(3) On or before the last day of the period provided for the submission of written data or comments under paragraph (2), any interested person may file with the Secretary written objections to the proposed rule, stating the grounds therefor and requesting a public hearing on such objections. Within thirty days after the last day for filing such objections, the Secretary shall publish in the Federal Register a notice specifying the occupational safety or health standard to which objections have been filed and a hearing requested, and specifying a time and place for such hearing.

(4) Within sixty days after the expiration of the period provided for the submission of written data or comments under paragraph (2), or within sixty days after the completion of any hearing held under paragraph (3), the Secretary shall issue a rule promulgating, modifying, or revoking an occupational safety or health standard or make a determination that a rule should not be issued. Such a rule may contain a provision delaying its effective date for such period (not in excess of ninety days) as the Secretary determines may be necessary to insure that affected employers and employees will be informed of the existence of the standard and of its terms and that employers affected are given an opportunity to familiarize themselves and their employees with the existence of the requirements of the standard.

(5) The Secretary, in promulgating standards dealing with toxic materials or harmful physical agents under this subsection, shall set the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life. Development of standards under this subsection shall be based upon research, demonstrations, experiments, and such other information as may be appropriate. In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experience gained under this and other health and safety laws. Whenever practicable, the standard promulgated shall be expressed in terms of objective criteria and of the performance desired.

(6)

(A) Any employer may apply to the Secretary for a temporary order granting a variance from a standard or any provision thereof promulgated under this section. Such temporary order shall be granted only if the employer files an application which meets the requirements of clause (B) and establishes that –

- (i) he is unable to comply with a standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standard or because necessary construction or alteration of facilities cannot be completed by the effective date,
- (ii) he is taking all available steps to safeguard his employees against the hazards covered by the standard, and
- (iii) he has an effective program for coming into compliance with the standard as quickly as practicable.

Any temporary order issued under this paragraph shall prescribe the practices, means, methods, operations, and processes which the employer must adopt and use while the order is in effect and state in detail his program for coming into compliance with the standard. Such a temporary order may be granted only after notice to employees and an opportunity for a hearing. *Provided*, That the Secretary may issue one interim order to be effective until a decision is made on the basis of the hearing. No temporary order may be in effect for longer than the period needed by the employer to achieve compliance with the standard or one year, whichever is shorter, except that such an order may be renewed not more than twice (I) so long as the requirements of this paragraph are met and (II) if an application for renewal is filed at least 90 days prior to the expiration date of the order. No interim renewal of an order may remain in effect for longer than 180 days.

(B) An application for temporary order under this paragraph (6) shall contain:

- (i) a specification of the standard or portion thereof from which the employer seeks a variance,
- (ii) a representation by the employer, supported by representations from qualified persons having

firsthand knowledge of the facts represented, that he is unable to comply with the standard or portion thereof and a detailed statement of the reasons therefor,

(iii) a statement of the steps he has taken and will take (with specific dates) to protect employees against the hazard covered by the standard,

(iv) a statement of when he expects to be able to comply with the standard and what steps he has taken and what steps he will take (with dates specified) to come into compliance with the standard, and

(v) a certification that he has informed his employees of the application by giving a copy thereof to their authorized representative, posting a statement giving a summary of the application and specifying where a copy may be examined at the place or places where notices to employees are normally posted, and by other appropriate means.

A description of how employees have been informed shall be contained in the certification. The information to employees shall also inform them of their right to petition the Secretary for a hearing.

(C) The Secretary is authorized to grant a variance from any standard or portion thereof whenever he determines, or the Secretary of Health and Human Services certifies, that such variance is necessary to permit an employer to participate in an experiment approved by him or the Secretary of Health and Human Services designed to demonstrate or validate new and improved techniques to safeguard the health or safety of workers.

(7) Any standard promulgated under this subsection shall prescribe the use of labels or other appropriate forms of warning as are necessary to insure that employees are apprised of all hazards to which they are exposed, relevant symptoms and appropriate emergency treatment, and proper conditions and precautions of safe use or exposure. Where appropriate, such standard shall also prescribe suitable protective equipment and control or technological procedures to be used in connection with such hazards and shall provide for monitoring or measuring employee exposure at such locations and intervals, and in such manner as may be necessary for the protection of employees. In addition, where appropriate, any such standard shall prescribe the type and frequency of medical examinations or other tests which shall be made available, by the employer or at his cost, to employees exposed to such hazards in order to most effectively determine whether the health of such employees is adversely affected by such exposure. In the event such medical examinations are in the nature of research, as determined by the Secretary of Health and Human Services, such examinations may be furnished at the expense of the Secretary of Health and Human Services. The results of such examinations or tests shall be furnished only to the Secretary or the Secretary of Health and Human Services, and, at the request of the employee, to his physician. The Secretary, in consultation with the Secretary of Health and Human Services, may by rule promulgated pursuant to section 553 of title 5, United States Code, make appropriate modifications in the foregoing requirements relating to the use of labels or other forms of warning, monitoring or measuring, and medical examinations, as may be warranted by experience, information, or medical or technological developments acquired subsequent to the promulgation of the relevant standard.

(8) Whenever a rule promulgated by the Secretary differs substantially from an existing national consensus standard, the Secretary shall, at the same time, publish in the Federal Register a statement of the reasons why the rule as adopted will better effectuate the purposes of this Act than the national consensus standard.

(c)

(1) The Secretary shall provide, without regard to the requirements of chapter 5, title 5, United States Code, for an emergency temporary standard to take immediate effect upon publication in the Federal Register if he determines –

(A) that employees are exposed to grave danger from exposure to substances or agents determined to be toxic or physically harmful or from new hazards, and

(B) that such emergency standard is necessary to protect employees from such danger.

(2) Such standard shall be effective until superseded by a standard promulgated in accordance with the procedures prescribed in paragraph (3) of this subsection.

(3) Upon publication of such standard in the Federal Register the Secretary shall commence a proceeding in accordance with section 6 (b) of this Act, and the standard as published shall also serve as a proposed rule for the proceeding. The Secretary shall promulgate a standard under this paragraph no later than six months after publication of the emergency standard as provided in paragraph (2) of this subsection.

(d) Any affected employer may apply to the Secretary for a rule or order for a variance from a standard promulgated under this section. Affected employees shall be given notice of each such application and an opportunity to participate in a hearing. The Secretary shall issue such rule or order if he determines on the record, after opportunity for an inspection where appropriate and a hearing, that the proponent of the variance has demonstrated by a preponderance of the evidence that the conditions, practices, means, methods, operations, or processes used or proposed to be used by an employer will provide employment and places of employment to his employees which are as safe and healthful as those which would prevail if he complied with the standard. The rule or order so issued shall prescribe the conditions the employer must maintain, and the practices, means, methods, operations, and processes which he must adopt and utilize to the extent they differ from the standard in question. Such a rule or order may be modified or revoked upon application by an employer, employees, or by the Secretary on his own motion, in the manner prescribed for its issuance under this subsection at any time after six months from its issuance.

(e) Whenever the Secretary promulgates any standard, makes any rule, order, or decision, grants any exemption or extension of time, or compromises, mitigates, or settles any penalty assessed under this Act, he shall include a

extension of time, or compromises, mitigates, or states any penalty assessed under this Act, he shall include a statement of the reasons for such action, which shall be published in the Federal Register.

(f) Any person who may be adversely affected by a standard issued under this section may at any time prior to the sixtieth day after such standard is promulgated file a petition challenging the validity of such standard with the United States court of appeals for the circuit wherein such person resides or has his principal place of business, for a judicial review of such standard. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The filing of such petition shall not, unless otherwise ordered by the court, operate as a stay of the standard. The determinations of the Secretary shall be conclusive if supported by substantial evidence in the record considered as a whole.

(g) In determining the priority for establishing standards under this section, the Secretary shall give due regard to the urgency of the need for mandatory safety and health standards for particular industries, trades, crafts, occupations, businesses, workplaces or work environments. The Secretary shall also give due regard to the recommendations of the Secretary of Health and Human Services regarding the need for mandatory standards in determining the priority for establishing such standards.

SEC. 7. Advisory Committees; Administration

(a)

(1) There is hereby established a National Advisory Committee on Occupational Safety and Health consisting of twelve members appointed by the Secretary, four of whom are to be designated by the Secretary of Health and Human Services, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and composed of representatives of management, labor, occupational safety and occupational health professions, and of the public. The Secretary shall designate one of the public members as Chairman. The members shall be selected upon the basis of their experience and competence in the field of occupational safety and health.

(2) The Committee shall advise, consult with, and make recommendations to the Secretary and the Secretary of Health and Human Services on matters relating to the administration of the Act. The Committee shall hold no fewer than two meetings during each calendar year. All meetings of the Committee shall be open to the public and a transcript shall be kept and made available for public inspection.

(3) The members of the Committee shall be compensated in accordance with the provisions of section 3109 of title 5, United States Code.

(4) The Secretary shall furnish to the Committee an executive secretary and such secretarial, clerical, and other services as are deemed necessary to the conduct of its business.

(b) An advisory committee may be appointed by the Secretary to assist him in his standard-setting functions under section 6 of this Act. Each such committee shall consist of not more than fifteen members and shall include as a member one or more designees of the Secretary of Health and Human Services, and shall include among its members an equal number of persons qualified by experience and affiliation to present the viewpoint of the employers involved, and of persons similarly qualified to present the viewpoint of the workers involved, as well as one or more representatives of health and safety agencies of the States. An advisory committee may also include such other persons as the Secretary may appoint who are qualified by knowledge and experience to make a useful contribution to the work of such committee, including one or more representatives of professional organizations of technicians or professionals specializing in occupational safety or health, and one or more representatives of nationally recognized standards producing organizations, but the number of persons so appointed to any such advisory committee shall not exceed the number appointed to such committee as representatives of Federal and State agencies. Persons appointed to advisory committees from private life shall be compensated in the same manner as consultants or experts under section 3109 of title 5, United States Code. The Secretary shall pay to any State which is the employer of a member of such a committee who is a representative of the health or safety agency of that State, reimbursement sufficient to cover the actual cost to the State resulting from such representative's membership on such committee. Any meeting of such committee shall be open to the public and an accurate record shall be kept and made available to the public. No member of such committee (other than representatives of employers and employees) shall have an economic interest in any proposed rule.

(c) In carrying out his responsibilities under this Act, the Secretary is authorized to –

(1) use, with the consent of any Federal agency, the services, facilities, and personnel of such agency, with or without reimbursement, and with the consent of any State or political subdivision thereof, accept and use the services, facilities, and personnel of any agency of such State or subdivision with reimbursement; and

(2) employ experts and consultants or organizations thereof as authorized by section 3109 of title 5, United States Code, except that contracts for such employment may be renewed annually; compensate individuals so employed at rates not in excess of the rate specified at the time of service for grade GS-18 under section 5332 of title 5, United States Code, including travel time, and allow them while away from their homes or regular places of business, travel expenses (including per diem in lieu of subsistence) as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently, while so employed.

(d) There is established a Maritime Occupational Safety and Health Advisory Committee, which shall be a continuing body and shall provide advice to the Secretary in formulating maritime industry standards and regarding matters pertaining to the administration of this Act related to the maritime industry. The composition of such advisory committee shall be consistent with the advisory committees established under subsection (b). A member of the advisory committee who is otherwise qualified may continue to serve until a successor is appointed. The Secretary may promulgate or amend regulations as necessary to implement this subsection.

29 USC 656

SEC. 8. Inspections, Investigations, and Recordkeeping

- (a) In order to carry out the purposes of this Act, the Secretary, upon presenting appropriate credentials to the owner, operator, or agent in charge, is authorized –

29 USC 657

(1) to enter without delay and at reasonable times any factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer; and

(2) to inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment and all pertinent conditions, structures, machines, apparatus devices, equipment, and materials therein, and to question privately any such employer, owner, operator, agent or employee.

- (b) In making his inspections and investigations under this Act the Secretary may require the attendance and testimony of witnesses and the production of evidence under oath. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In case of a contumacy, failure, or refusal of any person to obey such an order, any district court of the United States or the United States courts of any territory or possession, within the jurisdiction of which such person is found, or resides or transacts business, upon the application by the Secretary, shall have jurisdiction to issue to such person an order requiring such person to appear to produce evidence if, as, and when so ordered, and to give testimony relating to the matter under investigation or in question, and any failure to obey such order of the court may be punished by said court as a contempt thereof.

- (c)

(1) Each employer shall make, keep and preserve, and make available to the Secretary or the Secretary of Health and Human Services, such records regarding his activities relating to this Act as the Secretary, in cooperation with the Secretary of Health and Human Services, may prescribe by regulation as necessary or appropriate for the enforcement of this Act or for developing information regarding the causes and prevention of occupational accidents and illnesses. In order to carry out the provisions of this paragraph such regulations may include provisions requiring employers to conduct periodic inspections. The Secretary shall also issue regulations requiring that employers, through posting of notices or other appropriate means, keep their employees informed of their protections and obligations under this Act, including the provisions of applicable standards.

(2) The Secretary, in cooperation with the Secretary of Health and Human Services, shall prescribe regulations requiring employers to maintain accurate records of, and to make periodic reports on, work-related deaths, injuries and illnesses other than minor injuries requiring only first aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job.

(3) The Secretary, in cooperation with the Secretary of Health and Human Services, shall issue regulations requiring employers to maintain accurate records of employee exposures to potentially toxic materials or harmful physical agents which are required to be monitored or measured under section 6. Such regulations shall provide employees or their representatives with an opportunity to observe such monitoring or measuring, and to have access to the records thereof. Such regulations shall also make appropriate provision for each employee or former employee to have access to such records as will indicate his own exposure to toxic materials or harmful physical agents. Each employer shall promptly notify any employee who has been or is being exposed to toxic materials or harmful physical agents in concentrations or at levels which exceed those prescribed by an applicable occupational safety and health standard promulgated under section 6, and shall inform any employee who is being thus exposed of the corrective action being taken.

- (d) Any information obtained by the Secretary, the Secretary of Health and Human Services, or a State agency under this Act shall be obtained with a minimum burden upon employers, especially those operating small businesses. Unnecessary duplication of efforts in obtaining information shall be reduced to the maximum extent feasible.

- (e) Subject to regulations issued by the Secretary, a representative of the employer and a representative authorized by his employees shall be given an opportunity to accompany the Secretary or his authorized representative during the physical inspection of any workplace under subsection (a) for the purpose of aiding such inspection. Where there is no authorized employee representative, the Secretary or his authorized representative shall consult with a reasonable number of employees concerning matters of health and safety in the workplace.

- (f)

(1) Any employees or representative of employees who believe that a violation of a safety or health standard exists that threatens physical harm, or that an imminent danger exists, may request an inspection by giving notice to the Secretary or his authorized representative of such violation or danger. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employees or representative of employees, and a copy shall be provided the employer or his agent no later than at the time of inspection, except that, upon the request of the person giving such notice, his name and the names of individual employees referred to therein shall not appear in such copy or on any record published, released, or made available pursuant to subsection (g) of this section. If upon receipt of such notification the Secretary determines there are reasonable grounds to believe that such violation or danger exists, he shall make a special inspection in accordance with the provisions of this section as soon as practicable, to determine if such violation or danger exists. If the Secretary determines there are no reasonable grounds to believe that a violation or danger exists he shall notify the employees or representative of the employees in writing of such determination.

(2) Prior to or during any inspection of a workplace, any employees or representative of employees employed in such workplace may notify the Secretary or any representative of the Secretary responsible for conducting the inspection in writing of any violation of this Act which they have reason to believe exists in such workplace. The

inspection, in writing, of any violation of this Act which they have reason to believe exists in such workplace. The Secretary shall, by regulation, establish procedures for informal review of any refusal by a representative of the Secretary to issue a citation with respect to any such alleged violation and shall furnish the employees or representative of employees requesting such review a written statement of the reasons for the Secretary's final disposition of the case.

- (g)
- (1) The Secretary and Secretary of Health and Human Services are authorized to compile, analyze, and publish, either in summary or detailed form, all reports or information obtained under this section.
- (2) The Secretary and the Secretary of Health and Human Services shall each prescribe such rules and regulations as he may deem necessary to carry out their responsibilities under this Act, including rules and regulations dealing with the inspection of an employer's establishment.
- (h) The Secretary shall not use the results of enforcement activities, such as the number of citations issued or penalties assessed, to evaluate employees directly involved in enforcement activities under this Act or to impose quotas or goals with regard to the results of such activities.

Pub. L. 105-198
added subsection
(h).

SEC. 9. Citations

- (a) If, upon inspection or investigation, the Secretary or his authorized representative believes that an employer has violated a requirement of section 5 of this Act, of any standard, rule or order promulgated pursuant to section 6 of this Act, or of any regulations prescribed pursuant to this Act, he shall with reasonable promptness issue a citation to the employer. Each citation shall be in writing and shall describe with particularity the nature of the violation including a reference to the provision of the Act, standard, rule, regulation, or order alleged to have been violated. In addition, the citation shall fix a reasonable time for the abatement of the violation. The Secretary may prescribe procedures for the issuance of a notice in lieu of a citation with respect to de minimis violations which have no direct or immediate relationship to safety or health.
- (b) Each citation issued under this section, or a copy or copies thereof, shall be prominently posted, as prescribed in regulations issued by the Secretary, at or near each place a violation referred to in the citation occurred.
- (c) No citation may be issued under this section after the expiration of six months following the occurrence of any violation.

29 USC 658

SEC. 10. Procedure for Enforcement

- (a) If, after an inspection or investigation, the Secretary issues a citation under section 9(a), he shall, within a reasonable time after the termination of such inspection or investigation, notify the employer by certified mail of the penalty, if any, proposed to be assessed under section 17 and that the employer has fifteen working days within which to notify the Secretary that he wishes to contest the citation or proposed assessment of penalty. If, within fifteen working days from the receipt of the notice issued by the Secretary the employer fails to notify the Secretary that he intends to contest the citation or proposed assessment of penalty, and no notice is filed by any employee or representative of employees under subsection (c) within such time, the citation and the assessment, as proposed, shall be deemed a final order of the Commission and not subject to review by any court or agency.
- (b) If the Secretary has reason to believe that an employer has failed to correct a violation for which a citation has been issued within the period permitted for its correction (which period shall not begin to run until the entry of a final order by the Commission in the case of any review proceedings under this section initiated by the employer in good faith and not solely for delay or avoidance of penalties), the Secretary shall notify the employer by certified mail of such failure and of the penalty proposed to be assessed under section 17 by reason of such failure, and that the employer has fifteen working days within which to notify the Secretary that he wishes to contest the Secretary's notification or the proposed assessment of penalty. If, within fifteen working days from the receipt of notification issued by the Secretary, the employer fails to notify the Secretary that he intends to contest the notification or proposed assessment of penalty, the notification and assessment, as proposed, shall be deemed a final order of the Commission and not subject to review by any court or agency.
- (c) If an employer notifies the Secretary that he intends to contest a citation issued under section 9(a) or notification issued under subsection (a) or (b) of this section, or if, within fifteen working days of the issuance of a citation under section 9(a), any employee or representative of employees files a notice with the Secretary alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable, the Secretary shall immediately advise the Commission of such notification, and the Commission shall afford an opportunity for a hearing (in accordance with section 554 of title 5, United States Code, but without regard to subsection (a)(3) of such section). The Commission shall thereafter issue an order, based on findings of fact, affirming, modifying, or vacating the Secretary's citation or proposed penalty, or directing other appropriate relief, and such order shall become final thirty days after its issuance. Upon a showing by an employer of a good faith effort to comply with the abatement requirements of a citation, and that abatement has not been completed because of factors beyond his reasonable control, the Secretary, after an opportunity for a hearing as provided in this subsection, shall issue an order affirming or modifying the abatement requirements in such citation. The rules of procedure prescribed by the Commission shall provide affected employees or representatives of affected employees an opportunity to participate as parties to hearings under this subsection.

29 USC 659

SEC. 11. Judicial Review

- (a) Any person adversely affected or aggrieved by an order of the Commission issued under subsection (c) of section 10 may obtain a review of such order in any United States court of appeals for the circuit in which the violation is alleged to have occurred or where the employer has its principal office, or in the Court of Appeals for the District of Columbia Circuit, by filing in such court within sixty days following the issuance of such order a written petition praying that the order be modified or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Commission and to the other parties, and thereupon the Commission shall file in the court the record in the proceeding as provided in section 2112 of title 28, United States Code. Upon such filing, the court shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such record a decree affirming, modifying, or setting aside in whole or in part, the order of the Commission and enforcing the same to the extent that such order is affirmed or modified. The commencement of proceedings under this subsection shall not, unless ordered by the court, operate as a stay of the order of the Commission. No objection that has not been urged before the Commission shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Commission with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Commission, the court may order such additional evidence to be taken before the Commission and to be made a part of the record. The Commission may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive, and its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with it, the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the Supreme Court of the United States, as provided in section 1254 of title 28, United States Code.
- (b) The Secretary may also obtain review or enforcement of any final order of the Commission by filing a petition for such relief in the United States court of appeals for the circuit in which the alleged violation occurred or in which the employer has its principal office, and the provisions of subsection (a) shall govern such proceedings to the extent applicable. If no petition for review, as provided in subsection (a), is filed within sixty days after service of the Commission's order, the Commission's findings of fact and order shall be conclusive in connection with any petition for enforcement which is filed by the Secretary after the expiration of such sixty-day period. In any such case, as well as in the case of a noncontested citation or notification by the Secretary which has become a final order of the Commission under subsection (a) or (b) of section 10, the clerk of the court, unless otherwise ordered by the court, shall forthwith enter a decree enforcing the order and shall transmit a copy of such decree to the Secretary and the employer named in the petition. In any contempt proceeding brought to enforce a decree of a court of appeals entered pursuant to this subsection or subsection (a), the court of appeals may assess the penalties provided in section 17, in addition to invoking any other available remedies.
- (c)
- (1) No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself or others of any right afforded by this Act.
- (2) Any employee who believes that he has been discharged or otherwise discriminated against by any person in violation of this subsection may, within thirty days after such violation occurs, file a complaint with the Secretary alleging such discrimination. Upon receipt of such complaint, the Secretary shall cause such investigation to be made as he deems appropriate. If upon such investigation, the Secretary determines that the provisions of this subsection have been violated, he shall bring an action in any appropriate United States district court against such person. In any such action the United States district courts shall have jurisdiction, for cause shown to restrain violations of paragraph (1) of this subsection and order all appropriate relief including rehiring or reinstatement of the employee to his former position with back pay.
- (3) Within 90 days of the receipt of a complaint filed under this subsection the Secretary shall notify the complainant of his determination under paragraph 2 of this subsection.

29 USC 660

Pub. L. 98-620

SEC. 12. The Occupational Safety and Health Review Commission

- (a) The Occupational Safety and Health Review Commission is hereby established. The Commission shall be composed of three members who shall be appointed by the President, by and with the advice and consent of the Senate, from among persons who by reason of training, education, or experience are qualified to carry out the functions of the Commission under this Act. The President shall designate one of the members of the Commission to serve as Chairman.
- (b) The terms of members of the Commission shall be six years except that
- (1) the members of the Commission first taking office shall serve, as designated by the President at the time of

29 USC 661

appointment, one for a term of two years, one for a term of four years, and one for a term of six years, and

(2) a vacancy caused by the death, resignation, or removal of a member prior to the expiration of the term for which he was appointed shall be filled only for the remainder of such unexpired term.

A member of the Commission may be removed by the President for inefficiency, neglect of duty, or malfeasance in office.

(c) (Text omitted.)

(d) The principal office of the Commission shall be in the District of Columbia. Whenever the Commission deems that the convenience of the public or of the parties may be promoted, or delay or expense may be minimized, it may hold hearings or conduct other proceedings at any other place.

(e) The Chairman shall be responsible on behalf of the Commission for the administrative operations of the Commission and shall appoint such administrative law judges and other employees as he deems necessary to assist in the performance of the Commission's functions and to fix their compensation in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification and General Schedule pay rates: *Provided*, That assignment, removal and compensation of administrative law judges shall be in accordance with sections 3105, 3344, 5372, and 7521 of title 5, United States Code.

(f) For the purpose of carrying out its functions under this Act, two members of the Commission shall constitute a quorum and official action can be taken only on the affirmative vote of at least two members.

(g) Every official act of the Commission shall be entered of record, and its hearings and records shall be open to the public. The Commission is authorized to make such rules as are necessary for the orderly transaction of its proceedings. Unless the Commission has adopted a different rule, its proceedings shall be in accordance with the Federal Rules of Civil Procedure.

(h) The Commission may order testimony to be taken by deposition in any proceedings pending before it at any state of such proceeding. Any person may be compelled to appear and depose, and to produce books, papers, or documents, in the same manner as witnesses may be compelled to appear and testify and produce like documentary evidence before the Commission. Witnesses whose depositions are taken under this subsection, and the persons taking such depositions, shall be entitled to the same fees as are paid for like services in the courts of the United States.

(i) For the purpose of any proceeding before the Commission, the provisions of section 11 of the National Labor Relations Act (29 U.S.C. 161) are hereby made applicable to the jurisdiction and powers of the Commission.

(j) An administrative law judge appointed by the Commission shall hear, and make a determination upon, any proceeding instituted before the Commission and any motion in connection therewith, assigned to such administrative law judge by the Chairman of the Commission, and shall make a report of any such determination which constitutes his final disposition of the proceedings. The report of the administrative law judge shall become the final order of the Commission within thirty days after such report by the administrative law judge, unless within such period any Commission member has directed that such report shall be reviewed by the Commission.

(k) Except as otherwise provided in this Act, the administrative law judges shall be subject to the laws governing employees in the classified civil service, except that appointments shall be made without regard to section 5108 of title 5, United States Code. Each administrative law judge shall receive compensation at a rate not less than that prescribed for GS-16 under section 5332 of title 5, United States Code.

SEC. 13. Procedures to Counteract Imminent Dangers

(a) The United States district courts shall have jurisdiction, upon petition of the Secretary, to restrain any conditions or practices in any place of employment which are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by this Act. Any order issued under this section may require such steps to be taken as may be necessary to avoid, correct, or remove such imminent danger and prohibit the employment or presence of any individual in locations or under conditions where such imminent danger exists, except individuals whose presence is necessary to avoid, correct, or remove such imminent danger or to maintain the capacity of a continuous process operation to resume normal operations without a complete cessation of operations, or where a cessation of operations is necessary, to permit such to be accomplished in a safe and orderly manner.

(b) Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order pending the outcome of an enforcement proceeding pursuant to this Act. The proceeding shall be as provided by Rule 65 of the Federal Rules, Civil Procedure, except that no temporary restraining order issued without notice shall be effective for a period longer than five days.

(c) Whenever and as soon as an inspector concludes that conditions or practices described in subsection (a) exist in any place of employment, he shall inform the affected employees and employers of the danger and that he is recommending to the Secretary that relief be sought.

(d) If the Secretary arbitrarily or capriciously fails to seek relief under this section, any employee who may be injured by reason of such failure, or the representative of such employees, might bring an action against the Secretary in the United States district court for the district in which the imminent danger is alleged to exist or the employer has its principal office, or for the District of Columbia, for a writ of mandamus to compel the Secretary to seek such an order and for such further relief as may be appropriate.

See notes on omitted text.

Pub. L. 95-251

29 USC 662

and for such further relief as may be appropriate.

SEC. 14. Representation in Civil Litigation

Except as provided in section 518(a) of title 28, United States Code, relating to litigation before the Supreme Court, the Solicitor of Labor may appear for and represent the Secretary in any civil litigation brought under this Act but all such litigation shall be subject to the direction and control of the Attorney General.

29 USC 663

SEC. 15. Confidentiality of Trade Secrets

All information reported to or otherwise obtained by the Secretary or his representative in connection with any inspection or proceeding under this Act which contains or which might reveal a trade secret referred to in section 1905 of title 18 of the United States Code shall be considered confidential for the purpose of that section, except that such information may be disclosed to other officers or employees concerned with carrying out this Act or when relevant in any proceeding under this Act. In any such proceeding the Secretary, the Commission, or the court shall issue such orders as may be appropriate to protect the confidentiality of trade secrets.

29 USC 664

SEC. 16. Variations, Tolerances, and Exemptions

The Secretary, on the record, after notice and opportunity for a hearing may provide such reasonable limitations and may make such rules and regulations allowing reasonable variations, tolerances, and exemptions to and from any or all provisions of this Act as he may find necessary and proper to avoid serious impairment of the national defense. Such action shall not be in effect for more than six months without notification to affected employees and an opportunity being afforded for a hearing.

29 USC 665

SEC. 17. Penalties

(a) Any employer who willfully or repeatedly violates the requirements of section 5 of this Act, any standard, rule, or order promulgated pursuant to section 6 of this Act, or regulations prescribed pursuant to this Act, may be assessed a civil penalty of not more than \$70,000 for each violation, but not less than \$5,000 for each willful violation.

29 USC 666

Pub. L. 101-508 increased the civil penalties in subsections (a)-(d) & (i). See Historical notes.

(b) Any employer who has received a citation for a serious violation of the requirements of section 5 of this Act, of any standard, rule, or order promulgated pursuant to section 6 of this Act, or of any regulations prescribed pursuant to this Act, shall be assessed a civil penalty of up to \$7,000 for each such violation.

(c) Any employer who has received a citation for a violation of the requirements of section 5 of this Act, of any standard, rule, or order promulgated pursuant to section 6 of this Act, or of regulations prescribed pursuant to this Act, and such violation is specifically determined not to be of a serious nature, may be assessed a civil penalty of up to \$7,000 for each violation.

(d) Any employer who fails to correct a violation for which a citation has been issued under section 9(a) within the period permitted for its correction (which period shall not begin to run until the date of the final order of the Commission in the case of any review proceeding under section 10 initiated by the employer in good faith and not solely for delay or avoidance of penalties), may be assessed a civil penalty of not more than \$7,000 for each day during which such failure or violation continues.

(e) Any employer who willfully violates any standard, rule, or order promulgated pursuant to section 6 of this Act, or of any regulations prescribed pursuant to this Act, and that violation caused death to any employee, shall, upon conviction, be punished by a fine of not more than \$10,000 or by imprisonment for not more than six months, or by both; except that if the conviction is for a violation committed after a first conviction of such person, punishment shall be by a fine of not more than \$20,000 or by imprisonment for not more than one year, or by both.

Pub. L. 98-473 Maximum criminal fines are increased by the Sentencing Reform Act of 1984, 18 USC § 3551 et seq. See Historical notes.

(f) Any person who gives advance notice of any inspection to be conducted under this Act, without authority from the Secretary or his designees, shall, upon conviction, be punished by a fine of not more than \$1,000 or by imprisonment for not more than six months, or by both.

See historical notes.

(g) Whoever knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this Act shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than six months, or by both.

(h)

(1) Section 1114 of title 18, United States Code, is hereby amended by striking out "designated by the Secretary of Health and Human Services to conduct investigations, or inspections under the Federal Food, Drug, and Cosmetic Act" and inserting in lieu thereof "or of the Department of Labor assigned to perform investigative, inspection, or law enforcement functions".

(2) Notwithstanding the provisions of sections 1111 and 1114 of title 18, United States Code, whoever, in violation of the provisions of section 1114 of such title, kills a person while engaged in or on account of the performance of investigative, inspection, or law enforcement functions added to such section 1114 by paragraph (1) of this subsection, and who would otherwise be subject to the penalty provisions of such section 1111, shall be punished by imprisonment for any term of years or for life.

(i) Any employer who violates any of the posting requirements, as prescribed under the provisions of this Act, shall be assessed a civil penalty of up to \$7,000 for each violation.

(j) The Commission shall have authority to assess all civil penalties provided in this section, giving due consideration to the appropriateness of the penalty with respect to the size of the business of the employer being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations.

(k) For purposes of this section, a serious violation shall be deemed to exist in a place of employment if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use, in such place of employment unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.

(l) Civil penalties owed under this Act shall be paid to the Secretary for deposit into the Treasury of the United States and shall accrue to the United States and may be recovered in a civil action in the name of the United States brought in the United States district court for the district where the violation is alleged to have occurred or where the employer has its principal office.

SEC. 18. State Jurisdiction and State Plans

(a) Nothing in this Act shall prevent any State agency or court from asserting jurisdiction under State law over any occupational safety or health issue with respect to which no standard is in effect under section 6.

29 USC 667

(b) Any State which, at any time, desires to assume responsibility for development and enforcement therein of occupational safety and health standards relating to any occupational safety or health issue with respect to which a Federal standard has been promulgated under section 6 shall submit a State plan for the development of such standards and their enforcement.

(c) The Secretary shall approve the plan submitted by a State under subsection (b), or any modification thereof, if such plan in his judgement –

(1) designates a State agency or agencies as the agency or agencies responsible for administering the plan throughout the State,

(2) provides for the development and enforcement of safety and health standards relating to one or more safety or health issues, which standards (and the enforcement of which standards) are or will be at least as effective in providing safe and healthful employment and places of employment as the standards promulgated under section 6 which relate to the same issues, and which standards, when applicable to products which are distributed or used in interstate commerce, are required by compelling local conditions and do not unduly burden interstate commerce,

(3) provides for a right of entry and inspection of all workplaces subject to the Act which is at least as effective as that provided in section 8, and includes a prohibition on advance notice of inspections,

(4) contains satisfactory assurances that such agency or agencies have or will have the legal authority and qualified personnel necessary for the enforcement of such standards,

(5) gives satisfactory assurances that such State will devote adequate funds to the administration and enforcement of such standards,

(6) contains satisfactory assurances that such State will, to the extent permitted by its law, establish and maintain an effective and comprehensive occupational safety and health program applicable to all employees of public agencies of the State and its political subdivisions, which program is as effective as the standards contained in an approved plan,

(7) requires employers in the State to make reports to the Secretary in the same manner and to the same extent as if the plan were not in effect, and

(8) provides that the State agency will make such reports to the Secretary in such form and containing such

information, as the Secretary shall from time to time require.

(d) If the Secretary rejects a plan submitted under subsection (b), he shall afford the State submitting the plan due notice and opportunity for a hearing before so doing.

(e) After the Secretary approves a State plan submitted under subsection (b), he may, but shall not be required to, exercise his authority under sections 8, 9, 10, 13, and 17 with respect to comparable standards promulgated under section 6, for the period specified in the next sentence. The Secretary may exercise the authority referred to above until he determines, on the basis of actual operations under the State plan, that the criteria set forth in subsection (c) are being applied, but he shall not make such determination for at least three years after the plan's approval under subsection (c). Upon making the determination referred to in the preceding sentence, the provisions of sections 5(a)(2), 8 (except for the purpose of carrying out subsection (f) of this section), 9, 10, 13, and 17, and standards promulgated under section 6 of this Act, shall not apply with respect to any occupational safety or health issues covered under the plan, but the Secretary may retain jurisdiction under the above provisions in any proceeding commenced under section 9 or 10 before the date of determination.

(f) The Secretary shall, on the basis of reports submitted by the State agency and his own inspections make a continuing evaluation of the manner in which each State having a plan approved under this section is carrying out such plan. Whenever the Secretary finds, after affording due notice and opportunity for a hearing, that in the administration of the State plan there is a failure to comply substantially with any provision of the State plan (or any assurance contained therein), he shall notify the State agency of his withdrawal of approval of such plan and upon receipt of such notice such plan shall cease to be in effect, but the State may retain jurisdiction in any case commenced before the withdrawal of the plan in order to enforce standards under the plan whenever the issues involved do not relate to the reasons for the withdrawal of the plan.

(g) The State may obtain a review of a decision of the Secretary withdrawing approval of or rejecting its plan by the United States court of appeals for the circuit in which the State is located by filing in such court within thirty days following receipt of notice of such decision a petition to modify or set aside in whole or in part the action of the Secretary. A copy of such petition shall forthwith be served upon the Secretary, and thereupon the Secretary shall certify and file in the court the record upon which the decision complained of was issued as provided in section 2112 of title 28, United States Code. Unless the court finds that the Secretary's decision in rejecting a proposed State plan or withdrawing his approval of such a plan is not supported by substantial evidence the court shall affirm the Secretary's decision. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

(h) The Secretary may enter into an agreement with a State under which the State will be permitted to continue to enforce one or more occupational health and safety standards in effect in such State until final action is taken by the Secretary with respect to a plan submitted by a State under subsection (b) of this section, or two years from the date of enactment of this Act, whichever is earlier.

SEC. 19. Federal Agency Safety Programs and Responsibilities

- (a) It shall be the responsibility of the head of each Federal agency (not including the United States Postal Service) to establish and maintain an effective and comprehensive occupational safety and health program which is consistent with the standards promulgated under section 6. The head of each agency shall (after consultation with representatives of the employees thereof) –
- (1) provide safe and healthful places and conditions of employment, consistent with the standards set under section 6;
 - (2) acquire, maintain, and require the use of safety equipment, personal protective equipment, and devices reasonably necessary to protect employees;
 - (3) keep adequate records of all occupational accidents and illnesses for proper evaluation and necessary corrective action;
 - (4) consult with the Secretary with regard to the adequacy as to form and content of records kept pursuant to subsection (a)(3) of this section; and
 - (5) make an annual report to the Secretary with respect to occupational accidents and injuries and the agency's program under this section. Such report shall include any report submitted under section 7902(e)(2) of title 5, United States Code.
- (b) The Secretary shall report to the President a summary or digest of reports submitted to him under subsection (a)(5) of this section, together with his evaluations of and recommendations derived from such reports.

29 USC 668

Pub. L. 50-241

Pub. L. 97-375

(c) Section 7902(c)(1) of title 5, United States Code, is amended by inserting after "agencies" the following: "and of labor organizations representing employees".

(d) The Secretary shall have access to records and reports kept and filed by Federal agencies pursuant to subsections (a)(3) and (5) of this section unless those records and reports are specifically required by Executive order to be kept secret in the interest of the national defense or foreign policy, in which case the Secretary shall have access to such information as will not jeopardize national defense or foreign policy.

SEC. 20. Research and Related Activities

29 USC 669

- (a) (1) The Secretary of Health and Human Services, after consultation with the Secretary and with other appropriate Federal departments or agencies, shall conduct (directly or by grants or contracts) research, experiments, and demonstrations relating to occupational safety and health, including studies of psychological factors involved, and relating to innovative methods, techniques, and approaches for dealing with occupational safety and health problems.
- (2) The Secretary of Health and Human Services shall from time to time consult with the Secretary in order to develop specific plans for such research, demonstrations, and experiments as are necessary to produce criteria, including criteria identifying toxic substances, enabling the Secretary to meet his responsibility for the formulation of safety and health standards under this Act; and the Secretary of Health and Human Services, on the basis of such research, demonstrations, and experiments and any other information available to him, shall develop and publish at least annually such criteria as will effectuate the purposes of this Act.
- (3) The Secretary of Health and Human Services, on the basis of such research, demonstrations, and experiments, and any other information available to him, shall develop criteria dealing with toxic materials and harmful physical agents and substances which will describe exposure levels that are safe for various periods of employment, including but not limited to the exposure levels at which no employee will suffer impaired health or functional capacities or diminished life expectancy as a result of his work experience.
- (4) The Secretary of Health and Human Services shall also conduct special research, experiments, and demonstrations relating to occupational safety and health as are necessary to explore new problems, including those created by new technology in occupational safety and health, which may require ameliorative action beyond that which is otherwise provided for in the operating provisions of this Act. The Secretary of Health and Human Services shall also conduct research into the motivational and behavioral factors relating to the field of occupational safety and health.
- (5) The Secretary of Health and Human Services, in order to comply with his responsibilities under paragraph (2), and in order to develop needed information regarding potentially toxic substances or harmful physical agents, may prescribe regulations requiring employers to measure, record, and make reports on the exposure of employees to substances or physical agents which the Secretary of Health and Human Services reasonably believes may endanger the health or safety of employees. The Secretary of Health and Human Services also is authorized to establish such programs of medical examinations and tests as may be necessary for determining the incidence of occupational illnesses and the susceptibility of employees to such illnesses. Nothing in this or any other provision of this Act shall be deemed to authorize or require medical examination, immunization, or treatment for those who object thereto on religious grounds, except where such is necessary for the protection of the health or safety of others. Upon the request of any employer who is required to measure and record exposure of employees to substances or physical agents as provided under this subsection, the Secretary of Health and Human Services shall furnish full financial or other assistance to such employer for the purpose of defraying any additional expense incurred by him in carrying out the measuring and recording as provided in this subsection.
- (6) The Secretary of Health and Human Services shall publish within six months of enactment of this Act and thereafter as needed but at least annually a list of all known toxic substances by generic family or other useful grouping, and the concentrations at which such toxicity is known to occur. He shall determine following a written request by any employer or authorized representative of employees, specifying with reasonable particularity the grounds on which the request is made, whether any substance normally found in the place of employment has potentially toxic effects in such concentrations as used or found; and shall submit such determination both to employers and affected employees as soon as possible. If the Secretary of Health and Human Services determines that any substance is potentially toxic at the concentrations in which it is used or found in a place of employment, and such substance is not covered by an occupational safety or health standard promulgated under section 6, the Secretary of Health and Human Services shall immediately submit such determination to the Secretary, together with all pertinent criteria.
- (7) Within two years of enactment of the Act, and annually thereafter the Secretary of Health and Human Services shall conduct and publish industry wide studies of the effect of chronic or low-level exposure to industrial materials, processes, and stresses on the potential for illness, disease, or loss of functional capacity in aging adults
- (b) The Secretary of Health and Human Services is authorized to make inspections and quest on employers and employees as provided in section 8 of this Act in order to carry out his functions and responsibilities under this section.
- (c) The Secretary is authorized to enter into contracts, agreements, or other arrangements with appropriate public agencies or private organizations for the purpose of conducting studies relating to his responsibilities under this Act. In carrying out his responsibilities under this subsection, the Secretary shall cooperate with the Secretary of Health and Human Services in order to avoid any duplication of efforts under this section.
- (d) Information obtained by the Secretary and the Secretary of Health and Human Services under this section shall be disseminated by the Secretary to employers and employees and organizations thereof.
- (e) The functions of the Secretary of Health and Human Services under this Act shall, to the extent feasible, be delegated to the Director of the National Institute for Occupational Safety and Health established by section 22 of this Act.

EXPANDED RESEARCH ON WORKER SAFETY AND HEALTH

The Secretary of Health and Human Services (referred to in this section as the "Secretary"), acting through

the Director of the National Institute of Occupational Safety and Health, shall enhance and expand research as deemed appropriate on the health and safety of workers who are at risk for bioterrorist threats or attacks in the workplace, including research on the health effects of measures taken to treat or protect such workers for diseases or disorders resulting from a bioterrorist threat or attack. Nothing in this section may be construed as establishing new regulatory authority for the Secretary or the Director to issue or modify any occupational safety and health rule or regulation.

29 USC 669a

Pub. L. 107-188,
Title I, § 153
added this text.

SEC. 21. Training and Employee Education

(a) The Secretary of Health and Human Services, after consultation with the Secretary and with other appropriate Federal departments and agencies, shall conduct, directly or by grants or contracts –

29 USC 670

(1) education programs to provide an adequate supply of qualified personnel to carry out the purposes of this Act, and

(2) informational programs on the importance of and proper use of adequate safety and health equipment.

(b) The Secretary is also authorized to conduct, directly or by grants or contracts, short-term training of personnel engaged in work related to his responsibilities under this Act.

(c) The Secretary, in consultation with the Secretary of Health and Human

Services, shall –

(1) provide for the establishment and supervision of programs for the education and training of employers and employees in the recognition, avoidance, and prevention of unsafe or unhealthful working conditions in employments covered by this Act, and

(2) consult with and advise employers and employees, and organizations representing employers and employees as to effective means of preventing occupational injuries and illnesses.

(d)

(1) The Secretary shall establish and support cooperative agreements with the States under which employers subject to this Act may consult with State personnel with respect to –

(A) the application of occupational safety and health requirements under this Act or under State plans approved under section 18; and

(B) voluntary efforts that employers may undertake to establish and maintain safe and healthful employment and places of employment. Such agreements may provide, as a condition of receiving funds under such agreements, for contributions by States towards meeting the costs of such agreements.

(2) Pursuant to such agreements the State shall provide on-site consultation at the employer's worksite to employers who request such assistance. The State may also provide other education and training programs for employers and employees in the State. The State shall ensure that on-site consultations conducted pursuant to such agreements include provision for the participation by employees.

(3) Activities under this subsection shall be conducted independently of any enforcement activity. If an employer fails to take immediate action to eliminate employee exposure to an imminent danger identified in a consultation or fails to correct a serious hazard so identified within a reasonable time, a report shall be made to the appropriate enforcement authority for such action as is appropriate.

(4) The Secretary shall, by regulation after notice and opportunity for comment, establish rules under which an employer--

(A) which requests and undergoes an on-site consultative visit provided under this subsection;

(B) which corrects the hazards that have been identified during the visit within the time frames established by the State and agrees to request a subsequent consultative visit if major changes in working conditions or work processes occur which introduce new hazards in the workplace; and

(C) which is implementing procedures for regularly identifying and preventing hazards regulated under this Act and maintains appropriate involvement of, and training for, management and non-management employees in achieving safe and healthful working conditions, may be exempt from an inspection (except an inspection requested under section 8(f) or an inspection to determine the cause of a workplace accident which resulted in the death of one or more employees or hospitalization for three or more employees) for a period of 1 year from the closing of the consultative visit.

(5) A State shall provide worksite consultations under paragraph (2) at the request of an employer. Priority in scheduling such consultations shall be assigned to requests from small businesses which are in higher hazard industries or have the most hazardous conditions at issue in the request.

Pub. L. 105-97,
§2 added
subsection (d).
See Historical
notes.

SEC. 22. National Institute for Occupational Safety and Health

(a) It is the purpose of this section to establish a National Institute for Occupational Safety and Health in the Department of Health and Human Services in order to carry out the policy set forth in section 2 of this Act and to perform the functions of the Secretary of Health and Human Services under sections 20 and 21 of this Act.

29 USC 671

(b) There is hereby established in the Department of Health and Human Services a National Institute for Occupational Safety and Health. The Institute shall be headed by a Director who shall be appointed by the Secretary of Health and Human Services, and who shall serve for a term of six years unless previously removed by the Secretary of Health and Human Services.

(c) The Institute is authorized to –

- (1) develop and establish recommended occupational safety and health standards; and
- (2) perform all functions of the Secretary of Health and Human Services under sections 20 and 21 of this Act.

(d) Upon his own initiative, or upon the request of the Secretary of Health and Human Services, the Director is authorized (1) to conduct such research and experimental programs as he determines are necessary for the development of criteria for new and improved occupational safety and health standards, and (2) after consideration of the results of such research and experimental programs make recommendations concerning new or improved occupational safety and health standards. Any occupational safety and health standard recommended pursuant to this section shall immediately be forwarded to the Secretary of Labor, and to the Secretary of Health and Human Services.

(e) In addition to any authority vested in the Institute by other provisions of this section, the Director, in carrying out the functions of the Institute, is authorized to –

- (1) prescribe such regulations as he deems necessary governing the manner in which its functions shall be carried out;
- (2) receive money and other property donated, bequeathed, or devised, without condition or restriction other than that it be used for the purposes of the Institute and to use, sell, or otherwise dispose of such property for the purpose of carrying out its functions;
- (3) receive (and use, sell, or otherwise dispose of, in accordance with paragraph (2)), money and other property donated, bequeathed, or devised to the Institute with a condition or restriction, including a condition that the Institute use other funds of the Institute for the purposes of the gift;
- (4) in accordance with the civil service laws, appoint and fix the compensation of such personnel as may be necessary to carry out the provisions of this section;
- (5) obtain the services of experts and consultants in accordance with the provisions of section 3109 of title 5, United States Code;
- (6) accept and utilize the services of voluntary and noncompensated personnel and reimburse them for travel expenses, including per diem, as authorized by section 5703 of title 5, United States Code;
- (7) enter into contracts, grants or other arrangements, or modifications thereof to carry out the provisions of this section, and such contracts or modifications thereof may be entered into without performance or other bonds, and without regard to section 3709 of the Revised Statutes, as amended (41 U.S.C. 5), or any other provision of law relating to competitive bidding;
- (8) make advance, progress, and other payments which the Director deems necessary under this title without regard to the provisions of section 3324 (a) and (b) of Title 31; and
- (9) make other necessary expenditures.

(f) The Director shall submit to the Secretary of Health and Human Services, to the President, and to the Congress an annual report of the operations of the Institute under this Act, which shall include a detailed statement of all private and public funds received and expended by it, and such recommendations as he deems appropriate.

(g) Lead-Based Paint Activities.

Pub. L. 97-258

Pub. L. 102-550
added subsection
(g).

(1) Training Grant Program.

(A) The Institute, in conjunction with the Administrator of the Environmental Protection Agency, may make grants for the training and education of workers and supervisors who are or may be directly engaged in lead-based paint activities.

(B) Grants referred to in subparagraph (A) shall be awarded to nonprofit organizations (including colleges and universities, joint labor-management trust funds, States, and nonprofit government employee organizations) –

- (i) which are engaged in the training and education of workers and supervisors who are or who may be directly engaged in lead-based paint activities (as defined in Title IV of the Toxic Substances Control Act),
- (ii) which have demonstrated experience in implementing and operating health and safety training and education programs, and
- (iii) with a demonstrated ability to reach, and involve in lead-based paint training programs, target populations of individuals who are or will be engaged in lead-based paint activities. Grants under this subsection shall be awarded only to those organizations that fund at least 30 percent of their lead-based paint activities training programs from non-Federal sources, excluding in-kind

contributions. Grants may also be made to local governments to carry out such training and education for their employees.

(C) There are authorized to be appropriated, a minimum, \$10,000,000 to the Institute for each of the fiscal years 1994 through 1997 to make grants under this paragraph.

(2) Evaluation of Programs. The Institute shall conduct periodic and comprehensive assessments of the efficacy of the worker and supervisor training programs developed and offered by those receiving grants under this section. The Director shall prepare reports on the results of these assessments addressed to the Administrator of the Environmental Protection Agency to include recommendations as may be appropriate for the revision of these programs. The sum of \$500 000 is authorized to be appropriated to the Institute for each of the fiscal years 1994 through 1997 to carry out this paragraph.

WORKERS' FAMILY PROTECTION

(a) Short title

This section may be cited as the "Workers' Family Protection Act".

29 USC 671a

(b) Findings and purpose

(1) Findings
Congress finds that--

Pub. L. 102-522,
Title II, §209
added this text.

(A) hazardous chemicals and substances that can threaten the health and safety of workers are being transported out of industries on workers' clothing and persons;

(B) these chemicals and substances have the potential to pose an additional threat to the health and welfare of workers and their families;

(C) additional information is needed concerning issues related to

employee transported contaminant releases; and

(D) additional regulations may be needed to prevent future releases of this type.

(2) Purpose

It is the purpose of this section to--

(A) increase understanding and awareness concerning the extent and possible health impacts of the problems and incidents described in paragraph (1);

(B) prevent or mitigate future incidents of home contamination that could adversely affect the health and safety of workers and their families;

(C) clarify regulatory authority for preventing and responding to such incidents; and

(D) assist workers in redressing and responding to such incidents when they occur.

(c) Evaluation of employee transported contaminant releases

(1) Study

(A) In general

Not later than 18 months after October 26, 1992, the Director of the National Institute for Occupational Safety and Health (hereafter in this section referred to as the "Director"), in cooperation with the Secretary of Labor, the Administrator of the Environmental Protection Agency, the Administrator of the Agency for Toxic Substances and Disease Registry, and the heads of other Federal Government agencies as determined to be appropriate by the Director, shall conduct a study to evaluate the potential for, the prevalence of, and the issues related to the contamination of workers' homes with hazardous chemicals and substances, including infectious agents, transported from the workplaces of such workers.

(B) Matters to be evaluated

In conducting the study and evaluation under subparagraph (A), the Director shall--

(i) conduct a review of past incidents of home contamination through the utilization of literature and of records concerning past investigations and enforcement actions undertaken by--

(I) the National Institute for Occupational Safety and Health;

(II) the Secretary of Labor to enforce the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.);

(III) States to enforce occupational safety and health standards in accordance with section 18 of such Act (29 U.S.C. 667); and

(IV) other government agencies (including the Department of Energy and the Environmental Protection Agency), as the Director may determine to be appropriate;

- (ii) evaluate current statutory, regulatory, and voluntary industrial hygiene or other measures used by small, medium and large employers to prevent or remediate home contamination;
- (iii) compile a summary of the existing research and case histories conducted on incidents of employee transported contaminant releases, including--

- (I) the effectiveness of workplace housekeeping practices and personal protective equipment in preventing such incidents;

- (II) the health effects, if any, of the resulting exposure on workers and their families;

- (III) the effectiveness of normal house cleaning and laundry procedures for removing hazardous materials and agents from workers' homes and personal clothing;

- (IV) indoor air quality, as the research concerning such pertains to the fate of chemicals transported from a workplace into the home environment; and

- (V) methods for differentiating exposure health effects and relative risks associated with specific agents from other sources of exposure inside and outside the home;

- (iv) identify the role of Federal and State agencies in responding to incidents of home contamination;

- (v) prepare and submit to the Task Force established under paragraph (2) and to the appropriate committees of Congress, a report concerning the results of the matters studied or evaluated under clauses (i) through (iv); and

- (vi) study home contamination incidents and issues and worker and family protection policies and practices related to the special circumstances of firefighters and prepare and submit to the appropriate committees of Congress a report concerning the findings with respect to such study.

(2) Development of investigative strategy

(A) Task Force

Not later than 12 months after October 26, 1992, the Director shall establish a working group, to be known as the "Workers' Family Protection Task Force". The Task Force shall--

- (i) be composed of not more than 15 individuals to be appointed by the Director from among individuals who are representative of workers, industry, scientists, industrial hygienists, the National Research Council, and government agencies, except that not more than one such individual shall be from each appropriate government agency and the number of individuals appointed to represent industry and workers shall be equal in number;

- (ii) review the report submitted under paragraph (1)(B)(v);

- (iii) determine, with respect to such report, the additional data needs, if any, and the need for additional evaluation of the scientific issues related to and the feasibility of developing such additional data; and

- (iv) if additional data are determined by the Task Force to be needed, develop a recommended investigative strategy for use in obtaining such information.

(B) Investigative strategy

(i) Content

The investigative strategy developed under subparagraph (A)(iv) shall identify data gaps that can and cannot be filled, assumptions and uncertainties associated with various components of such strategy, a timetable for the implementation of such strategy, and methodologies used to gather any required data

(ii) Peer review

The Director shall publish the proposed investigative strategy under subparagraph (A)(iv) for public comment and utilize other methods, including technical conferences or seminars, for the purpose of obtaining comments concerning the proposed strategy.

(iii) Final strategy

After the peer review and public comment is conducted under clause

- (ii), the Director, in consultation with the heads of other government agencies, shall propose a final strategy for investigating issues related to home contamination that shall be implemented by the National Institute for Occupational Safety and Health and other Federal agencies for the period of time necessary to enable such agencies to obtain the information identified under subparagraph (A)(iii).

(C) Construction

Nothing in this section shall be construed as precluding any government agency from investigating issues related to home contamination using existing procedures until such time as a final strategy is developed or from taking actions in addition to those proposed in the strategy after its completion.

(3) Implementation of investigative strategy

Upon completion of the investigative strategy under subparagraph (B)(iii), each Federal agency or department shall fulfill the role assigned to it by the strategy.

(d) Regulations

(1) In general

Not later than 4 years after October 26, 1992, and periodically thereafter, the Secretary of Labor, based on the information developed under subsection (c) of this section and on other information available to the Secretary, shall--

(A) determine if additional education about, emphasis on, or enforcement of existing regulations or standards is needed and will be sufficient, or if additional regulations or standards are needed with regard to employee transported releases of hazardous materials; and

(B) prepare and submit to the appropriate committees of Congress a report concerning the result of such determination.

(2) Additional regulations or standards If the Secretary of Labor determines that additional regulations or standards are needed under paragraph (1), the Secretary shall promulgate, pursuant to the Secretary's authority under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.), such regulations or standards as determined to be appropriate not later than 3 years after such determination.

(e) Authorization of appropriations There are authorized to be appropriated from sums otherwise authorized to be appropriated, for each fiscal year such sums as may be necessary to carry out this section.

SEC. 23. Grants to the States

(a) The Secretary is authorized, during the fiscal year ending June 30, 1971, and the two succeeding fiscal years, to make grants to the States which have designated a State agency under section 18 to assist them --

29 USC 672

(1) in identifying their needs and responsibilities in the area of occupational safety and health,

(2) in developing State plans under section 18, or

(3) in developing plans for --

(A) establishing systems for the collection of information concerning the nature and frequency of occupational injuries and diseases;

(B) increasing the expertise and enforcement capabilities of their personnel engaged in occupational safety and health programs; or

(C) otherwise improving the administration and enforcement of State occupational safety and health laws, including standards thereunder, consistent with the objectives of this Act.

(b) The Secretary is authorized, during the fiscal year ending June 30, 1971, and the two succeeding fiscal years, to make grants to the States for experimental and demonstration projects consistent with the objectives set forth in subsection (a) of this section.

(c) The Governor of the State shall designate the appropriate State agency for receipt of any grant made by the Secretary under this section.

(d) Any State agency designated by the Governor of the State desiring a grant under this section shall submit an application therefor to the Secretary.

(e) The Secretary shall review the application, and shall, after consultation with the Secretary of Health and Human Services, approve or reject such application.

(f) The Federal share for each State grant under subsection (a) or (b) of this section may not exceed 90 per centum of the total cost of the application. In the event the Federal share for all States under either such subsection is not the same, the differences among the States shall be established on the basis of objective criteria.

(g) The Secretary is authorized to make grants to the States to assist them in administering and enforcing programs for occupational safety and health contained in State plans approved by the Secretary pursuant to section 18 of this Act. The Federal share for each State grant under this subsection may not exceed 50 per centum of the total cost to the State of such a program. The last sentence of subsection (f) shall be applicable in determining the Federal share under this subsection.

(h) Prior to June 30, 1973, the Secretary shall, after consultation with the Secretary of Health and Human Services, transmit a report to the President and to the Congress, describing the experience under the grant programs authorized by this section and making any recommendations he may deem appropriate.

SEC. 24. Statistics

(a) In order to further the purposes of this Act, the Secretary, in consultation with the Secretary of Health and Human Services, shall develop and maintain an effective program of collection, compilation, and analysis of occupational safety and health statistics. Such program may cover all employments whether or not subject to any other provisions of this Act but shall not cover employments excluded by section 4 of the Act. The Secretary shall compile accurate statistics on work injuries and illnesses which shall include all disabling, serious, or significant injuries and illnesses, whether or not involving loss of time from work, other than minor injuries requiring only first aid treatment and which do not involve medical

treatment, loss of consciousness, restriction of work or motion, or transfer to another job.

(b) To carry out his duties under subsection (a) of this section, the Secretary may –

- (1) promote, encourage, or directly engage in programs of studies, information and communication concerning occupational safety and health statistics;
- (2) make grants to States or political subdivisions thereof in order to assist them in developing and administering programs dealing with occupational safety and health statistics; and
- (3) arrange, through grants or contracts, for the conduct of such research and investigations as give promise of furthering the objectives of this section.

(c) The Federal share for each grant under subsection (b) of this section may be up to 50 per centum of the State's total cost.

(d) The Secretary may, with the consent of any State or political subdivision thereof, accept and use the services, facilities, and employees of the agencies of such State or political subdivision, with or without reimbursement, in order to assist him in carrying out his functions under this section.

(e) On the basis of the records made and kept pursuant to section 8(c) of this Act, employers shall file such reports with the Secretary as he shall prescribe by regulation, as necessary to carry out his functions under this Act.

(f) Agreements between the Department of Labor and States pertaining to the collection of occupational safety and health statistics already in effect on the effective date of this Act shall remain in effect until superseded by grants or contracts made under this Act.

SEC. 25. Audits

(a) Each recipient of a grant under this Act shall keep such records as the Secretary or the Secretary of Health and Human Services shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such grant, the total cost of the project or undertaking in connection with which such grants made or used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

29 USC 674

(b) The Secretary or the Secretary of Health and Human Services, and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipients of any grant under this Act that are pertinent to any such grant.

SEC. 26. Annual Report

Within one hundred and twenty days following the convening of each regular session of each Congress, the Secretary and the Secretary of Health and Human Services shall each prepare and submit to the President for transmittal to the Congress a report upon the subject matter of this Act, the progress toward achievement of the purpose of this Act, the needs and requirements in the field of occupational safety and health, and any other relevant information. Such reports shall include information regarding occupational safety and health standards, and criteria for such standards, developed during the preceding year; evaluation of standards and criteria previously developed under this Act, defining areas of emphasis for new criteria and standards; an evaluation of the degree of observance of applicable occupational safety and health standards, and a summary of inspection and enforcement activity undertaken; analysis and evaluation of research activities for which results have been obtained under governmental and nongovernmental sponsorship; an analysis of major occupational diseases; evaluation of available control and measurement technology for hazards for which standards or criteria have been developed during the preceding year; description of cooperative efforts undertaken between Government agencies and other interested parties in the implementation of this Act during the preceding year; a progress report on the development of an adequate supply of trained manpower in the field of occupational safety and health, including estimates of future needs and the efforts being made by Government and others to meet those needs; listing of all toxic substances in industrial usage for which labeling requirements, criteria, or standards have not yet been established; and such recommendations for additional legislation as are deemed necessary to protect the safety and health of the worker and improve the administration of this Act.

29 USC 675 Pub. L. 104-66 §3003 terminated provision relating to transmittal of report to Congress.

SEC. 27. National Commission on State Workmen's Compensation Laws

(Text omitted.)

29 USC 676

SEC. 28. Economic Assistance to Small Businesses

(Text omitted.)

See notes on omitted text.

SEC. 29. Additional Assistant Secretary of Labor

(Text omitted.)

SEC. 30. Additional Positions

(Text omitted.)

See notes on omitted text.

SEC. 31. Emergency Locator Beacons

SEC. 31. Emergency Locator Beacons

(Text omitted.)

See notes on
omitted text.**SEC. 32. Separability**See notes on
omitted text.

If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

29 USC 677

SEC. 33. Appropriations

There are authorized to be appropriated to carry out this Act for each fiscal year such sums as the Congress shall deem necessary.

29 USC 678

SEC. 34. Effective Date

This Act shall take effect one hundred and twenty days after the date of its enactment.

Approved December 29, 1970.

As amended through January 1, 2004.

Historical Notes

This reprint generally retains the section numbers originally created by Congress in the Occupational Safety and Health (OSH) Act of 1970, Pub. L. 91-596, 84 Stat 1590. This document includes some editorial changes, such as changing the format to make it easier to read, correcting typographical errors, and updating some of the margin notes. Because Congress enacted amendments to the Act since 1970, this version differs from the original version of the OSH Act. It also differs slightly from the version published in the United States Code at 29 U.S.C. 661 *et seq.* For example, this reprint refers to the statute as the "Act" rather than the "chapter."

This reprint reflects the provisions of the OSH Act that are in effect as of January 1, 2004. Citations to Public Laws which made important amendments to the OSH Act since 1970 are set forth in the margins and explanatory notes are included below.

NOTE: Some provisions of the OSH Act may be affected by the enactment of, or amendments to, other statutes. Section 17(h)(1), 29 U.S.C. 666, is an example. The original provision amended section 1114 of title 18 of the United States Code to include employees of "the Department of Labor assigned to perform investigative, inspection, or law enforcement functions" within the list of persons protected by the provisions to allow prosecution of persons who have killed or attempted to kill an officer or employee of the U.S. government while performing official duties. This reprint sets forth the text of section 17(h) as enacted in 1970. However, since 1970, Congress has enacted multiple amendments to 18 U.S.C. 1114. The current version does not specifically include the Department of Labor in a list; rather it states that "Whoever kills or attempts to kill any officer or employee of the United States or of any agency in any branch of the United States Government (including any member of the uniformed services) while such officer or employee is engaged in or on account of the performance of official duties, or any person assisting such an officer or employee in the performance of such duties or on account of that assistance shall be punished . . ." as provided by the statute. Readers are reminded that the official version of statutes can be found in the current volumes of the United States Code, and more extensive historical notes can be found in the current volumes of the United States Code Annotated.

Amendments

On January 2, 1974, section 2(c) of Pub. L. 93-237 replaced the phrase "7(b)(6)" in section 28(d) of the OSH Act with "7(b)(5)". 87 Stat. 1023. Note: The text of Section 28 (Economic Assistance to Small Business) amended Sections 7(b) and Section 4(c)(1) of the Small Business Act. Because these amendments are no longer current, the text of section 28 is omitted in this reprint. For the current version, see 15 U.S.C. 636.

In 1977, the U.S. entered into the Panama Canal Treaty of 1977, Sept. 7, 1977, U.S.-Panama, T.I.A.S. 10030, 33 U.S.T. 39. In 1979, Congress enacted implementing legislation. Panama Canal Act of 1979, Pub. L. 96-70, 93 Stat. 452 (1979). Although no corresponding amendment to the OSH Act was enacted, the Canal Zone ceased to exist in 1979. The U.S. continued to manage, operate and facilitate the transit of ships through the Canal under the authority of the Panama Canal Treaty until December 31, 1999, at which time authority over the Canal was transferred to the Republic of Panama.

On March 27, 1978, Pub. L. 95-251, 92 Stat. 183, replaced the term "hearing examiner(s)" with "administrative law judge(s)" in all federal laws, including sections 12(e), 12(j), and 12(k) of the OSH Act, 29 U.S.C. 661.

On October 13, 1978, Pub. L. 95-454, 92 Stat. 1111, 1221, which redesignated section numbers concerning personnel matters and compensation, resulted in the substitution of section 5372 of Title 5 for section 5362 in section 12(e) of the OSH Act, 29 U.S.C. 661.

On October 17, 1979, Pub. L. 96-88, Title V, section 509(b), 93 Stat. 668, 695, redesignated references to the Department of Health, Education, and Welfare to the Department of Health and Human Services and redesignated references to the Secretary of Health, Education, and Welfare to the Secretary of Health and Human Services.

On September 13, 1982, Pub. L. 97-258, §4(b), 96 Stat. 877, 1067, effectively substituted "Section 3324(a) and (b) of Title 31" for "Section 3648 of the Revised Statutes, as amended (31 U.S.C. 529)" in section 22 (e)(8), 29 U.S.C. 671, relating to NIOSH procurement authority.

On December 21, 1982, Pub. L. 97-375, 96 Stat. 1819, deleted the sentence in section 19(b) of the Act, 29 U.S.C. 668, that directed the President of the United States to transmit annual reports of the activities of federal agencies to the House of Representatives and the Senate.

On October 12, 1984, Pub. L. 98-473, Chapter II, 98 Stat. 1837, 1987, (commonly referred to as the "Sentencing Reform Act of 1984") instituted a classification system for criminal offenses punishable under the United States Code. Under this system, an offense with imprisonment terms of "six months or less but more than thirty days," such as that found in 29 U.S.C. 666(e) for a willful violation of the OSH Act, is classified as a criminal "Class B misdemeanor." 18 U.S.C. 3559(a)(7).

The criminal code increases the monetary penalties for criminal misdemeanors beyond what is provided for in the OSH Act: a fine for a Class B misdemeanor resulting in death, for example, is not more than \$250,000 for an individual, and is not more than \$500,000 for an organization. 18 U.S.C. 3571(b)(4), (c)(4). The criminal code also provides for authorized terms of probation for both individuals and organizations. 18 U.S.C. 3551, 3561. The term of imprisonment for individuals is the same as that authorized by the OSH Act. 18 U.S.C. 3581(b)(7).

On November 8, 1984, Pub. L. 98-620, 98 Stat. 3335, deleted the last sentence in section 11(a) of the Act, 29 U.S.C. 660, that required petitions filed under the subsection to be heard expeditiously.

On November 5, 1990, Pub. L. 101-508, 104 Stat. 1388, amended section 17 of the Act, 29 U.S.C. 666, by increasing the penalties in section 17(a) from \$10,000 for each violation to "\$70,000 for each violation, but not less than \$5,000 for each willful violation," and increased the limitation on penalties in sections (b), (c), (d), and (i) from \$1,000 to \$7,000.

On October 26, 1992, Pub. L. 102-522, 106 Stat. 3410, 3420, added to Title 29, section 671a "Workers' Family Protection" to grant authority to the Director of NIOSH to evaluate, investigate and if necessary, for the Secretary of Labor to regulate employee transported releases of hazardous material that result from contamination on the employee's clothing or person and may adversely affect the health and safety of workers and their families. Note: section 671a was enacted as section 209 of the Fire Administration Authorization Act of 1992, but it is reprinted here because it is codified within the chapter that comprises the OSH Act.

On October 28, 1992, the Housing and Community Development Act of 1992, Pub. L. 102-550, 106 Stat. 3672, 3924, amended section 22 of the Act, 29 U.S.C. 671 by adding subsection (g), which requires NIOSH to institute a training grant program for lead-based paint activities.

On July 5, 1994, section 7(b) of Pub. L. 103-272, 108 Stat. 745, repealed section 31 of the OSH Act, "Emergency Locator Beacons." Section 1(e) of the same Public Law, however, enacted a modified version of section 31 of the OSH Act. This provision, titled "Emergency Locator Transmitters," is codified at 49 U.S.C. 44712.

On December 21, 1995, Section 3003 of Pub. L. 104-66, 109 Stat. 707, as amended, effective May 15, 2000, terminated the provisions relating to the transmittal to Congress of reports under section 26 of the OSH Act. 29 U.S.C. 675.

On July 16, 1998, Pub. L. 105-197, 112 Stat. 638, amended section 21 of the Act, 29 U.S.C. 670, by adding subsection (d), which required the Secretary to establish a compliance assistance program by which employers can consult with state personnel regarding the application of and compliance with OSHA standards.

On July 16, 1998, Pub. L. 105-198, 112 Stat. 640, amended section 8 of the Act, 29 U.S.C. 657, by adding subsection (h), which forbids the Secretary to use the results of enforcement activities to evaluate the employees involved in such enforcement or to impose quotas or goals.

On September 28, 1998, Pub. L. 105-241, 112 Stat. 1572, amended sections 3(5) and 19(a) of the Act, 29 U.S.C. 652 and 668, to include the United States Postal Service as an "employer" subject to OSHA enforcement.

On June 12, 2002, Pub. L. 107-188, Title I, Section 153, 116 Stat. 631, Congress enacted 29 U.S.C. 669a, to expand research on the "health and safety of workers who are at risk for bioterrorist threats or attacks in the workplace."

Jurisdictional Note

Although no corresponding amendments to the OSH Act have been made, OSHA no longer exercises jurisdiction over the entity formerly known as the Trust Territory of the Pacific Islands. The Trust Territory, which consisted of the Former

Japanese Mandated Islands, was established in 1947 by the Security Council of the United Nations, and administered by the United States. *Trusteeship Agreement for the Former Japanese Mandated Islands*, Apr. 2-July 18, 1947, 61 Stat. 3301, T.I.A.S. 1665, 8 U.N.T.S. 189.

From 1947 to 1994, the people of these islands exercised the right of self-determination conveyed by the Trusteeship four times, resulting in the division of the Trust Territory into four separate entities. Three entities: the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands, became "Freely Associated States," to which U.S. Federal Law does not apply. Since the OSH Act is a generally applicable law that applies to Guam, it applies to the Commonwealth of Northern Mariana Islands, which elected to become a "Flag Territory" of the United States. See *Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America*, Article V, section 502(a) as contained in Pub. L. 94-241, 90 Stat. 263 (Mar. 24, 1976)[citations to amendments omitted]; 48 U.S.C. 1801 and note (1976); see also *Saipan Stevedore Co., Inc. v Director, Office of Workers' Compensation Programs*, 133 F.3d 717, 722 (9th Cir. 1998)(Longshore and Harbor Workers' Compensation Act applies to the Commonwealth of Northern Mariana Islands pursuant to section 502(a) of the Covenant because the Act

has general application to the states and to Guam). For up-to-date information on the legal status of these freely associated states and territories, contact the Office of Insular Affairs of the Department of the Interior. (Web address: <http://www.doi.gov/oia/>)

Omitted Text. Reasons for textual deletions vary. Some deletions may result from amendments to the OSH Act; others to subsequent amendments to other statutes which the original provisions of the OSH Act may have amended in 1970. In some instances, the original provision of the OSH Act was date-limited and is no longer operative.

The text of section 12(c), 29 U.S.C. 661, is omitted. Subsection (c) amended sections 5314 and 5315 of Title 5, United States Code, to add the positions of Chairman and members of the Occupational Safety and Health Review Commission.

The text of section 27, 29 U.S.C. 676, is omitted. Section 27 listed Congressional findings on workers' compensation and established the National Commission on State Workmen's Compensation Laws, which ceased to exist ninety days after the submission of its final report, which was due no later than July 31, 1972.

The text of section 28 (Economic Assistance to Small Business) amended sections 7(b) and section 4(c)(1) of the Small Business Act to allow for small business loans in order to comply with applicable standards. Because these amendments are no longer current, the text is omitted here. For the current version see 15 U.S.C. 636.

The text of section 29, (Additional Assistant Secretary of Labor), created an Assistant Secretary for Occupational Safety and Health, and section 30 (Additional Positions) created additional positions within the Department of Labor and the Occupational Safety and Health Review Commission in order to carry out the provisions of the OSH Act. The text of these sections is omitted here because it no longer reflects the current statutory provisions for staffing and pay. For current provisions, see 29 U.S.C. 553 and 5 U.S.C. 5108 (c).

Section 31 of the original OSH Act amended 49 U.S.C. 1421 by inserting a section entitled "Emergency Locator Beacons." The text of that section is omitted in this reprint because Pub. L. 103-272, 108 Stat.745, (July 5, 1994), repealed the text of section 31 and enacted a modified version of the provision, entitled "Emergency Locator Transmitters," which is codified at 49 U.S.C. 44712.

Notes on other legislation affecting the administration of the Occupational Safety and Health Act. Sometimes legislation does not directly amend the OSH Act, but does place requirements on the Secretary of Labor either to act or to refrain from acting under the authority of the OSH Act. Included below are some examples of such legislation. Please note that this is not intended to be a comprehensive list.

STANDARDS PROMULGATION.

For example, legislation may require the Secretary to promulgate specific standards pursuant to authority under section 6 of the OSH Act, 29 U.S.C. 655. Some examples include the following:

Hazardous Waste Operations. Pub. L. 99-499, Title I, section 126(a)-(f), 100 Stat. 1613 (1986), as amended by Pub. L. 100-202, section 101(f), Title II, section 201, 101 Stat. 1329 (1987), required the Secretary of Labor to promulgate standards concerning hazardous waste operations.

Chemical Process Safety Management. Pub. L. 101-549, Title III, section 304, 104 Stat. 2399 (1990), required the Secretary of Labor, in coordination with the Administrator of the Environmental Protection Agency, to promulgate a chemical process safety standard.

Hazardous Materials. Pub. L. 101-615, section 29, 104 Stat. 3244 (1990), required the Secretary of Labor, in consultation with the Secretaries of Transportation and Treasury, to issue specific standards concerning the handling of hazardous materials.

Bloodborne Pathogens Standard. Pub. L. 102-170, Title I, section 100, 105 Stat. 1107 (1991), required the Secretary of Labor to promulgate a final Bloodborne Pathogens standard.

Lead Standard. The Housing and Community Development Act of 1992, Pub. L. 102-550, Title X, sections 1031 and 1032, 106 Stat. 3672 (1992), required the Secretary of Labor to issue an interim final lead standard.

EXTENSION OF COVERAGE.

Sometimes a statute may make some OSH Act provisions applicable to certain entities that are not subject to those provisions by the terms of the OSH Act. For example, the Congressional Accountability Act of 1995, Pub. L. 104-1, 109 Stat. 3, (1995), extended certain OSH Act coverage, such as the duty to comply with Section 5 of the OSH Act, to the Legislative Branch. Among other provisions, this legislation authorizes the General Counsel of the Office of Compliance within the Legislative Branch to exercise the authority granted to the Secretary of Labor in the OSH Act to inspect places of employment and issue a citation or notice to correct the violation found. This statute does not make all the provisions of the OSH Act applicable to the Legislative Branch. Another example is the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Title IX, Section 947, Pub. L. 108-173, 117 Stat. 2066 (2003), which requires public hospitals not otherwise subject to the OSH Act to comply with OSHA's Bloodborne Pathogens standard, 29 CFR 1910.1030. This statute provides for the imposition and collection of civil money penalties by the Department of Health and Human Services in the event that a hospital fails to comply with OSHA's Bloodborne Pathogens standard.

PROGRAM CHANGES ENACTED THROUGH APPROPRIATIONS LEGISLATION.

Sometimes an appropriations statute may allow or restrict certain substantive actions by OSHA or the Secretary of Labor. For example, sometimes an appropriations statute may restrict the use of money appropriated to run the Occupational Safety and Health Administration or the Department of Labor. One example of such a restriction, that has been included in OSHA's appropriation for many years, limits the applicability of OSHA requirements with respect to farming operations that employ ten or fewer workers and do not maintain a temporary labor camp. Another example is a restriction that limits OSHA's authority to conduct certain enforcement activity with respect to employers of ten or fewer employees in low hazard industries. See Consolidated Appropriations Act, 2004, Pub. L. 108-199, Div. E - Labor, Health and Human Services, and Education, and Related

Agencies Appropriations, 2004, Title I - Department of Labor, 118 Stat. 3 (2004). Sometimes an appropriations statute may allow OSHA to retain some money collected to use for occupational safety and health training or grants. For example, the Consolidated Appropriations Act, 2004, Div. E, Title I, cited above, allows OSHA to retain up to \$750,000 of training institute course tuition fees per fiscal year for such uses. For the statutory text of currently applicable appropriations provisions, consult the OSHA appropriations statute for the fiscal year in question.



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SEARCH OSHA

By Standard Number / 1977.1 - Introductory statement.

- **Part Number:** 1977
- **Part Number Title:** Discrimination Against Employees Exercising Rights Under the Williams Steiger Occupational Safety and Health Act of 1970
- **Standard Number:** 1977.1
- **Title:** Introductory statement.
- **GPO Source:** [e-CFR](#)

1977.1(a)

The Occupational Safety and Health Act of 1970 (29 U.S.C. 651, et seq.), hereinafter referred to as the Act, is a Federal statute of general application designed to regulate employment conditions relating to occupational safety and health and to achieve safer and healthier workplaces throughout the Nation. By terms of the Act, every person engaged in a business affecting commerce who has employees is required to furnish each of his employees employment and a place of employment free from recognized hazards that are causing or likely to cause death or serious physical harm, and, further, to comply with occupational safety and health standards promulgated under the Act. See part 1975 of this chapter concerning coverage of the Act.

1977.1(b)

The Act provides, among other things, for the adoption of occupational safety and health standards, research and development activities, inspections and investigations of workplaces, and recordkeeping requirements. Enforcement procedures initiated by the Department of Labor, review proceedings before an independent quasi-judicial agency (the Occupational Safety and Health Review Commission), and express judicial review are provided by the Act. In addition, States which desire to assume responsibility for development and enforcement of standards which are at least as effective as the Federal standards published in this chapter may submit plans for such development and enforcement of the Secretary of Labor.

1977.1(c)

Employees and representatives of employees are afforded a wide range of substantive and procedural rights under the Act. Moreover, effective implementation of the Act and achievement of its goals depend in large part upon the active but orderly participation of employees, individually and through their representatives, at every level of safety and health activity.

1977.1(d)

This part deals essentially with the rights of employees afforded under section 11(c) of the Act. Section 11(c) of the Act prohibits reprisals, in any form, against employees who exercise rights under the Act.





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By Standard Number / 1977.2 - Purpose of this part.

- **Part Number:** 1977
- **Part Number Title:** Discrimination Against Employees Exercising Rights Under the Williams Steiger Occupational Safety and Health Act of 1970
- **Standard Number:** 1977.2
- **Title:** Purpose of this part.
- **GPO Source:** e-CFR

The purpose of this part is to make available in one place interpretations of the various provisions of section 11(c) of the Act which will guide the Secretary of Labor in the performance of his duties thereunder unless and until otherwise directed by authoritative decisions of the courts, or concluding, upon reexamination of an interpretation, that it is incorrect.





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By Standard Number / 1977.3 - General requirements of section 11(c) of the Act.

- **Part Number:** 1977
- **Part Number Title:** Discrimination Against Employees Exercising Rights Under the Williams Steiger Occupational Safety and Health Act of 1970
- **Standard Number:** 1977.3
- **Title:** General requirements of section 11(c) of the Act.
- **GPO Source:** [e-CFR](#)

Section 11(c) provides in general that no person shall discharge or in any manner discriminate against any employee because the employee has:

1977.3(a)

Filed any complaint under or related to the Act;

1977.3(b)

Instituted or caused to be instituted any proceeding under or related to the Act;

1977.3(c)

Testified or is about to testify in any proceeding under the Act or related to the Act; or

1977.3(d)

Exercised on his own behalf or on behalf of others any right afforded by the Act.

Any employee who believes that he has been discriminated against in violation of section 11(c) of the Act may, within 30 days after such violation occurs, lodge a complaint with the Secretary of Labor alleging such violation. The Secretary shall then cause appropriate investigation to be made. If, as a result of such investigation, the Secretary determines that the provisions of section 11(c) have been violated civil action may be instituted in any appropriate United States district court, to restrain violations of section 11(c)(1) and to obtain other appropriate relief, including rehiring or reinstatement of the employee to his former position with back pay. Section 11(c) further provides for notification of complainants by the Secretary of determinations made pursuant to their complaints.



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By Standard Number / 1977.4 - Persons prohibited from discriminating.

- **Part Number:** 1977
- **Part Number Title:** Discrimination Against Employees Exercising Rights Under the Williams Steiger Occupational Safety and Health Act of 1970
- **Standard Number:** 1977.4
- **Title:** Persons prohibited from discriminating.
- **GPO Source:** e-CFR

Section 11(c) specifically states that "no person shall discharge or in any manner discriminate against any employee" because the employee has exercised rights under the Act. Section 3(4) of the Act defines "person" as "one or more individuals, partnerships, associations, corporations, business trusts, legal representatives, or any group of persons." Consequently, the prohibitions of section 11(c) are not limited to actions taken by employers against their own employees. A person may be chargeable with discriminatory action against an employee of another person. Section 11(c) would extend to such entities as organizations representing employees for collective bargaining purposes, employment agencies, or any other person in a position to discriminate against an employee. See, *Meek v. United States*, 136 F. 2d 679 (6th Cir., 1943); *Bowe v. Judson C. Burns*, 137 F. 2d 37 (3rd Cir., 1943).



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By [Standard Number](#) / [1977.5 - Persons protected by section 11\(c\)](#).

- **Part Number:** [1977](#)
- **Part Number Title:** [Discrimination Against Employees Exercising Rights Under the Williams Steiger Occupational Safety and Health Act of 1970](#)
- **Standard Number:** [1977.5](#)
- **Title:** [Persons protected by section 11\(c\)](#).
- **GPO Source:** [e-CFR](#)

1977.5(a)

All employees are afforded the full protection of section 11(c). For purposes of the Act, an employee is defined as "an employee of an employer who is employed in a business of his employer which affects commerce." The Act does not define the term "employ." However, the broad remedial nature of this legislation demonstrates a clear congressional intent that the existence of an employment relationship, for purposes of section 11(c), is to be based upon economic realities rather than upon common law doctrines and concepts. See, *U.S. v. Silk*, 331 U.S. 704 (1947); *Rutherford Food Corporation v. McComb*, 331 U.S. 722 (1947).

1977.5(b)

For purposes of section 11(c), even an applicant for employment could be considered an employee. See, *NLRB v. Lamar Creamery*, 246 F. 2d 8 (5th Cir., 1957). Further, because section 11(c) speaks in terms of any employee, it is also clear that the employee need not be an employee of the discriminator. The principal consideration would be whether the person alleging discrimination was an "employee" at the time of engaging in protected activity.

1977.5(c)

In view of the definitions of "employer" and "employee" contained in the Act, employees of a State or political subdivision thereof would not ordinarily be within the contemplated coverage of section 11(c).



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SEARCH OSHA

By Standard Number / 1977.6 - Unprotected activities distinguished.

- **Part Number:** 1977
- **Part Number Title:** Discrimination Against Employees Exercising Rights Under the Williams Steiger Occupational Safety and Health Act of 1970
- **Standard Number:** 1977.6
- **Title:** Unprotected activities distinguished.
- **GPO Source:** e-CFR

1977.6(a)

Actions taken by an employer, or others, which adversely affect an employee may be predicated upon nondiscriminatory grounds. The proscriptions of section 11(c) apply when the adverse action occurs because the employee has engaged in protected activities. An employee's engagement in activities protected by the Act does not automatically render him immune from discharge or discipline for legitimate reasons, or from adverse action dictated by non-prohibited considerations. See, *NLRB v. Dixie Motor Coach Corp.*, 128 F. 2d 201 (5th Cir., 1942).

1977.6(b)

At the same time, to establish a violation of section 11(c), the employee's engagement in protected activity need not be the sole or primary consideration behind discharge or other adverse action. If the discharge or other adverse action would not have taken place "but for" engagement in protected activity, section 11(c) has been violated. See *Bostock v. Clay County, Ga.*, 140 S Ct. 1731, 1739 (2020); *Univ. of Tex. Sw. Med. Ctr. v. Nassar*, 570 U.S. 338 (2013). Ultimately, the issue as to whether a discharge or other adverse action was because of protected activity will have to be determined on the basis of the facts in the particular case.

[38 FR 2681, Jan. 29, 1973; 86 FR 49476, September 3, 2021]



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By [Standard Number](#) / 1977.9 - Complaints under or related to the Act.

- **Part Number:** 1977
- **Part Number Title:** Discrimination Against Employees Exercising Rights Under the Williams Steiger Occupational Safety and Health Act of 1970
- **Standard Number:** 1977.9
- **Title:** Complaints under or related to the Act.
- **GPO Source:** e-CFR

1977.9(a)

Discharge of, or discrimination against, an employee because the employee has filed "any complaint * * * under or related to this Act * * *" is prohibited by section 11(c). An example of a complaint made "under" the Act would be an employee request for inspection pursuant to section 8(f). However, this would not be the only type of complaint protected by section 11(c). The range of complaints "related to" the Act is commensurate with the broad remedial purposes of this legislation and the sweeping scope of its application, which entails the full extent of the commerce power. (See Cong. Rec., vol. 116 p. P. 42206 Dec. 17, 1970).

1977.9(b)

Complaints registered with other Federal agencies which have the authority to regulate or investigate occupational safety and health conditions are complaints "related to" this Act. Likewise, complaints made to State or local agencies regarding occupational safety and health conditions would be "related to" the Act. Such complaints, however, must relate to conditions at the workplace, as distinguished from complaints touching only upon general public safety and health.

1977.9(c)

Further, the salutary principles of the Act would be seriously undermined if employees were discouraged from lodging complaints about occupational safety and health matters with their employers. (Section 2(1), (2), and (3)). Such complaints to employers, if made in good faith, therefore would be related to the Act, and an employee would be protected against discharge or discrimination caused by a complaint to the employer.



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By Standard Number / 1977.10 - Proceedings under or related to the Act.

		News
<ul style="list-style-type: none"> ▪ Part Number: 1977 ▪ Part Number Title: Discrimination Against Employees Exercising Rights Under the Williams Steiger Occupational Safety and Health Act of 1970 ▪ Standard Number: 1977.10 ▪ Title: Proceedings under or related to the Act. ▪ GPO Source: e-CFR 		<ul style="list-style-type: none"> Federal Registers Newsroom News Releases

1977.10(a)

Discharge of, or discrimination against, any employee because the employee has "instituted or caused to be instituted any proceeding under or related to this Act" is also prohibited by section 11(c). Examples of proceedings which could arise specifically under the Act would be inspections of worksites under section 8 of the Act, employee contest of abatement date under section 10(c) of the Act, employee initiation of proceedings for promulgation of an occupational safety and health standard under section 6(b) of the Act and part 1911 of this chapter, employee application for modification of revocation of a variance under section 6(d) of the Act and part 1905 of this chapter, employee judicial challenge to a standard under section 6(f) of the Act and employee appeal of an Occupational Safety and Health Review Commission order under section 11(a) of the Act. In determining whether a "proceeding" is "related to" the Act, the considerations discussed in § 1977.9 would also be applicable.

1977.10(b)

An employee need not himself directly institute the proceedings. It is sufficient if he sets into motion activities of others which result in proceedings under or related to the Act.



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By [Standard Number](#) / 1977.12 - Exercise of any right afforded by the Act.

- **Part Number:** 1977
- **Part Number Title:** Discrimination Against Employees Exercising Rights Under the Williams Steiger Occupational Safety and Health Act of 1970
- **Standard Number:** [1977.12](#)
- **Title:** Exercise of any right afforded by the Act.
- **GPO Source:** e-CFR

1977.12(a)

In addition to protecting employees who file complaints, institute proceedings, or testify in proceedings under or related to the Act, section 11(c) also protects employees from discrimination occurring because of the exercise "of any right afforded by this Act." Certain rights are explicitly provided in the Act; for example, there is a right to participate as a party in enforcement proceedings (section 10). Certain other rights exist by necessary implication. For example, employees may request information from the Occupational Safety and Health Administration; such requests would constitute the exercise of a right afforded by the Act. Likewise, employees interviewed by agents of the Secretary in the course of inspections or investigations could not subsequently be discriminated against because of their cooperation.

1977.12(b)

1977.12(b)(1)

On the other hand, review of the Act and examination of the legislative history discloses that, as a general matter, there is no right afforded by the Act which would entitle employees to walk off the job because of potential unsafe conditions at the workplace. Hazardous conditions which may be violative of the Act will ordinarily be corrected by the employer, once brought to his attention. If corrections are not accomplished, or if there is dispute about the existence of a hazard, the employee will normally have opportunity to request inspection of the workplace pursuant to section 8(f) of the Act, or to seek the assistance of other public agencies which have responsibility in the field of safety and health. Under such circumstances, therefore, an employer would not ordinarily be in violation of section 11(c) by taking action to discipline an employee for refusing to perform normal job activities because of alleged safety or health hazards.

1977.12(b)(2)

However, occasions might arise when an employee is confronted with a choice between not performing assigned tasks or subjecting himself to serious injury or death arising from a hazardous condition at the workplace. If the employee, with no reasonable alternative, refuses in good faith to expose himself to the dangerous condition, he would be protected against subsequent discrimination. The condition causing the employee's apprehension of death or injury must be of such a nature that a reasonable person, under the circumstances then confronting the employee, would conclude that there is a real danger of death or serious injury and that there is insufficient time, due to the urgency of the situation, to eliminate the danger through resort to regular statutory enforcement channels. In addition, in such circumstances, the employee, where possible, must also have sought from his employer, and been unable to obtain, a correction of the dangerous condition.

[38 FR 2681, Jan. 29, 1973, as amended at 38 FR 4577, Feb. 16, 1973]





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By [Standard Number](#) / 1977.15 - Filing of complaint for discrimination.

- **Part Number:** 1977
- **Part Number Title:** Discrimination Against Employees Exercising Rights Under the Williams Steiger Occupational Safety and Health Act of 1970
- **Standard Number:** 1977.15
- **Title:** Filing of complaint for discrimination.
- **GPO Source:** e-CFR

1977.15(a)

Who may file. A complaint of section 11(c) discrimination may be filed by the employee himself, or by a representative authorized to do so on his behalf.

1977.15(b)

Nature of filing. No particular form of complaint is required.

1977.15(c)

Place of filing. Complaint should be filed with the Area Director (Occupational Safety and Health Administration) responsible for enforcement activities in the geographical area where the employee resides or was employed.

1977.15(d)

Time for filing.

1977.15(d)(1)

Section 11(c)(2) provides that an employee who believes that he has been discriminated against in violation of section 11(c)(1) "may, within 30 days after such violation occurs," file a complaint with the Secretary of Labor.

1977.15(d)(2)

A major purpose of the 30-day period in this provision is to allow the Secretary to decline to entertain complaints which have become stale. Accordingly, complaints not filed within 30 days of an alleged violation will ordinarily be presumed to be untimely.

1977.15(d)(3)

However, there may be circumstances which would justify tolling of the 30-day period on recognized equitable principles or because of strongly extenuating circumstances, e.g., where the employer has concealed, or misled the employee regarding the grounds for discharge or other adverse action; or where the discrimination is in the nature of a continuing violation. The pendency of grievance-arbitration proceedings or filing with another agency, among others, are circumstances which do not justify tolling the 30-day period. In the absence of circumstances justifying a tolling of the 30-day period, untimely complaints will not be processed.

[38 FR 2681, Jan. 29, 1973, as amended at 50 FR 32846, Aug. 15, 1985]



Appendix #8

By Standard Number / 1926.57 - Ventilation.

- **Part Number:** 1926
 - **Part Number Title:** Safety and Health Regulations for Construction
 - **Subpart:** 1926 Subpart D
 - **Subpart Title:** Occupational Health and Environmental Controls
 - **Standard Number:** 1926.57
 - **Title:** Ventilation.
 - **GPO Source:** e-CFR
-

1926.57(a)

General. Whenever hazardous substances such as dusts, fumes, mists, vapors, or gases exist or are produced in the course of construction work, their concentrations shall not exceed the limits specified in § 1926.55(a). When ventilation is used as an engineering control method, the system shall be installed and operated according to the requirements of this section.

1926.57(b)

Local exhaust ventilation. Local exhaust ventilation when used as described in (a) shall be designed to prevent dispersion into the air of dusts, fumes, mists, vapors, and gases in concentrations causing harmful exposure. Such exhaust systems shall be so designed that dusts, fumes, mists, vapors, or gases are not drawn through the work area of employees.

1926.57(c)

Design and operation. Exhaust fans, jets, ducts, hoods, separators, and all necessary appurtenances, including refuse receptacles, shall be so designed, constructed, maintained and operated as to ensure the required protection by maintaining a volume and velocity of exhaust air sufficient to gather dusts, fumes, vapors, or gases from said equipment or process, and to convey them to suitable points of safe disposal, thereby preventing their dispersion in harmful quantities into the atmosphere where employees work.

1926.57(d)

Duration of operations.

1926.57(d)(1)

The exhaust system shall be in operation continually during all operations which it is designed to serve. If the employee remains in the contaminated zone, the system shall continue to operate after the cessation of said operations, the length of time to depend upon the individual circumstances and effectiveness of the general ventilation system.

1926.57(d)(2)

Since dust capable of causing disability is, according to the best medical opinion, of microscopic size, tending to remain for hours in suspension in still air, it is essential that the exhaust system be continued in operation for a time after the work process or equipment served by the same shall have ceased, in order to ensure the removal

of the harmful elements to the required extent. For the same reason, employees wearing respiratory equipment should not remove same immediately until the atmosphere seems clear.

1926.57(e)

Disposal of exhaust materials. The air outlet from every dust separator, and the dusts, fumes, mists, vapors, or gases collected by an exhaust or ventilating system shall discharge to the outside atmosphere. Collecting systems which return air to work area may be used if concentrations which accumulate in the work area air do not result in harmful exposure to employees. Dust and refuse discharged from an exhaust system shall be disposed of in such a manner that it will not result in harmful exposure to employees.

1926.57(f)

Abrasive blasting -

1926.57(f)(1)

Definitions applicable to this paragraph -

1926.57(f)(1)(i)

Abrasive. A solid substance used in an abrasive blasting operation.

1926.57(f)(1)(ii)

Abrasive-blasting respirator. A respirator constructed so that it covers the wearer's head, neck, and shoulders to protect the wearer from rebounding abrasive.

1926.57(f)(1)(iii)

Blast cleaning barrel. A complete enclosure which rotates on an axis, or which has an internal moving tread to tumble the parts, in order to expose various surfaces of the parts to the action of an automatic blast spray.

1926.57(f)(1)(iv)

Blast cleaning room. A complete enclosure in which blasting operations are performed and where the operator works inside of the room to operate the blasting nozzle and direct the flow of the abrasive material.

1926.57(f)(1)(v)

Blasting cabinet. An enclosure where the operator stands outside and operates the blasting nozzle through an opening or openings in the enclosure.

1926.57(f)(1)(vi)

Clean air. Air of such purity that it will not cause harm or discomfort to an individual if it is inhaled for extended periods of time.

1926.57(f)(1)(vii)

Dust collector. A device or combination of devices for separating dust from the air handled by an exhaust ventilation system.

1926.57(f)(1)(viii)

Exhaust ventilation system. A system for removing contaminated air from a space, comprising two or more of the following elements

- (A) enclosure or hood,
- (B) duct work,
- (C) dust collecting equipment,
- (D) exhauster, and
- (E) discharge stack.

1926.57(f)(1)(ix)

Particulate-filter respirator. An air purifying respirator, commonly referred to as a dust or a fume respirator, which removes most of the dust or fume from the air passing through the device.

1926.57(f)(1)(x)

Respirable dust. Airborne dust in sizes capable of passing through the upper respiratory system to reach the lower lung passages.

1926.57(f)(1)(xi)

Rotary blast cleaning table. An enclosure where the pieces to be cleaned are positioned on a rotating table and are passed automatically through a series of blast sprays.

1926.57(f)(1)(xii)

Abrasive blasting. The forcible application of an abrasive to a surface by pneumatic pressure, hydraulic pressure, or centrifugal force.

1926.57(f)(2)

Dust hazards from abrasive blasting.

1926.57(f)(2)(i)

Abrasives and the surface coatings on the materials blasted are shattered and pulverized during blasting operations and the dust formed will contain particles of respirable size. The composition and toxicity of the dust from these sources shall be considered in making an evaluation of the potential health hazards.

1926.57(f)(2)(ii)

The concentration of respirable dust or fume in the breathing zone of the abrasive-blasting operator or any other worker shall be kept below the levels specified in § 1926.55 or other pertinent sections of this part.

1926.57(f)(2)(iii)

Organic abrasives which are combustible shall be used only in automatic systems. Where flammable or explosive dust mixtures may be present, the construction of the equipment, including the exhaust system and all electric wiring, shall conform to the requirements of American National Standard Installation of Blower and Exhaust Systems for Dust, Stock, and Vapor Removal or Conveying, Z33.1-1961 (NFPA 91-1961), and subpart

Appendix #9



OSHA ALERT

Improving Workplace Ventilation During Cold Weather

Indoor air quality in the workplace during cold weather is especially critical while influenza, cold, and COVID-19 viruses are circulating.

Improving ventilation is a key engineering control that can be used to increase the delivery of clean air and remove or reduce the concentration of viral particles or other contaminants. Building managers may perform some steps to improve indoor air, while others should be conducted by a qualified heating, ventilation, and air conditioning (HVAC) professional.

Key steps to improve ventilation include:

- Inspect air intake and exhaust ports to ensure they are clean and free of ice or snow.
- Replace filters as necessary to ensure the proper function of the HVAC system.
- Have an HVAC professional conduct all regularly scheduled inspections and maintenance.
- Add portable air cleaners with High Efficiency Particulate Air (HEPA) filters in spaces with high occupancy or limited ventilation.



Maintaining a healthy HVAC system requires an HVAC professional to:

- Ensure all HVAC systems are operating in accordance with the manufacturer's instructions and design specifications.
- Maximize the amount of outdoor air supplied consistent with the heating capacity of the HVAC system. Rebalance or adjust HVAC systems to increase total airflow to occupied spaces. Total airflow includes both outside and recirculated air.
- Install air filters with a **minimum efficiency reporting value (MERV) 13** (or equivalent) or higher where feasible. If MERV-13 filters are not compatible with the HVAC system, use filters with the highest compatible filtering efficiency for the HVAC system.
- Clean HVAC system drain pans, heating and cooling coils, and supply/return registers to eliminate areas where contaminants can settle.

To learn more about improving ventilation, visit [osha.gov/ventilation](https://www.osha.gov/ventilation).

OSHA alerts are issued on occasion to draw attention to worker safety and health issues and solutions.

Appendix #10

Public Law 92-449

September 30, 1972
[S. 3442]

AN ACT

To amend the Public Health Service Act to extend and revise the program of assistance under that Act for the control and prevention of communicable diseases.

Communicable
Disease Control
Amendments Act
of 1972.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. This Act may be cited as the "Communicable Disease Control Amendments Act of 1972".

TITLE I—COMMUNICABLE DISEASE CONTROL
PROGRAMS

84 Stat. 988.
42 USC 247b.

SEC. 101. Section 317 of the Public Health Service Act (42 U.S.C. 347b) is amended to read as follows:

"GRANTS FOR VACCINATION PROGRAMS AND OTHER COMMUNICABLE
DISEASE CONTROL PROGRAMS

"SEC. 317. (a) The Secretary may make grants to States and, in consultation with the State health authority, to agencies and political subdivisions of States to assist in meeting the costs of communicable disease control programs. In making a grant under this section, the Secretary shall give consideration to (1) the relative extent, in the area served by the applicant for the grant, of the problems which relate to one or more of the communicable diseases referred to in subsection (h) (1), and (2) the design of the applicant's communicable disease program to determine its effectiveness.

Application
submission.

"(b) (1) No grant may be made under this section unless an application therefor has been submitted to, and approved by, the Secretary. Except as provided in paragraph (2), such application shall be in such form, submitted in such manner, and contain such information, as the Secretary shall by regulation prescribe.

Application
requirements.

"(2) An application for a grant for a fiscal year beginning after June 30, 1973, shall—

"(A) set forth with particularity the objectives (and their priorities, as determined in accordance with such regulations as the Secretary may prescribe) of the applicant for each of the programs he proposes to conduct with assistance from a grant under this section;

"(B) contain assurances satisfactory to the Secretary that, in the fiscal year for which a grant under this section is applied for, the applicant will conduct such programs as may be necessary to develop an awareness in those persons in the area served by the applicant who are most susceptible to the diseases referred to in subsection (h) (1) of the importance of immunization against such diseases, to encourage such persons to seek appropriate immunization, and to facilitate access by such persons to immunization services; and

"(C) provide for the reporting to the Secretary of such information as he may require concerning (i) the problems, in the area served by the applicant, which relate to any communicable disease referred to in subsection (h) (1), and (ii) the communicable disease control programs of the applicant.

"(3) Nothing in this section shall be construed to require any State or any agency or political subdivision of a State to have a communicable disease control program which would require any person, who objects to any treatment provided under such a program, to be treated

or to have any child or ward of his treated under such a program.

“(c) (1) Payments under grants under this section may be made in advance on the basis of estimates or by way of reimbursement, with necessary adjustments on account of underpayments or overpayments, and in such installments and on such terms and conditions as the Secretary finds necessary to carry out the purposes of this section.

Payments.

“(2) The Secretary, at the request of a recipient of a grant under this section, may reduce such grant by the fair market value of any supplies (including vaccines and other preventive agents) or equipment furnished to such recipient and by the amount of the pay, allowances, travel expenses, and any other costs in connection with the detail of an officer or employee of the Government to the recipient when the furnishing of such supplies or equipment or the detail of such an officer or employee is for the convenience of and at the request of such recipient and for the purpose of carrying out the program with respect to which the grant under this section is made. The amount by which any such grant is so reduced shall be available for payment by the Secretary of the costs incurred in furnishing the supplies or equipment, or in detailing the personnel, on which the reduction of such grant is based.

Grant reduction.

“(d) (1) There is authorized to be appropriated \$11,000,000 for the fiscal year ending June 30, 1973, \$11,000,000 for the fiscal year ending June 30, 1974, and \$11,000,000 for the fiscal year ending June 30, 1975, for grants under this section for communicable disease control programs for tuberculosis.

Appropriations.

“(2) There is authorized to be appropriated \$6,000,000 for the fiscal year ending June 30, 1973, \$6,000,000 for the fiscal year ending June 30, 1974, and \$6,000,000 for the fiscal year ending June 30, 1975, for grants under this section for communicable disease control programs for measles.

“(3) There is authorized to be appropriated \$23,000,000 for the fiscal year ending June 30, 1973, \$23,000,000 for the fiscal year ending June 30, 1974, and \$23,000,000 for the fiscal year ending June 30, 1975, for grants under this section for communicable disease control programs other than communicable disease control programs for which appropriations are authorized by paragraph (1) or (2).

“(4) Not to exceed 50 per centum of the amount appropriated for any fiscal year under any of the preceding paragraphs of this subsection may be used by the Secretary for grants for such fiscal year under (A) programs for which appropriations are authorized under any one or more of the other paragraphs of this subsection if the Secretary determines that such use will better carry out the purposes of this section, and (B) section 318.

Limitation.

“(e) The Secretary shall develop a plan under which personnel, equipment, medical supplies, and other resources of the Service and other agencies under his jurisdiction may be effectively utilized to meet epidemics of, or other health emergencies involving, any disease referred to in subsection (h) (1). There is authorized to be appropriated to the Secretary \$5,000,000 for the fiscal year ending June 30, 1973, \$5,000,000 for the fiscal year ending June 30, 1974, and \$5,000,000 for the fiscal year ending June 30, 1975, for costs incurred in utilizing such resources in accordance with such plan.

Post, p. 751.

Emergency plan development.

“(f) (1) Except as provided in section 318(g), no funds appropriated under any provision of this Act other than subsection (d) may be used to make grants in any fiscal year for communicable disease control programs if (A) grants for such programs are authorized by this section, and (B) all the funds authorized to be appropriated under that subsection for that fiscal year have not been appropriated for that fiscal year and obligated in that fiscal year.

Appropriation.

Post, p. 754.

"(2) No funds appropriated under any provision of this Act other than subsection (e) may be used in any fiscal year for costs incurred in utilizing resources of the Service in accordance with a plan developed in accordance with that subsection if all the funds authorized to be appropriated under that subsection for that fiscal year have not been appropriated for that fiscal year and obligated in that fiscal year.

Annual report to President, submittal to Congress.

"(g) The Secretary shall submit to the President for submission to the Congress on January 1 of each year a report (1) on the effectiveness of all Federal and other public and private activities in preventing and controlling the diseases referred to in subsection (h) (1), (2) on the extent of the problems presented by such diseases, (3) on the effectiveness of the activities, assisted under grants under this section, in preventing and controlling such diseases, and (4) setting forth a plan for the coming year for the prevention and control of such diseases.

Definitions.

"(h) For the purposes of this section:

"(1) The term 'communicable disease control program' means a program which is designed and conducted so as to contribute to national protection against tuberculosis, rubella, measles, Rh disease, poliomyelitis, diphtheria, tetanus, whooping cough, or other communicable diseases (other than venereal disease) which are transmitted from State to State, are amenable to reduction, and are determined by the Secretary to be of national significance. Such term includes vaccination programs, laboratory services, and studies to determine the communicable disease control needs of States and political subdivisions of States and the means of best meeting such needs.

"(2) The term 'State' includes the Commonwealth of Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the District of Columbia.

"(i) Nothing in this section shall limit or otherwise restrict the use of funds which are granted to a State or to an agency or a political subdivision of a State under provisions of Federal law (other than this Act) and which are available for the conduct of communicable disease control programs from being used in connection with programs assisted through grants under this section."

Effective date.

SEC. 102. The amendment made by section 101 of this title shall apply to grants made under section 317 of the Public Health Service Act after June 30, 1972, except that subsection (d) of such section as amended by section 101 shall take effect on the date of enactment of this Act.

TITLE II—VENEREAL DISEASE PREVENTION AND CONTROL

Citation of title.

SEC. 201. This title may be cited as the "National Venereal Disease Prevention and Control Act".

Congressional findings.

SEC. 202. (a) The Congress finds and declares that—

(1) the number of reported cases of venereal disease has reached epidemic proportions in the United States;

(2) the number of patients with venereal disease reported to public health authorities is only a fraction of those treated by physicians;

(3) the incidence of venereal disease is particularly high among individuals in the 20-24 age group, and in metropolitan areas;

(4) venereal disease accounts for needless deaths and leads to such severe disabilities as sterility, insanity, blindness, and crippling conditions:

(5) the number of cases of congenital syphilis, a preventable disease, in infants under one year of age increased by 33½ per centum between 1970 and 1971;

(6) health education programs in schools and through the mass media may prevent a substantial portion of the venereal disease problem; and

(7) medical authorities have no successful vaccine for syphilis or gonorrhea and no blood test for the detection of gonorrhea among the large reservoir of asymptomatic females.

(b) In order to preserve and protect the health and welfare of all citizens, it is the purpose of this Act to establish a national program for the prevention and control of venereal disease.

SEC. 203. Part B of title III of the Public Health Service Act is amended by adding immediately after section 317 thereof the following new section:

58 Stat. 693.
42 USC 243.
Ante, p. 748.

“PROJECTS AND PROGRAMS FOR THE PREVENTION AND CONTROL OF
VENEREAL DISEASE

“SEC. 318. (a) The Secretary may provide technical assistance to appropriate public authorities and scientific institutions for their research, training, and public health programs for the prevention and control of venereal disease.

Technical
assistance.

“(b) (1) The Secretary is authorized to make grants to States, political subdivisions of States, and any other public or nonprofit private entity for projects for the conduct of research, demonstrations, and training for the prevention and control of venereal disease.

Grants.

“(2) For the purpose of carrying out this subsection, there is authorized to be appropriated \$7,500,000 for the fiscal year ending June 30, 1973, and for each of the next two fiscal years.

Appropriations.

“(c) (1) There is authorized to be appropriated \$25,000,000 for the fiscal year ending June 30, 1973, and for each of the next two fiscal years, to enable the Secretary to make grants to State health authorities to assist the States in establishing and maintaining adequate public health programs for the diagnosis and treatment of venereal disease. For purposes of this subsection, the term ‘State’ means each of the several States of the United States, the District of Columbia, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of Puerto Rico.

“State.”

“(2) Any State desiring to receive a grant under this subsection shall submit to the Secretary a State plan for a public health program for the diagnosis and treatment of venereal disease. Each State plan shall—

State plan re-
quirements.

“(A) provide for the administration or supervision of administration of the State plan by the State health authority;

“(B) set forth the policies and procedures to be followed in the expenditure of the funds paid to the State under this subsection;

“(C) provide that the public health services furnished under the State plan will include the provision of Statewide laboratory services (including dark field microscope techniques for the diagnosis of both gonorrhea and syphilis), which services will be provided in accordance with standards prescribed by regulations, including standards as to the scope and quality of such services;

“(D) contain or be supported by assurances satisfactory to the Secretary that (i) not less than 70 per centum of the funds paid to the State under this subsection will be used to provide and strengthen public health services in its political subdivisions for the diagnosis and treatment of venereal disease; (ii) such funds

will be used to supplement and, to the extent practical, to increase the level of funds that would otherwise be made available for the purposes for which the Federal funds are provided under this subsection and will not supplant any non-Federal funds which would otherwise be available for such purposes; and (iii) the plan is compatible with the total health program of the State;

Review.

“(E) provide that the State health authority will from time to time, but not less often than annually, review and evaluate its State plan approved under this subsection, and submit to the Secretary appropriate modifications thereof;

Reports.

“(F) provide that the State health authority will make such reports, in such form and containing such information, as the Secretary may from time to time reasonably require, and will keep such records and afford such access thereto as the Secretary finds necessary to assure the correctness and verification of such reports;

Recordkeeping.

“(G) provide for such fiscal control and fund accounting procedures as may be necessary to assure the proper disbursement of and accounting for funds paid to the State under this subsection; and

“(H) contain such additional information and assurances as the Secretary may find necessary to carry out the purposes of this subsection.

Approval.

The Secretary shall approve any State plan and any modification thereof which meets the requirements of this paragraph.

State allotments.

“(3) (A) Grants under this subsection shall be made from allotments to States made in accordance with this paragraph. For each fiscal year the Secretary shall, in accordance with regulations, allot the sums appropriated under paragraph (1) for such year among the States on the basis of the incidence of venereal disease in, and the population of, the respective States; except that no State's allotment shall be less than \$75,000 for any fiscal year.

Limitation.**Unobligated funds.**

“(B) Any amount allotted to a State (other than the Virgin Islands, American Samoa, Guam, the Trust Territory of the Pacific Islands, and the Commonwealth of Puerto Rico) under subparagraph (A) for a fiscal year and remaining unobligated at the end of such year shall remain available to such State, for the purposes for which made, for the next fiscal year (and for such year only), and any such amount shall be in addition to the amounts allotted to such State for such purpose for such next fiscal year; except that any such amount, remaining unobligated at the end of the sixth month following the end of such year for which it was allotted, which the Secretary determines will remain unobligated by the close of such next fiscal year, may be reallocated by the Secretary, to be available for the purposes for which made until the close of such next fiscal year, to other States which have need therefor, on such basis as the Secretary deems equitable and consistent with the purposes of this subsection, and any amount so reallocated to a State shall be in addition to the amounts allotted and available to the States for the same period. Any amount allotted under subparagraph (A) to the Virgin Islands, American Samoa, Guam, the Trust Territory of the Pacific Islands, or the Commonwealth of Puerto Rico for a fiscal year and remaining unobligated at the end of such year shall remain available to it for the purposes for which made, for the next two fiscal years (and for such years only), and any such amount shall be in addition to the amounts allotted to it for such purposes for each of such next two fiscal years; except that any such amount, remaining unobligated at the end of the first of such next two years, which the Secretary determines will remain unobligated at the close of the second of such next two years, may be reallocated by the Secretary, to be available for the purposes for which made until the

Reallotment.

close of the second of such next two years, to any other of such named States which have need therefor, on such basis as the Secretary deems equitable and consistent with the purposes of this subsection, and any amount so reallocated to any such named State shall be in addition to any other amounts allotted and available to it for the same period.

“(4) The amount of any grant under this subsection for public health programs under an approved State plan shall be determined by the Secretary, except that no grant for any such program may exceed 90 per centum of its cost (as determined under regulations of the Secretary). Payments under grants under this subsection shall be made from time to time in advance on the basis of estimates by the Secretary or by way of reimbursement, with necessary adjustments on account of previous underpayments or overpayments.

“(d) (1) The Secretary is authorized to make project grants to States and, in consultation with the State health authority, to political subdivisions of States, for—

“(A) venereal disease surveillance activities, including the reporting, screening, and followup of diagnostic tests for, and diagnosed cases of, venereal disease;

“(B) casefinding and case followup activities respecting venereal disease, including contact tracing of infectious cases of venereal disease;

“(C) interstate epidemiologic referral and followup activities respecting venereal disease;

“(D) professional and public venereal disease education activities; and

“(E) such special studies or demonstrations to evaluate or test venereal disease control as may be prescribed by the Secretary.

“(2) For the purpose of carrying out this subsection, there is authorized to be appropriated \$30,000,000 for the fiscal year ending June 30, 1973, and for each of the next two succeeding fiscal years.

“(e) (1) Grants made under subsection (b) or (d) of this section shall be made on such terms and conditions as the Secretary finds necessary to carry out the purposes of such subsection, and payments under any such grants shall be made in advance or by way of reimbursement and in such installments as the Secretary finds necessary.

“(2) Each recipient of a grant under this section shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such grant, the total cost of the project or undertaking in connection with which such grant was given or used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

“(3) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipients of grants under this section that are pertinent to such grants.

“(4) The Secretary, at the request of a recipient of a grant under this section, may reduce such grant by the fair market value of any supplies or equipment furnished to such recipient and by the amount of pay, allowances, travel expenses, and any other costs in connection with the detail of an officer or employee of the United States to the recipient when the furnishing of such supplies or equipment or the detail of such an officer or employee is for the convenience of and at the request of such recipient and for the purpose of carrying out the program with respect to which the grant under this section is made. The amount by which any such grant is so reduced shall be available for

Amount, limitation.

Advance payments.

Project grants to States.

Appropriation.

Terms and conditions.

Recordkeeping.

Audit.

Grant reduction.

payment by the Secretary of the costs incurred in furnishing the supplies, equipment, or personal services on which the reduction of such grant is based; and, in the case of a grant under subsection (c), such amount shall be deemed a part of the grant to such recipient and shall, for the purposes of that subsection, be deemed to have been paid to such recipient.

Information disclosure.

“(5) All information obtained in connection with the examination, care, or treatment of any individual under any program which is being carried out with a grant made under this section shall not, without such individual’s consent, be disclosed except as may be necessary to provide service to him. Information derived from any such program may be disclosed—

“(A) in summary, statistical, or other form, or

“(B) for clinical or research purposes,

but only if the identity of the individuals diagnosed or provided care or treatment under such program is not disclosed.

Ante, p. 749.

“(f) Except as provided in section 317(d)(4), no funds appropriated under any provision of this Act other than this section may be used to make grants in any fiscal year for programs or projects respecting venereal disease if (1) grants for such programs or projects are authorized by this section, and (2) all the funds authorized to be appropriated under this section for that fiscal year have not been appropriated for that fiscal year and obligated in that fiscal year.

Limitation.

“(g) Not to exceed 50 per centum of the amounts appropriated for any fiscal year under subsections (b), (c), and (d) of this section may be used by the Secretary for grants for such fiscal year under section 317.

Ante, p. 748.

“(h) Nothing in this section shall be construed to require any State or any political subdivision of a State to have a venereal disease program which would require any person, who objects to any treatment provided under such a program, to be treated or to have any child or ward of his treated under such a program.”

TITLE III—PROJECT GRANTS AND CONTRACTS FOR FAMILY PLANNING SERVICES

84 Stat. 1506.
42 USC 300.

SEC. 301. Section 1001(c) of the Public Health Service Act is amended by striking out “\$90,000,000” and inserting “\$111,500,000” in lieu thereof.

Approved September 30, 1972.

Public Law 92-450

September 30, 1972
[H. J. Res. 1304]

JOINT RESOLUTION

Authorizing the President to proclaim October 1, 1972, as
“National Heritage Day”.

National Heritage Day.
Designation authorization.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President is hereby authorized and requested to issue a proclamation designating Sunday, October 1, 1972, as “National Heritage Day”, and calling upon the people of the United States, all of us immigrants, to observe such day with appropriate ceremonies and activities.

Approved September 30, 1972.

Appendix #11



Influenza A (H1N1)

pandemic 2009 - 2010

[Overview](#)[Surveillance](#)[Operations](#)[Research](#)[Training](#)[Partners](#)

[Home](#) / [Situations](#) / Influenza A (H1N1) outbreak

Overview

Before the H1N1 pandemic in 2009, the influenza A(H1N1) virus had never been identified as a cause of infections in people. Genetic analyses of this virus have shown that it originated from animal influenza viruses and is unrelated to the human seasonal H1N1 viruses that have been in general circulation among people since 1977.

After early reports of influenza outbreaks in North America in April 2009, the new influenza virus spread rapidly around the world. By the time WHO declared a pandemic in June 2009, a total of 74

countries and territories had reported laboratory confirmed infections. Unlike typical seasonal flu patterns, the new virus caused high levels of summer infections in the northern hemisphere, and then even higher levels of activity during cooler months. The new virus also led to patterns of death and illness not normally seen in influenza infections.

The H1N1 (2009) virus continues to circulate as a seasonal virus and is included in the vaccines against seasonal influenza.

[Emergency List](#)



[Influenza \(avian and other zoonotic\)](#)



[Influenza seasonal](#)



WHO news

All →



[News Releases \(Archived\)](#)

/ US Department of Labor's OSHA provides workplace H1N1 influenza precaution and protection information for workers and employers

OSHA ARCHIVE

NOTICE: This is an OSHA Archive Document, and may no longer represent OSHA Policy. It is presented here as historical content, for research and review purposes only.



OSHA National News Release

U.S. Department of Labor

Please note: As of January 20, 2021, information in some news releases may be out of date or not reflect current policies.

09-1375-NAT

Nov. 9, 2009

Contact: Gloria Della

Phone: 202-693-8666

**US Department of Labor's OSHA provides workplace H1N1 influenza
precaution and protection information for workers and employers
*New Web site offers fact sheets with practical information***

WASHINGTON - The U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) has issued commonsense fact sheets that employers and workers can use to promote safety during the current H1N1 influenza outbreak.

The fact sheets inform employers and workers about ways to reduce the risk of exposure to the 2009 H1N1 virus at work. Separate fact sheets for health care workers, who carry out tasks and activities that require close contact with 2009 H1N1 patients, contain additional precautions.

"Protecting our nation's workers is OSHA's top priority," said Jordan Barab, the agency's acting assistant secretary. "These fact sheets are tools we have developed to help ensure America's workers stay healthy and our businesses remain viable. OSHA's new fact sheets will help all employers identify appropriate actions to protect their workers."

OSHA's "Workplace Safety and H1N1" Web site provides easy to understand information appropriate for all workplaces and more extensive guidance for those involved in higher risk health care activities. The fact sheets are advisory in nature and informational in content.

As new information about the 2009 H1N1 virus becomes available, these workplace fact sheets will be updated. Employers and workers should review OSHA's <http://www.osha.gov/h1n1> site often to ensure they have the most up-to-date information when making decisions about their operations and planning.

Under the Occupational Safety and Health Act, OSHA's role is to promote safe and healthful working conditions for America's working men and women by setting and enforcing standards, and providing training, outreach and education. For more information about the agency, visit <http://www.osha.gov>.

###

U.S. Department of Labor releases are accessible on the Internet at <http://www.dol.gov>. The information in this news release will be made available in alternate format (large print, Braille, audiotape or disc) from the COAST office upon request. Please specify which news release when placing your request at 202-693-7828 or TTY 202-693-7755. The Labor Department is committed to providing America's employers and employees with easy access to understandable information on how to comply with its laws and regulations. For more information, please visit <http://www.dol.gov/compliance>.



Appendix #12

Hospital Respiratory Protection Program Toolkit

Resources for Respirator
Program Administrators

MAY 2015



This document is in the public domain and may be freely copied or reprinted.

This document was adapted from a California-specific guide, *Implementing Respiratory Protection Programs in Hospitals: A Guide for Respirator Program Administrators*, May 2012, which was developed by the California Department of Public Health, Occupational Health Branch, and the Public Health Institute under contract no. 254-2010-345-11 from the National Institute for Occupational Safety and Health, National Personal Protective Technology Laboratory (NIOSH-NPPTL). The guide was adapted under contract no. 254-2011-M-40839 from NIOSH-NPPTL to produce this toolkit.

Special thanks to the following organizations for assistance in the development and/or review of these materials:

3M, Inc.	Hospital Corporation of America	Service Employees International Union (SEIU)
America Federation of Labor-Congress of Industrial Organizations (AFL-CIO)	Illinois State University, Department of Health Sciences	University of Minnesota, School of Public Health
American Federation of State, County, and Municipal Employees (AFSCME)	Intermountain Healthcare Kaiser Permanente	University of North Carolina, Chapel Hill
Arizona Division of Occupational Safety and Health	Mayo Clinic Michigan Public Institute, Center for Healthy Communities	Veterans Health Administration, Iowa City VA Health Care System
Children's Healthcare of Atlanta, Inc.	New York State Department of Health	Veterans Health Administration, Office of Public Health
Coalition of Kaiser Permanente Unions		Y. Day Designs

This guidance document is not a standard or regulation, and it creates no new legal obligations. It contains recommendations as well as descriptions of mandatory safety and health standards. The recommendations are advisory in nature, informational in content, and are intended to assist employers in providing a safe and healthful workplace. The *Occupational Safety and Health Act* requires employers to comply with safety and health standards and regulations promulgated by OSHA or by a state with an OSHA-approved state plan. In addition, the Act's General Duty Clause, Section 5(a)(1), requires employers to provide their employees with a workplace free from recognized hazards likely to cause death or serious physical harm.

Cover photo courtesy of 3M. ©2015

Hospital Respiratory Protection Program Toolkit

Resources for Respirator
Program Administrators

May 2015



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Glossary

Aerosol-generating procedures—

Procedures that may increase potential exposure to aerosol transmissible disease pathogens due to the reasonably anticipated aerosolization of pathogens. Aerosol-generating procedures may also be known as high hazard or cough-inducing procedures. See [page 12](#) for a detailed explanation.

Aerosol transmissible disease (ATD) or aerosol transmissible disease pathogen—Any disease or pathogen requiring Airborne Precautions and/or Droplet Precautions.

Airborne infection isolation room (AIIR)—A single-occupancy patient-care room designed to isolate persons with suspected or confirmed airborne infectious diseases. Environmental factors are controlled in AIIRs to minimize the transmission of infectious agents that can be spread from person-to-person by the airborne route. AIIRs should maintain negative pressure relative to adjacent rooms and halls (so that air flows under the door gap into the room), an air flow rate of 6–12 air changes per hour, and direct exhaust of air from the room to the outside of the building or recirculation of air through a HEPA filter.

Airborne Precautions—A category of Transmission-Based Precautions that CDC and HICPAC may recommend when Standard Precautions alone are not sufficient to prevent the transmission of disease. When Airborne Precautions are required patients should be placed in airborne infection isolation rooms and healthcare personnel sharing patients' airspaces should wear respirators.

Air-purifying respirator (APR)—A respirator with an air-purifying filter, cartridge, or canister that removes specific air contaminants by passing ambient air through an air-purifying element. See [page 15](#) for a detailed explanation.

Assigned protection factor (APF)—The workplace level of respiratory protection that a respirator or class of respirators is expected to provide to employees when the employer implements a continuing, effective respiratory protection program as specified in [29 CFR 1910.134](#).

Droplet Precautions—A category of Transmission-Based Precautions that CDC and HICPAC may recommend when Standard Precautions alone are not sufficient to prevent the transmission of disease. When Droplet Precautions are required, patients should be spatially separated, preferably in separate rooms with closed doors. Healthcare personnel should wear surgical masks for close contact and, if substantial spraying of body fluids is anticipated, gloves and gown as well as goggles (or face shield in place of goggles). Patients should be masked during transport.

Facemask—A loose-fitting, disposable device that creates a physical barrier between the mouth and nose of the wearer and potential contaminants in the immediate environment. Facemasks may be labeled as surgical, laser, isolation, dental, or medical procedure masks and are cleared by the FDA for marketing. They may come with or without a face shield. Facemasks do not seal tightly to the wearer's face, do not provide the wearer with a reliable level of protection from inhaling smaller airborne particles, and are not considered respiratory protection.

Facepiece—The part of a respirator that covers the nose and mouth of the wearer. Respirators may have half facepieces covering just the nose and mouth, or they may have full facepieces covering the nose, mouth, and eyes. They are designed to form a seal with the face.

Filtering facepiece respirator—A type of disposable (single-use), negative-pressure, air-purifying respirator where an integral part of the facepiece or the entire facepiece is made of filtering material.

Fit factor—A quantitative estimate of the fit of a particular respirator to a specific individual; typically estimates the ratio of the concentration of a substance in ambient air to its concentration inside the respirator when worn.

Fit test—The use of a protocol to qualitatively or quantitatively evaluate the fit of a respirator on an individual.

Food and Drug Administration (FDA)—An agency within the U.S. Department of Health and Human Services. The FDA is responsible for, among other things, protecting the public health by assuring drugs, vaccines, and other biological products and medical devices intended for human use are safe and effective.

Healthcare Infection Control Practices Advisory Committee (HICPAC)—A federal advisory committee assembled to provide advice and guidance to the CDC and the U.S. Department of Health and Human Services regarding the practice of infection control and strategies for surveillance, prevention, and control of healthcare-associated infections and antimicrobial resistance in United States healthcare settings. CDC and HICPAC authored the *2007 Guideline for Isolation Precautions: Preventing Transmission of Infectious Agents in Healthcare Settings*, which describes Standard and Transmission-Based Precautions used for infection control.

Healthcare personnel (HCP)—Paid and unpaid persons who provide patient care in a healthcare setting or support the delivery of healthcare by providing clerical, dietary, housekeeping, engineering, security, or maintenance services.

High-efficiency (HE) or high-efficiency particulate air (HEPA) filter—The NIOSH classification for a filter that is at least 99.97% efficient in removing particles and is used in powered air-purifying respirators (PAPRs). When high-efficiency filters are required for non-powered respirators, N100, R100, or P100 filters may be used.

Hood—The portion of a respirator that completely covers the head and neck, and may also cover portions of the shoulders and torso, and through which clean air is distributed to the breathing zone.

Loose-fitting facepiece—The portion of a respirator that forms a partial seal with the face but leaves the back of the neck exposed, is designed to form a partial seal with the face, and through which clean air is distributed to the breathing zone.

N95 filter—A type of NIOSH-approved filter or filter material, which captures at least 95% of airborne particles and is not resistant to oil.

N95 respirator—A generally used term for a half mask air-purifying respirator with NIOSH-approved N95 particulate filters or filter material (i.e., includes N95 filtering facepiece respirator or equivalent protection).

Negative-pressure respirator—A tight-fitting respirator in which air is inhaled through an air-purifying filter, cartridge, or canister during inhalational efforts, generating negative pressure inside the facepiece relative to ambient air pressure outside the respirator.

Personal protective equipment (PPE)—

Specialized clothing or equipment worn by an employee to protect the respiratory tract, mucous membranes, skin, and clothing from infectious agents or other hazards. Examples of PPE include gloves, respirators, goggles, facemasks, surgical masks, faceshields, footwear, and gowns.

Physician or other licensed healthcare professional (PLHCP)—

An individual whose legally permitted scope of practice (i.e., license, registration, or certification), as defined by the state where he or she practices, allows him or her to independently provide, or be delegated the responsibility to provide, some or all of the healthcare services required to provide a medical evaluation as described in OSHA's Respiratory Protection standard.

Powered air-purifying respirator (PAPR)—

An air-purifying respirator that uses a blower to force air through filters or cartridges and into the breathing zone of the wearer. This creates a positive pressure inside the facepiece or hood, providing more protection than a non-powered or negative-pressure half mask APR.

Qualitative fit testing (QLFT)—A pass/fail fit test to assess the adequacy of respirator fit that relies on the individual's response to the test agent.

Quantitative fit testing (QNFT)—

An assessment of the adequacy of respirator fit by numerically measuring the amount of leakage into the respirator.

Respirator—A device worn over the nose and mouth to protect the wearer from hazardous materials in the breathing zone. Respirators must be certified by NIOSH for the purpose for which they are used.

Respirator program administrator (RPA)—

Individual designated to oversee a facility's respiratory protection program (RPP).

Respiratory protection program (RPP)—

Program required by OSHA under the Respiratory Protection standard that includes development and implementation of detailed policies and worksite-specific procedures for respirator use for control of respiratory hazards.

Surgical mask—

A loose-fitting, disposable type of facemask that creates a physical barrier between the mouth and nose of the wearer and potential contaminants in the immediate environment. Surgical masks are fluid resistant and provide protection from splashes, sprays, and splatter. Surgical masks do not seal tightly to the wearer's face, do not provide the wearer with a reliable level of protection from inhaling smaller airborne particles, and are not considered respiratory protection.

Surgical respirator—A filtering facepiece respirator with spray- or splash-resistant facemask material on the outside to protect the wearer from splashes. Also known as a surgical N95 respirator.

User seal check—An action conducted by the respirator user to determine if the respirator is properly seated to the face. For all tight-fitting respirators, the employer shall ensure that employees perform a user seal check each time they put on the respirator using the procedures in [Appendix B-1 of OSHA's Respiratory Protection standard](#) or equally effective procedures recommended by the respirator manufacturer. User seal checks are not substitutes for qualitative or quantitative fit tests.

Why Hospitals Need a Respiratory Protection Program

Respiratory Hazards in the Healthcare Setting

The hospital environment contains hazards such as bacteria, viruses, and chemicals that may be inhaled by personnel and cause injury or illness. The approach for reducing exposure required by the Occupational Safety and Health Administration (OSHA) and accepted by health and safety professionals is to use a “hierarchy of controls.” This means we start with the most effective controls—the elimination of hazards or substitution of less hazardous processes, chemicals, or products. Next in the hierarchy are engineering controls, which involve isolating the hazard and/or using specialized ventilation (e.g., isolation rooms or laboratory hoods). Where these controls are not feasible or adequate, administrative controls (e.g., providing vaccinations or triaging chemical emergency patients) and work practices (e.g., following respiratory hygiene/cough etiquette strategies or keeping chemical containers capped) are used to reduce risk, most often by minimizing the extent or duration of the exposure, or reducing the number of employees exposed. Respirators and other personal protective equipment (PPE) are used as a last line of defense when exposures cannot be reduced to an acceptable level using these other methods. Each facility should develop policies and procedures which address the control methods used at their institution.

The hazards associated with ATDs (e.g., infectious patients with a transmissible disease or, in rare situations, environmental sources of anthrax or

fungi) cannot be eliminated from or substituted out of the hospital setting. ATD pathogen exposures cannot routinely be measured in the air, and have no established occupational exposure limits. In addition, ATD pathogens vary in infectivity and severity of outcome. In order to protect employees from ATDs, healthcare facilities must implement comprehensive infection control plans utilizing a combination of engineering, administrative (including training and vaccination), and work practice controls, and provide for the use of respirators and other PPE.

Healthcare personnel who care for patients with ATDs must work in close proximity to the source of the hazard; even with controls in place, they are likely to have a higher risk of inhaling infectious aerosols (droplets and particles) than the general public. These personnel, and others with a higher risk of exposure related to the tasks they perform (e.g., lab or autopsy workers), must often be protected further through the proper use of



Airborne droplets visible during sneezing (photo enhanced).

Photo: Centers for Disease Control and Prevention

FIGURE 1: EXAMPLES OF METHODS FOR CONTROLLING EXPOSURE TO AEROSOL TRANSMISSIBLE DISEASE PATHOGENS

Minimize the number of employees exposed	Minimize the amount of infectious aerosol in the air	Protect employees who must be exposed
<ul style="list-style-type: none"> Isolate patients suspected or confirmed with tuberculosis in negative pressure rooms, to separate the source from all employees not providing direct patient care. Use partitions, barriers, or ventilated enclosures to separate employees from the source of the hazard. 	<ul style="list-style-type: none"> Place a surgical mask on patients with a suspected or confirmed ATD. Use closed suctioning systems to minimize the dispersion of aerosol. 	<ul style="list-style-type: none"> Provide vaccinations. Use personal protective equipment (PPE) including respirators when caring for patients with measles (rubeola).

respirators. See [Figure 1](#) above for some examples of methods used for controlling exposures to ATD pathogens in the healthcare setting.

Respiratory Protection Reduces Inhalation of Aerosols

In order to understand how respirators can be used to protect healthcare personnel, it is important to understand what a respirator is and what it is not. One important distinction that must be made when discussing respirator use in healthcare settings is the difference between **respirators** and **facemasks**. Facemasks include surgical masks, which are fluid resistant, and procedure or isolation masks which are not fluid resistant. While some people may call both respirators and facemasks “masks,” this is incorrect as they are very different in their design, performance and purpose.

The purpose of a facemask, **when worn by healthcare personnel**, is twofold. As part of “Droplet Precautions” (explained in more detail later in this document), the surgical mask is worn to protect the wearer from large droplets or sprays of infectious body fluids from patients that otherwise could be directly transmitted to the mucous membranes in the wearer’s nose or mouth. In other instances, a facemask is worn by healthcare personnel to protect patients by reducing the amount of large droplets with infectious agents the wearer could introduce into the room by talking, sneezing, or coughing; this protection is especially important where sterile fields must be maintained, such as operating rooms.

The purpose of a facemask, **when worn by a patient** suspected or confirmed with an illness such as influenza or tuberculosis, is to reduce the amount of large infectious particles released as

the patient talks, sneezes, or coughs; this limits their concentration in the room air and reduces the infection risk to others who are present.

However, facemasks by design do not seal tightly to the wearer's face. Therefore, they allow unfiltered air to easily flow around the sides of the facemask into the breathing zone and respiratory tract of the wearer. In addition, the materials used for facemasks are not regulated for their ability to filter particles and are known to vary greatly between models. This makes it possible for small particles to pass through or around the facemask and be inhaled by the wearer. **This is why they are not considered respiratory protection— facemasks do NOT provide the wearer with a reliable level of protection from inhaling smaller particles, including those emitted into the room air by a patient who is exhaling or coughing, or generated during certain medical procedures.**

The purpose of a respirator **when worn by healthcare personnel**, for example a N95 filtering facepiece respirator, is typically to protect the wearer by reducing the concentration

of infectious particles in the air inhaled by the wearer. These particles may come from infectious patients who are exhaling, talking, sneezing, or coughing in the rooms in which healthcare personnel are working; from medical procedures performed on infectious patients (e.g., using bone saws or performing bronchoscopies); or from laboratory procedures (e.g., operating centrifuges, blenders, or aspiration equipment) that may aerosolize pathogens.

Respirators are designed and regulated to provide a known level of protection when used within the context of a comprehensive and effective respiratory protection program (see the "[Types of Respiratory Protection](#)" section on page 15). For example, filtering facepiece respirators are designed to seal tightly to the face when the proper model and size is selected for the individual by using a fit test procedure. The wearer can then be assured that inhaled air is forced through the filtering material, which allows contaminants to be captured and reduces exposure to both large droplets and small infectious particles.



Photo: California Dept. of Public Health

Healthcare personnel wearing a surgical mask.



Photo: California Dept. of Public Health

Healthcare personnel wearing a filtering facepiece respirator.

Also available, and widely used in healthcare, is the **surgical respirator**—a filtering facepiece respirator with spray- or splash-resistant facemask material on the outside to protect the wearer

from splashes (sometimes referred to as “surgical N95 respirators”). See [Figure 2](#) below for further comparison of surgical masks, filtering facepiece respirators, and surgical respirators.

FIGURE 2: SURGICAL MASKS, FILTERING FACEPIECE RESPIRATORS, AND SURGICAL RESPIRATORS

	Surgical Masks	Filtering Facepiece Respirators	Surgical Respirators
Intended use when: Worn by HCP ¹	<p>Do not protect against small airborne particles (aerosols)</p> <p>Protect the patient and sterile field by reducing the number of particles introduced into the room as HCP talk, sneeze, or cough</p> <p>Protect the wearer’s nose/mouth from splashes or sprays of large droplets of body fluids</p>	<p>Reduce HCP inhalation of both large droplets and small airborne particles (aerosols)</p> <p>Protect the patient by reducing the number of particles introduced into the room as HCP talk, sneeze, or cough</p>	<p>Reduce HCP inhalation of both large droplets and small airborne particles (aerosols)</p> <p>Protect the patient and sterile field by reducing the number of particles introduced into the room as HCP talk, sneeze, or cough</p> <p>Protect the wearer’s nose/mouth from splashes or sprays of large droplets of body fluids</p>
Worn by patient	Protect HCP by reducing the number of particles introduced into the room as a patient talks, sneezes, or coughs	Not typically worn by patients	Not typically worn by patients
Fit testing required?	No, not designed to seal to the face	Yes, to ensure adequate seal to the face	Yes, to ensure adequate seal to the face
Government oversight	FDA ² clears for marketing	NIOSH ³ provides certification	NIOSH provides certification and FDA clears for marketing

¹ HCP = healthcare personnel

² FDA = United States Food and Drug Administration

³ NIOSH = National Institute for Occupational Safety and Health

patients suspected or known to have diseases requiring Droplet Precautions, CDC and HICPAC report that infection has occurred at distances greater than 3 feet. Thus, CDC and HICPAC state that observing Droplet Precautions at a distance up to 6 or 10 feet or upon entry into the patient's room may be prudent.

When **Droplet Precautions** are recommended, **surgical masks** function to reduce the transmission of large infectious droplets between the source (patient) and the mucosal surfaces of a susceptible host (healthcare personnel). When **Airborne Precautions** are recommended, **respirators and** other control measures, such as patient isolation in an **airborne infection isolation room (AIIR)** with specialized ventilation, are used to protect healthcare personnel from inhaling infectious particles that are of small diameter, likely to remain infectious over long time or distance, or both.

Airborne Transmission of Diseases: Factors that Affect Risk

Experimental studies as well as epidemiological evidence continue to inform our knowledge on how various diseases are transmitted. Aerosol studies show that infectious particles are released from a patient's respiratory tract in a wide range of sizes, and the size of a droplet or particle quickly decreases as water evaporates from it. Particles up to 100 micrometers in diameter are known to be inhalable into the nose or mouth. Smaller particles stay airborne longer than larger particles, which increases exposure time and the distance the particles might travel. Particles of various sizes can remain suspended in air for hours, especially with high rates of air movement in the room. Small particles can travel on air currents and potentially be carried long distances from the source of generation.

The other factor affecting risk of infection is how long a specific pathogen can remain viable and infectious while suspended in air. We know that certain pathogens, such as *M. tuberculosis*, are able to remain infectious for a long time in the air. It is likely that this feature plays a critical role in determining if a pathogen is transmitted

FIGURE 3: CDC AND HICPAC—DISEASES/PATHOGENS REQUIRING AIRBORNE PRECAUTIONS¹

- Aerosolizable spore-containing powders such as Anthrax/*Bacillus anthracis*
- Aspergillosis (if massive soft tissue infection with copious drainage and repeated irrigations required)
- Varicella (chickenpox) and herpes zoster (disseminated or in an immunocompromised host)/Varicella-zoster virus
- Measles (rubeola)/Measles virus
- Monkeypox/Monkeypox virus
- Severe acute respiratory syndrome (SARS)/SARS-associated coronavirus (SARS-CoV)
- Smallpox (variola)/Variola virus
- Tuberculosis (TB)/*Mycobacterium tuberculosis*
- Novel or emerging pathogens and any other disease for which public health guidelines recommend airborne infection isolation²

¹ Some of these diseases may require additional precautions such as contact precautions.

² Hospitals need to look to CDC and public health authorities for the latest guidance. Respiratory protection may be advisable. For examples, see CDC's latest guidance for [novel influenza A viruses associated with severe disease](#) and [Middle East Respiratory Syndrome Coronavirus](#).

FIGURE 4: CDC AND HICPAC—DISEASES/PATHOGENS REQUIRING DROPLET PRECAUTIONS^{1,2}

- Diphtheria, pharyngeal
- Epiglottitis, due to *Haemophilus influenzae* type b
- *Haemophilus influenzae* serotype b (Hib) (see disease-specific recommendations)
- Influenza viruses, seasonal²
- Meningitis
 - *Haemophilus influenzae*, type b known or suspected
 - *Neisseria meningitidis* (meningococcal) known or suspected
- Meningococcal disease sepsis, pneumonia (see also meningitis)
- Mumps (infectious parotitis)/ Mumps virus
- Mycoplasma pneumonia
- Parvovirus B19 infection (erythema infectiosum)
- Pertussis (whooping cough)
- Pharyngitis in infants and young children
- Pneumonia
 - Adenovirus
 - *Haemophilus influenzae*, serotype b, infants and children
 - Meningococcal
 - *Mycoplasma*, primary atypical
 - *Streptococcus*, Group A
- Pneumonic plague/*Yersinia pestis*
- Rhinovirus
- Rubella virus infection (German measles)/Rubella virus
- Streptococcal disease (group A streptococcus)
 - Skin, wound or burn, Major
 - Pharyngitis in infants and young children
 - Pneumonia
 - Scarlet fever in infants and young children
 - Serious invasive disease
- Viral hemorrhagic fevers due to Lassa, Ebola, Marburg, Crimean-Congo fever viruses²

¹ Some of these diseases may require additional precautions such as contact precautions.

² CDC currently recommends respirator use during aerosol-generating procedures for patients with suspected or confirmed seasonal influenza or viral hemorrhagic fevers. [October 2014 CDC guidance for Ebola virus disease](#) recommends at least an N95 respirator. See [Figure 9](#) on page 24.

program is training staff on the hospital's policies regarding which situations should trigger respirator use. The training must be given to all caregivers and support staff, regardless of experience or skill set. Signage on patient rooms and notes in medical charts are additional ways in which respirator use policies and decisions are communicated between staff.

Personnel should be trained, consistent with facility respirator use policies, on how the patient's signs and symptoms and clinical judgment about potential diagnoses relate to risk-based decisions on respirator use. For example, when a patient presents in the emergency room with a cough, fever, fatigue, night sweats, unexplained weight

loss, and loss of appetite, healthcare personnel should suspect tuberculosis and appropriately isolate the patient and wear respiratory protection pending definitive diagnosis. Healthcare personnel should also consider the possible diseases and pathogens associated with the diagnostic tests that have been ordered for the patient and the diseases currently circulating in the population when making decisions about respiratory protection. See "[Appendix A](#)" on page 41 for a table of symptoms, potential pathogens, and recommended precautions based on Table 2 in [CDC and HICPAC's 2007 Guideline for Isolation Precautions: Preventing Transmission of Infectious Agents in Healthcare Settings](#).

be ruled out. [Federal OSHA](#) recommends that employers consider that the use of respiratory protection may be necessary when they are preparing for pandemic influenza. Specific recommendations about the need for Droplet or Airborne Precautions will be made at the time of an actual pandemic and based on such factors as transmissibility and severity of disease.

CDC and HICPAC recognize that certain infectious agents may be considered epidemiologically important and require enhanced protection, including the use of respiratory protection. Pathogens may be considered epidemiologically important if they have a propensity for transmission within healthcare facilities, are resistant to first-line therapies, or have high rates of morbidity and mortality. Pathogens may also be considered epidemiologically important if they are newly discovered, emerging, or re-emerging, and little or no information about their transmission, resistance, or disease rates is available. These pathogens may not be regularly encountered, but facilities and healthcare personnel must be prepared to consider and include these pathogens on differential diagnoses when appropriate, and implement infection control measures, including respiratory protection, when necessary.



Photo: Bullard Safety

Healthcare personnel wearing a powered air-purifying respirator while treating a patient.

The OSHA Respiratory Protection Standard

Hospitals and all other employers who require employees to use respiratory protection for control of exposures to airborne contaminants, including ATD pathogens, must comply with Federal OSHA's Respiratory Protection standard, [29 CFR 1910.134](#), or the equivalent state standard. The OSHA Respiratory Protection standard establishes legally enforceable requirements about how respirators are to be used.

When respirator use is required, the Respiratory Protection standard requires that all employee use of respirators be done within the context of a comprehensive and effective respiratory protection program. The program must be in writing, have a designated respirator program administrator, and specify the employer's policies and procedures for the use of respiratory protection in the facility. OSHA requires each respiratory protection program to include several specific elements, but leaves the specifics of the policies and procedures used to meet these requirements up to individual employers. See [Figure 6](#) on page 14 for a summary of the key requirements of the standard (as it pertains to the use of air-purifying respirators) and the section of this document titled "[Developing a Respiratory Protection Program](#)" on page 19 for more information.

The Respiratory Protection standard does not specify the circumstances under which healthcare personnel must use respirators for protection against ATD pathogens. However, OSHA requires employers to evaluate the respiratory hazards in the workplace, and expects that hospitals develop their respiratory protection policies based on CDC/HICPAC and other public health guidance from CDC, state, and local health departments. In

Types of Respiratory Protection

Respirators are devices worn over the nose and mouth to protect the wearer from hazardous materials in the breathing zone.

Respirators are available in many types (described in detail below), models, and sizes from several manufacturers for a variety of applications. The most common types of respirators in healthcare are filtering facepiece respirators and powered air-purifying respirators (PAPRs). Different types of respirators are designed to provide different levels of protection and to protect against different hazards. Professional judgment along with the type of airborne contaminant, its concentration, its potential to cause a health effect in exposed personnel, and any applicable regulation dictate the type of respirator that must be worn. When information regarding the exposure is limited, the decision will rely more heavily on professional judgment and more protective respirators may be selected for use. Each facility's written policies and training programs should specify whom to contact for questions or additional information.

OSHA has given each class of respirator an assigned protection factor (APF) to indicate the minimum level of protection that can be expected when the respirators are properly selected and used in a continuing, effective respiratory protection program. For higher-risk exposure situations (i.e., higher concentration of infectious particles), choosing a respirator with a higher APF provides a higher level of protection for the wearer. The APFs for different types of respirators are presented in [Table 1 of the OSHA Respiratory Protection standard](#) and in [Appendix B](#) of this document.

All respirators used in the workplace must be tested by the manufacturer and tested and certified by NIOSH. The two major types of respirators, air-purifying respirators and air-supplying respirators, are described below.

Air-Purifying Respirators

Air-purifying respirators (APRs) work by removing gases, vapors, aerosols (droplets and solid particles), or a combination of contaminants from the air through the use of filters, cartridges, or canisters. APRs with filters will remove particles and droplets (also called aerosols) from the inhaled air, while those with chemical cartridges or canisters are designed to remove gases and vapors. To help employers select the right protection for a specific contaminant, all filters, cartridges, and canisters must carry a label



Photo: MSA Safety, Inc.

Worker wearing a half mask elastomeric air-purifying respirator.

approved by NIOSH. As a secondary means of identification, cartridges and canisters must also be color-coded as specified by NIOSH. Air-purifying respirators do not provide clean breathing air from a source independent of the work area; therefore, APRs cannot be worn in an oxygen-deficient atmosphere.

Filters come in various degrees of filtration efficiency (see [Figure 7](#) on page 17 for more information on the NIOSH filter classes); however, leakage around the facepiece of a respirator plays a larger role than filter efficiency in determining the protection provided. When APRs are required to provide protection from ATD pathogens, they must be fitted with particulate filters at least as efficient as an N95 filter, not cartridges or canisters for gases and vapors.

Types of Air-Purifying Respirators

Non-powered, or negative-pressure, respirators have a tight-fitting facepiece, which can be either a half mask that covers the nose and mouth or a full facepiece that covers the nose, mouth, and eyes. They may be disposable (or “single-use,” meaning the filter is not replaceable and the respirator cannot be cleaned) filtering facepiece respirators where the entire facepiece is made of filtering material, or elastomeric respirators that have replaceable filters or cartridges.

“N95 respirator” is a term used in healthcare to refer to a half mask APR with a NIOSH-approved N95 particulate filter. An N95 respirator may be a filtering facepiece respirator or half mask elastomeric respirator; both have an APF of 10

and may be used in healthcare. These respirators are described as “negative-pressure” because the pressure inside the facepiece is negative during inhalation compared to the pressure outside the respirator. Filtering facepiece respirators are also available with other classes of filters and spray- or splash-resistant facemask material on the outside to protect the wearer from splashes (sometimes referred to as “surgical N95 respirators”).

Powered air-purifying respirators (PAPRs) may be used in healthcare when aerosol-generating procedures are performed, by hospital first receivers, or when the respirator user is not able to wear a tight-fitting respirator. PAPRs have a battery-powered blower that forces air in the room through filters (for particles) or cartridges (for gases or vapors) to clean it before delivering it to the breathing zone of the wearer. High-efficiency (HE) filters are the only



Photo: Moldex

Worker wearing a filtering facepiece air-purifying respirator.

class of particulate filters available for powered air-purifying respirators. PAPRs are generally more protective than non-powered half mask respirators because the blower creates positive pressure inside the facepiece, reducing inward leakage of potentially contaminated air.

A PAPR may have a tight-fitting half or full facepiece or a loose-fitting facepiece, hood, or helmet. A PAPR has an [OSHA APF](#) of at least 25, compared to an APF of 10 for a filtering facepiece respirator or elastomeric half mask respirator; this means the PAPR reduces the aerosol concentration inhaled by the wearer to 1/25th of that in the room air, compared to a 1/10th reduction for half mask APRs. OSHA allows employers to use an APF of 1,000 for PAPRs with hoods when they have evidence from the manufacturer demonstrating performance at this level. OSHA does not require fit testing of loose-fitting PAPRs.

Air-Supplying Respirators

Air-supplying respirators (also known as atmosphere-supplying respirators) include supplied-air respirators and self-contained breathing apparatus (SCBAs). Air-supplying respirators work by providing clean breathing air from a source independent of the work area. Supplied-air respirators typically have higher APFs than APRs; the APF can be up to 1,000. These respirators obtain breathing air from a compressor or a large pressurized cylinder that is not carried by the user. SCBAs can have APFs of up to 10,000. They are usually equipped with a full facepiece and contain their own breathing air supply in a pressurized cylinder that is carried by the user.

FIGURE 7: NIOSH FILTER CLASSES

Filter Class	Description
N95	Filters at least 95% of airborne particles. Not resistant to oil.
N99	Filters at least 99% of airborne particles. Not resistant to oil.
N100	Filters at least 99.97% of airborne particles. Not resistant to oil.
R95	Filters at least 95% of airborne particles. Resistant to oil.
P95	Filters at least 95% of airborne particles. Oil proof (strongly resistant to oil).
P99	Filters at least 99% of airborne particles. Oil proof (strongly resistant to oil).
P100	Filters at least 99.97% of airborne particles. Oil proof (strongly resistant to oil).
HE (high-efficiency)	Filters at least 99.97% of airborne particles. For use on PAPRs only.

What are Air-Purifying Respirators?

Air-purifying respirators (APRs) work by removing gases, vapors, aerosols (droplets and solid particles), or a combination of contaminants from the air through the use of filters, cartridges, or canisters. These respirators do not supply oxygen and therefore cannot be used in an atmosphere that is oxygen-deficient or immediately dangerous to life or health. The appropriate respirator for a particular situation will depend on the environmental contaminant(s).

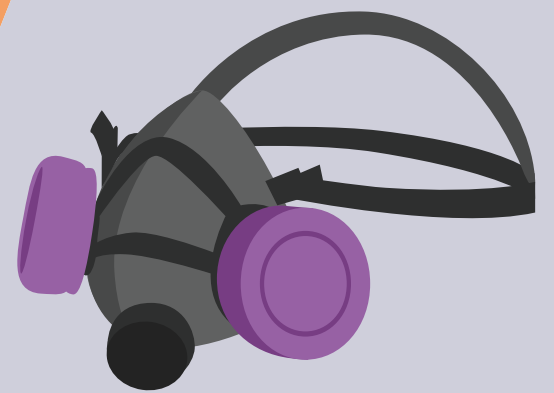
Filtering Facepiece Respirator (FFR)



- Disposable
- Covers the nose and mouth
- Filters out particles such as dust, mist, and fumes
- Select from N, R, P series and 95, 99, 100 efficiency level
- Does NOT provide protection against gases and vapors
- Fit testing required

Elastomeric Half Facepiece Respirator

- Reusable facepiece and replaceable cartridges or filters
- Can be used to protect against gases, vapors, or particles, if equipped with the appropriate cartridge or filter
- Covers the nose and mouth
- Fit testing required



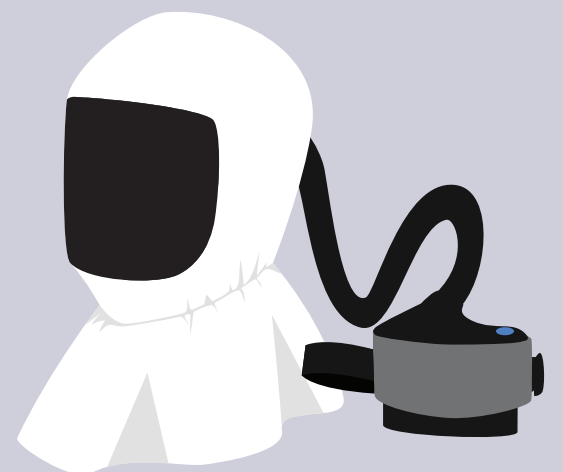
Elastomeric Full Facepiece Respirator



- Reusable facepiece and replaceable canisters, cartridges, or filters
- Can be used to protect against gases, vapors, or particles, if equipped with the appropriate cartridge, canister, or filter
- Provides eye protection
- More effective face seal than FFRs or elastomeric half-facepiece respirators
- Fit testing required

Powered Air-Purifying Respirator (PAPR)

- Reusable components and replaceable filters or cartridges
- Can be used to protect against gases, vapors, or particles, if equipped with the appropriate cartridge, canister, or filter
- Battery-powered with blower that pulls air through attached filters or cartridges
- Provides eye protection
- Low breathing resistance
- Loose-fitting PAPR does NOT require fit testing and can be used with facial hair
- Tight-fitting PAPR requires fit testing



A Guide to Air-Purifying Respirators

Air-purifying respirators (APRs) work by removing gases, vapors, aerosols (airborne droplets and solid particles), or a combination of contaminants from the air through the use of filters, cartridges, or canisters. These respirators do not supply oxygen from other than the working atmosphere, and therefore cannot be used in an atmosphere that is oxygen-deficient¹ or immediately dangerous to life or health² (IDLH). The appropriate respirator for a particular situation will depend on the environment and the contaminant(s).

Filtering Facepiece Respirators



Photo courtesy of Shutterstock

Filtering facepiece respirators (FFRs) remove particles from the inhaled airstream of the wearer. They may be referred to as “N95 respirators”. They are also sometimes called disposable respirators because the entire respirator is discarded when it becomes unsuitable for further use because of hygiene, excessive resistance, or physical damage.

FFRs are divided into classes based on their filtration capabilities. “N95” is a term referring to the N95 filter class, which removes at least 95% of airborne particles using a “most-penetrating” sized particle during “worst case” NIOSH testing.

The FFR classes include N (not resistant to oil), R (somewhat resistant to oil), and P (strongly resistant to oil) series, which are available at 95, 99, and 100 filtration efficiency levels.

FFRs provide protection against particles, but not gases or vapors, and should not be used for respiratory protection to protect against hazardous gases or vapors. These classes and oil-resistant designations are applicable to all types of air-purifying respirators.

N95, N99, N100 – Filters at least 95%, 99%, 99.97% of airborne particles. Not resistant to oil.

R95, R99, R100 – Filters at least 95%, 99%, 99.97% of airborne particles. Somewhat resistant to oil.

P95, P99, P100 – Filters at least 95%, 99%, 99.97% of airborne particles. Strongly resistant to oil.

FFRs form a tight seal against the user’s face, covering the nose and mouth. As the user inhales air through the facepiece, particulate material collects on the fibrous material of the filter, which removes the particulate contaminant from the airstream. An FFR may have an exhalation valve located on the filter, which reduces breathing resistance during exhalation.

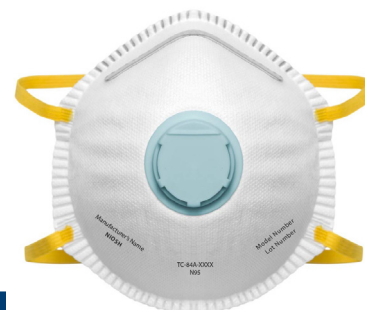


Photo courtesy of Shutterstock

¹ OSHA CFR 1910.134(b) defines oxygen-deficient as an atmosphere with an oxygen content below 19.5% by volume.

² IDLH values can be found at: <https://www.cdc.gov/niosh/idlh/intridl4.html>

Filtering Facepiece Respirators (continued)

Because the effectiveness of this type of respirator relies upon the breathing air travelling through the filter, a tight seal to the user's face is very important. Therefore, the Occupational Safety and Health Administration (OSHA) (29 CFR 1910.134) requires an annual respirator fit test to ensure that users receive the expected level of protection by minimizing any leakage of unfiltered contaminant through gaps between the face and facepiece. When used with a respiratory protection program, including annual fit-testing, an FFR will reduce exposures by 1/10th. Another way to express this is that the OSHA Assigned Protection Factor (APF) is 10. For proper donning (putting on) and doffing (taking off) techniques of this type of respiratory protection, refer to the manufacturer's instructions.

Elastomeric Half Facepiece Respirators

Elastomeric half facepiece and quarter facepiece respirators are reusable devices with exchangeable cartridges or filters. The facepiece is made of rubber or silicone that forms a seal against the user's face. The facepiece of the elastomeric respirator must form a tight seal against the user's face, covering the nose and mouth just like the disposable FFRs; therefore, fit testing is required. The attached filters and cartridges are replaceable and can be easily changed. Elastomeric respirators can be used to protect against gases, vapors, and/or particles if equipped with the appropriate filters and/or cartridges.



Photo courtesy on Shutterstock

When cleaning and sanitizing a respirator, the manufacturer's guidelines should always be followed. Check the manufacturer's website if guidance is not included with the packaging of the respirator. If guidance isn't available, OSHA provides general cleaning and sanitizing guidelines. Elastomeric half facepiece respirators have an APF of 10.

OSHA Definitions of Filter and Cartridge/Canister, CFR 1910.134(b)

Filter or air-purifying element means a component used in respirators to remove solid or liquid aerosols from the inspired air.

Canister³ or cartridge means a container with a filter, sorbent, catalyst, or combination of these items, which removes specific contaminants from the air passed through the container.

Elastomeric Full Facepiece Respirators

Like the elastomeric half facepiece respirator, the elastomeric full facepiece respirator is a reusable device. This type of respiratory protective device uses exchangeable cartridges, canisters, or filters. It is also made of rubber or silicone, but the elastomeric full facepiece has a clear plastic lens that covers the face and provides eye protection. The full facepiece covers roughly from the hairline to below the chin. These types of respirators tend to provide a more reliable face seal than FFRs or elastomeric half facepiece respirators. Since these respirators cover the user's face and eyes, they can also be used to protect against liquid splashes and irritating vapors. Annual fit testing is still required. Elastomeric full facepiece respirators have an APF of 50.



Photo courtesy of Honeywell International Inc

³ A canister on a tight fitting full facepiece or PAPR can be used for escape from unknown concentrations of gas or vapor hazards whereas a cartridge based system cannot be used in this capacity.

Powered Air-Purifying Respirator



Photo courtesy of Honeywell International Inc.

Powered Air-Purifying Respirators (PAPRs) are battery-powered devices that use a blower to pull air through attached filters (for particles) or cartridges (for gases or vapors) to clean it before delivering it to the breathing zone of the wearer. High-efficiency (HE) filters are the only class of particulate filters available for powered air-purifying respirators. The benefits of PAPRs include a low breathing resistance with a high level of protection. PAPRs can be used to protect against gases, vapors, or particles, if equipped with the appropriate cartridge, canister, or filter. PAPRs are generally more protective than non-powered half mask respirators because the blower creates positive pressure inside the facepiece under most work conditions, which reduces inward leakage of potentially contaminated air. A half facepiece PAPR has an APF of 50, and a full facepiece PAPR has an APF of 1,000.

A PAPR may have a tight-fitting half or full facepiece or a loose-fitting facepiece, hood, or helmet. The loose-fitting PAPR does not require fit testing. Loose-fitting PAPRs may be an alternative for users who have facial hair or are otherwise not able to pass a fit test with a tight-fitting respirator. However, OSHA does require fit testing for a tight-fitting PAPR³. Loose-fitting PAPRs have an APF of 25. Loose-fitting PAPRs with a helmet or hood can have an APF up to 1,000 if supported by manufacturer-supplied test evidence.



Photo courtesy of MSA

References

Occupational Safety and Health Administration (OSHA) CFR 1910.134 https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=standards&p_id=12716

National Institute for Occupational Safety and Health (NIOSH): NIOSH Guide to Industrial Respiratory Protection. DHHS (NIOSH) Publication No. 87-116. Cincinnati, Ohio: NIOSH, 1987. <http://www.cdc.gov/niosh/docs/87-116/>

National Institute for Occupational Safety and Health (NIOSH): Hospital Respiratory Protection Program Toolkit. DHHS (NIOSH) Publication No. 2015-117. Pittsburgh, Pennsylvania: NIOSH, 2015. <https://www.cdc.gov/niosh/docs/2015-117/pdfs/2015-117.pdf?id=10.26616/NIOSH PUB2015117>

⁴ OSHA CFR 1910.134(f)(8) states that fit testing of tight-fitting atmosphere-supplying respirators and tight-fitting powered air-purifying respirators shall be accomplished by performing quantitative or qualitative fit testing in the negative pressure mode, regardless of the mode of operation (negative or positive pressure) that is used for respiratory protection.

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What are Air-Purifying Respirators?

Air-purifying respirators (APRs) work by removing gases, vapors, aerosols (droplets and solid particles), or a combination of contaminants from the air through the use of filters, cartridges, or canisters. These respirators do not supply oxygen and therefore cannot be used in an atmosphere that is oxygen-deficient or immediately dangerous to life or health. The appropriate respirator for a particular situation will depend on the environmental contaminant(s).

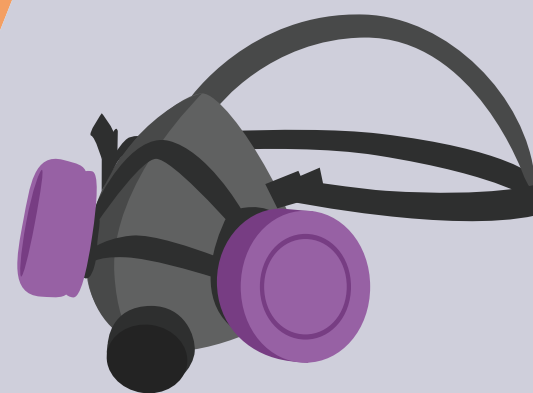
Filtering Facepiece Respirator (FFR)



- Disposable
- Covers the nose and mouth
- Filters out particles such as dust, mist, and fumes
- Select from N, R, P series and 95, 99, 100 efficiency level
- Does NOT provide protection against gases and vapors
- Fit testing required

Elastomeric Half Facepiece Respirator

- Reusable facepiece and replaceable cartridges or filters
- Can be used to protect against gases, vapors, or particles, if equipped with the appropriate cartridge or filter
- Covers the nose and mouth
- Fit testing required



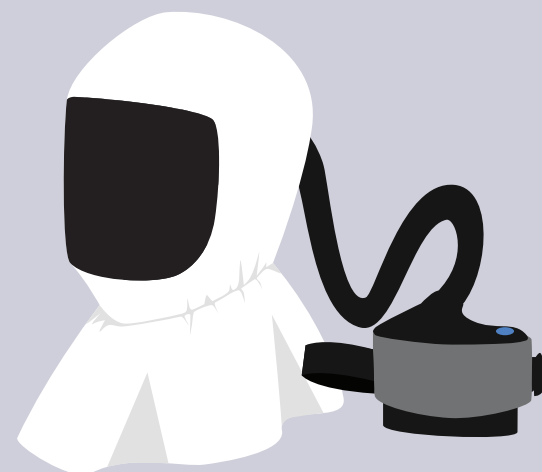
Elastomeric Full Facepiece Respirator



- Reusable facepiece and replaceable canisters, cartridges, or filters
- Can be used to protect against gases, vapors, or particles, if equipped with the appropriate cartridge, canister, or filter
- Provides eye protection
- More effective face seal than FFRs or elastomeric half-facepiece respirators
- Fit testing required

Powered Air-Purifying Respirator (PAPR)

- Reusable components and replaceable filters or cartridges
- Can be used to protect against gases, vapors, or particles, if equipped with the appropriate cartridge, canister, or filter
- Battery-powered with blower that pulls air through attached filters or cartridges
- Provides eye protection
- Low breathing resistance
- Loose-fitting PAPR does NOT require fit testing and can be used with facial hair
- Tight-fitting PAPR requires fit testing



Appendix #13

AFFIDAVIT OF BRUCE MILLER M.S. CIH

STATE OF IDAHO)
) ss.
COUNTY OF BONNEVILLE)

BRUCE MILLER, being first duly sworn on oath, deposes and declares as follows:

- 1. I am above the age of 18 and am competent to make this affidavit.
2. I am a Board-Certified Industrial Hygienist (CIH) through the American Board of Industrial Hygiene, with a Master’s Degree in Industrial Hygiene from Central Missouri State University, and I received my BS in Industrial Technology from Southern Illinois University with an A.A.S. in Bioenvironmental Engineering Technology,
3. I am President and owner of Health & Safety Services, LLC with more than 33 years of experience in comprehensive health and safety practice specializing in conducting retrospective exposure assessments for Department of Energy workers for Employees Occupational Illness Compensation Program (EEOICP) and Hanford Presumptive Claims, Occupational Safety and Health Administration (OSHA) General Industry (29 CFR 1910) and Construction (29 CFR 1926) compliance, and developing workplace exposure assessment tools and controls for environmental remediation, construction, demolition, water damage/mold projects.
4. I have managed and supervised health, safety, and health physics personnel and provided project management, planning, regulatory support, and oversight to numerous environmental remediation, waste management, construction, decontamination and decommissioning, and microbial and indoor air quality investigations, and remediation projects.

5. I have served as the Chair of the American Industrial Hygiene Association (AIHA) Law Committee, Consultants Special Interest Committee, and member of the Indoor Environmental Air and Environmental Affairs Committees.
6. My complete Curriculum Vitae is attached as **Exhibit A** and details my knowledge, skills and experiences.
7. Specifically, I have knowledge and experience with the OSHA regulations and compliance and applied experience writing, implementing and auditing OSHA 29 CFR 1910.132, “Personal Protective Equipment” and 29 CFR 1910.134, “Respiratory Protection” programs and implementing procedures to mitigate risks associated with hazardous agents and infectious diseases; I have conducted compliance inspections of hospitals and reviewed infectious prevention and control programs to verify safe healthcare work environments and best practices.
8. In preparation for providing my opinions herein, I have reviewed the New York State Department of Health Covid Emergency Public Health Law 2.61 (Attached as **Exhibit 1**), the New York City Department of Health Covid Emergency Public Health Emergency Orders dated August 24, 2021, September 15, 2021, October 20, 2021 collectively attached as **Exhibit 2 (a)(b)(c)**, and I have reviewed the applicable regulations of the U.S. Department of Labor, Occupational Safety and Health Administration, along with documents of several New York hospitals’ Covid-19 workplace program policies, including the affidavits and documents provided by a certain class of New York healthcare workers, including the class represented by Plaintiff, Rachel Toussaint (“Healthcare Worker Class”) against certain New York hospitals and on behalf of a certain class of New York City (NYC) government workers from various NYC agencies including the Department of Education, Department of Transportation, Department of Sanitation, NYC Central Administration, Department of Children’s Services (“NYC Worker Class”), represented by the Plaintiff, Amour Bryan, a

remote teacher for the New York City Department of Education.

FACTUAL BACKGROUND

9. Based on my review of the claims of the Healthcare Worker Class and the NYC Worker Class, both classes of Plaintiffs allege that they submitted requests to their employer to be exempted from the Covid-19 vaccine requirement implemented by NYC and the State of New York for healthcare employers pursuant to Emergency Orders issued by the New York State and City Departments of Health.
10. Based on my knowledge and experience consulting as an Industrial Hygienist for more than 30 years, there has never been adult vaccine mandates created or authorized by emergency order or otherwise by state or federal health officials as an occupational health and safety risk mitigation tool or control method for the purpose of eliminating or reducing the hazards caused by airborne pathogens and, in particular, airborne communicable diseases during a pandemic or even during an epidemic.
11. All of the exemption requests by each Plaintiff member of both Classes were denied, despite the fact that many of the Plaintiffs already worked remotely and had no contact with the public or had no direct contact with children if they worked for the Department of Education. In some instances, healthcare workers who refused the vaccine requested to be provided with or be allowed to use Powered Air-Purifying Respirator (PAPR) to keep themselves and patients safe while they worked face-to-face with patients. PAPRs provide a high level of respiratory protection greater than an N95 respirator or tight-fitting air-purifying respirator (APR).
12. All members of both Classes were subsequently terminated from their jobs and removed from their work sites by their employers because they would not comply with the employers'

implementation of NYS DOH and NYC DOH vaccine orders adopted by the employers as part of their workplace safety program.

13. Hospitals are one of the most hazardous places to work. In 2016, U.S. hospitals recorded 228,200 work-related injuries and illnesses, a rate of 5.9 work-related injuries and illnesses for every 100 full-time employees. This is twice the rate for private industry as a whole (U.S. Bureau of Labor Statistics).
14. According to OSHA, healthcare workers face numerous serious safety and health hazards in the workplace. They include needlestick/sharps injuries, exposure to bloodborne pathogens and biological hazards, potential chemical and drug exposures, waste anesthetic gas exposures, infectious respiratory hazards (including SARS-CoV-2), ergonomic hazards from lifting and similar repetitive tasks involving immobile patients, laser hazards, workplace violence, hazards associated with laboratories, and radioactive material and x-ray hazards.¹
15. The OSHA website on “Infectious Disease,” which contains guidelines for the risk management and mitigation for specific infectious diseases, specifically states that healthcare workers are occupationally exposed to a variety of infectious diseases during the performance of their duties. The primary routes of infectious disease transmission in U.S. healthcare settings are contact, droplet, and airborne.²
16. Since 1970, when OSHA was formed under the U.S. Department of Labor, it has been law that employers are specifically responsible and have a duty for providing a safe and healthful workplace for workers, specifically to prevent workplace severe injury and death. It is not the duty of employees to identify hazards, perform risk assessments and implement hazard controls to eliminate or reduce risks.

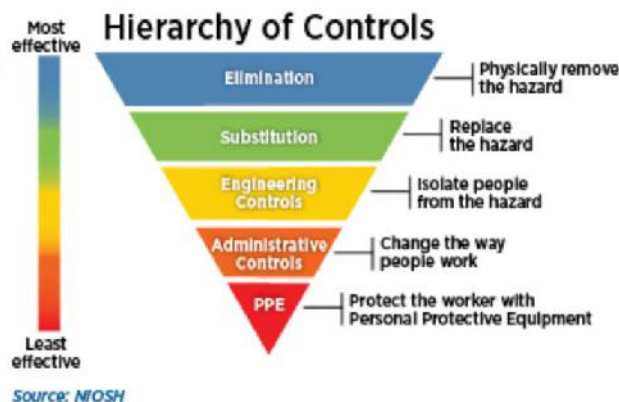
¹ See OSHA Healthcare Regulation Introduction. <https://www.osha.gov/healthcare>

² See OSHA Healthcare Infectious Diseases Guidelines - <https://www.osha.gov/healthcare/infectious-diseases/>

17. OSHA law expressly states that “the right to a safe workplace is a basic human right” and that “no worker should have to choose between their life and their job.”³ The OSHA regulations are applicable to most states in U.S. through the Approved State Plans, which includes New York.
18. OSHA regulations provides the minimum standards for employers to meet their duty to provide a safe workplace for their employees. In addition to specific OSHA standards, the general duty clause of the Occupational Safety and Health Act of 1970, 29 U.S.C. 654(a)(1), requires each employer to “furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees.”
19. According to the OSHA “Recommended Practices for Safety and Health Programs”, employers are required to select the hazard controls that are most feasible, effective and permanent, with a focus on first eliminating the hazard; and, if elimination is not possible, the below diagram illustrates the hierarchy of controls (also known as –“AKA” risk mitigations”) that are to be used by employers which are the most effective alone or in combination that aids an employer in getting the closest to eliminating a hazard.⁴

Action item 2: Select controls

Employers should select the controls that are the most feasible, effective, and permanent.



³ See “All About OSHA”, U.S. Department of Labor OSHA Publication 3302-01R 2020. <https://www.osha.gov/laws-regs/standardinterpretations/2011-08-05>

⁴ See OSHA Recommended Practices - <https://www.osha.gov/safety-management/hazard-prevention>

20. OSHA regulations specifically places the duty on the employers to identify and correct safety and health hazards in the workplace. This duty requires employers to first eliminate or reduce hazards by making feasible changes in working conditions, either through: 1) installation of workplace engineering controls, including but are not limited to installing ventilation systems to capture airborne particulates or aerosols, such as portable or fixed high-efficiency particulate air (HEPA) filtration systems, downdraft ventilation capture systems, and isolation of hazard sources with barriers to name a few, 2) implementing administrative controls, including, but are not limited to, changes to “how” an employee performs the essential functions of their job. Examples include training, limiting employee exposure time or location (which includes permitting remote work), screening to identify and isolate infectious patients, and other procedural requirements such as use of universal precautions, having infectious patients wear face masks, and posting hazard warning signs, and 3) providing personal protective equipment (PPE) where the workplace hazards cannot be controlled through engineering or administrative controls. Examples of PPE include, but are not limited to, protective clothing and gowns, gloves, face shields and goggles, respiratory protection, and hearing protection (hereafter collectively called “Risk Mitigation Tools”). PPE are to be used by the employer as a last line of defense when employee exposures cannot be reduced to an acceptable level using these other control methods.
21. OSHA Section 29 CFR 1910.132, Personal Protective Equipment, sets forth mandatory duties for all employers, including employers in the healthcare industry employees.
22. Employers are mandated under OSHA Personal Protective Equipment Standard, 29 CFR 1910.132, to conduct a hazard assessment to identify the hazards are present, or are likely to be present, which necessitate the use of PPE through a written hazard assessment.

23. Section 1910.132(d)(1)(i) specifically states:
- “Select, and have each affected employee use, the types of PPE that will protect the affected employee from the hazards identified in the hazard assessment.”
24. Section 1910.132 1910.132(d)(2) specifically states:
- “The employer shall verify that the required workplace hazard assessment has been performed through a written certification that identifies the workplace evaluated; the person certifying that the evaluation has been performed; the date(s) of the hazard assessment; and, which identifies the document as a certification of hazard assessment.”
25. This written hazard assessment is critical since it serves as the foundation for the selection of all PPE to be used by employees. Task and area-specific hazards should be evaluated within the hazard assessment so the selected PPE is tailored to the specific hazards, areas, and employee duties.
26. OSHA 29 CFR 1910.134, Respiratory Protection, mandates the employer’s specific requirements for the selection and use of respirators for protection against airborne hazards where other hazard controls are not feasible.
27. Section 1910.134(a)(1) specifically states:
- “In the control of those occupational diseases caused by breathing air contaminated with harmful dusts, fogs, fumes, mists, gases, smokes, sprays, or vapors, the primary objective shall be to prevent atmospheric contamination. This shall be accomplished as far as feasible by accepted engineering control measures (for example, enclosure or confinement of the operation, general and local ventilation, and substitution of less toxic materials). When effective engineering controls are not feasible, or while they are being instituted, appropriate respirators shall be used.”
28. OSHA 1910.134(a)(2) further states:
- “A **respirator shall be provided to each employee when such equipment is necessary to protect the health of such employee.** [Emphasis added] The employer shall provide the respirators which are applicable and suitable for the purpose intended. The employer shall be responsible for the establishment and maintenance of a respiratory protection program, which shall include the requirements outlined in paragraph (c) of this section. The program shall cover each employee required by this section to use a respirator.”
29. OSHA 1910.134, Respiratory Protection requires employers to select respirators based on an evaluation of respiratory hazard(s) to which the worker is exposed and workplace and

identified relevant workplace and user factors. This respirator-specific evaluation is in addition to the hazard assessment required by the 1910.132 Personal Protective Equipment Standard.

30. Section 1910.134(d)(1)(iii) further states:
- “The employer shall identify and evaluate the respiratory hazard(s) in the workplace; this evaluation shall include a reasonable estimate of employee exposures to respiratory hazard(s) and an identification of the contaminant's chemical state and physical form. Where the employer cannot identify or reasonably estimate the employee exposure, the employer shall consider the atmosphere to be [immediately dangerous to life and health] IDLH.”
31. The OSHA Respiratory Protection Standard provides for progressively more protective respirators (higher protection factor) based on the concentration of the airborne hazard or risk mitigation strategy or on a voluntary use basis if a higher level of protection is desired by the employee. For example, employees may use National Institute for Occupational Safety and Health (NIOSH)-certified filtering facepiece respirators (N95) for general interactions with infectious Covid-19 patients or may request their employer to provide a more protective PAPR for aerosol generator medical procedures conducted on infectious Covid-19 patients or to just provide a higher level of protection. OSHA has assigned protection factors (APFs) for each type of NIOSH-certified respirators with an properly fitted N95 filtering facepiece and half-face APR having a APF of 10 and a PAPR assigned a APF of 1,000.
32. Before the SARS-CoV-2 virus that causes Covid-19 emerged and became an occupational exposure concern, the OSHA law mandated employers eliminate or control airborne and other “hazards” from the workplace. OSHA standards have never defined employees as inherently hazardous or being hazardous substances or materials that must be eliminated from or otherwise controlled in the workplace. It had always been the duty of the employer to protect the employees through hazard elimination or mitigation. In addition, OSHA has also never mandated employees be vaccinated to eliminate workplace hazards.

33. The history of the founding of OSHA as revealed in the publication “About OSHA”⁵ , the agency was created to keep employees in the workplace and as safe as possible.
34. In the case of airborne hazards, including infectious diseases of any kind (such as SARS-CoV-2 Covid-19), employers have a duty to implement the hierarchy of controls to eliminate or isolate the hazard (infectious airborne virus or infectious patient) using engineering controls where feasible, or minimizes employee exposures through the use of administrative control measures, which can include working remotely for employees whose jobs can be performed remotely, with all remote work-related costs to be paid for by the employer pursuant to OSHA guidelines.
35. Where hazard eliminating, isolation or the use of engineering and administrative controls do not adequately mitigate the workplace hazard, OSHA requires employers to conduct a written hazards assessment to identify the appropriate PPE for employees to protect them from the workplace hazard(s) that may include the selection and issuance of respirators to prevent inhalation hazards, based on an airborne hazard assessment.
36. Employers have the duty to select respirators, conduct medical surveillance, fit-test and train employees on the proper use, inspection, and cleaning of respirators, and perform an Respirator Program assessment of their written Respirator Protection Program in accordance with 29 CFR 1910.134, Respirator Protection, Section §1910.134(l), “Program Evaluation”.
37. In the context of the hazards caused by infectious disease, and in particular during the Covid-19 pandemic, OSHA describes the hazards in a January 29, 2021 publication titled “Protecting Workers: Guidance on Mitigating and Preventing the Spread of Covid-19 in the Workplace,”⁶ as follows:

⁵ See U.S. Department of Labor - OSHA Publication #- 3302-01R - “All About OSHA 2020” https://www.osha.gov/sites/default/files/publications/all_about_OSHA.pdf

⁶ See OSHA January 29, 2021 publication titled “Protecting Workers: Guidance on Mitigating and Preventing the Spread of Covid-19 in the Workplace” at <https://www.osha.gov/coronavirus/safework>

“SARS-CoV-2, the virus that causes **COVID-19** is highly infectious and spreads from person to person, including through aerosol transmission of particles produced when an infected person exhales, talks, vocalizes, sneezes, or coughs. COVID-19 is less commonly transmitted when people touch a contaminated object and then touch their eyes, nose, or mouth. The virus that causes COVID-19 is highly transmissible and can be spread by people who have no symptoms and who do not know they are infected. Particles containing the virus can travel more than 6 feet, especially indoors and in dry conditions with relative humidity below 40%. The [CDC estimates](#) that over fifty percent of the spread of the virus is from individuals with no symptoms at the time of spread.”

38. Unlike chemical airborne hazards, aerosol transmission from infectious patients causes exposures that cannot be routinely measured in the air and have no established occupational exposure limits. Healthcare employees working in close proximity to patients, are likely to have a high risk of inhaling infectious aerosols (droplets and particles). Respirators for healthcare employees, and masks or filtering facepieces for contagious patients, are essential to prevent employee exposures. The selection of respirators with higher APFs (for example, PAPRs equipped with HEPA filters provide the highest level of respiratory protection) for healthcare employees.
39. Control and mitigation airborne infectious diseases are in fact nothing new for employers within healthcare occupation settings. The OSHA Standard 29 CFR 1910.1030, Bloodborne Pathogens, requires employers to have a written Exposure Control Plan designed to eliminate or minimize employee exposure when they are identified.
40. OSHA Section 1910.1030(b) states:

“Occupational Exposure means reasonably anticipated skin, eye, mucous membrane, or parenteral contact with blood or other potentially infectious materials that may result from the performance of an employee's duties.”
41. OSHA Section 1910.1030(d)(2)(i) states:

“Engineering and work practice controls shall be used to eliminate or minimize employee exposure. Where occupational exposure remains after institution of these controls, personal protective equipment shall also be used.”
42. CDC guidance documents such as “Hospital Respiratory Protection Program Toolkit, Resources for Respirator Program Administrators” (2015) and “2007 Guideline for

Isolation Precautions: Preventing Transmission of Infectious Agents in Healthcare Settings, Last update: July 2019” provide detailed guidelines for the selection and use of respirators for healthcare workers exposure to airborne natural and manmade infectious disease hazards such as anthrax, noroviruses, monkeypox, multidrug-resistant organisms, tuberculosis, and viral hemorrhagic fevers (Lassa, Ebola, Marburg, Crimean-Congo fever viruses). CDC guidance clearly identifies the appropriate respiratory protection as the primary control mechanism to prevent or minimize healthcare workers exposures to these airborne pathogens where engineering controls and isolation are not feasible.

43. OSHA’s description of hazards associated with SARS-CoV-2 Covid-19 along with the declarations by the CDC, the President of the United States, and the New York State and City Public Health Commissioners, identify transmission through airborne means as the primary infectious pathway. The most effective Risk Mitigation Tool to prevent airborne transmission of the airborne aerosolized SARS-CoV-2 virus to healthcare employees that could result in severe Covid and death are the wearing of respirators equipped with HEPA filters (where other engineering controls and isolation measures are not feasible) that have **99.97% efficiency** in removing airborne aerosols that may include the virus that causes Covid-19 according to the Hospital Respirator Protection Program Toolkit first published May 2015 (“Respirator Guidelines”).⁷ The use of HEPA-filtered respirator has been longer standing strategy and the highest efficacy for infection prevention and control of airborne pathogens.
44. According to the Respirator Guidelines, there are a very small number of respirator types that meet the 99.97% efficacy rate, namely, 1) the HEPA filtered air-purifying respirators (APRs) and 2) HEPA filtered Powered Air Purifying Respirator (PAPRs).

⁷ See Hospital Respiratory Protection Program Toolkit published May 2015 by the U.S. Department of Labor, OSHA, CDC Workplace Safety and Health, Department of Health & Human Services, National Institute for Occupational Safety and Health (NIOSH) - <https://www.osha.gov/sites/default/files/publications/OSHA3767.pdf>

45. HEPA-filtered APRs and PAPRs have OSHA assigned protection factors greater than surgical facemasks (no assigned protection factor) with half-face APRs with a protection factor of 10 and PAPR 1,000, respectively. The combination of a tightfitting respirator seal, in the case of the APR, to minimize leakage around the face-to-facepiece seal with the HEPA filtration, provides a high degree of protection to the wearer. The PAPRs higher level of protection is based on a positive pressure around the wearer's face generated from air drawn by a pump through HEPA filters being forced into the PAPR facepiece or hood creating positive pressure. This equipment ensures any leaks or breaks around the face-to-facepiece seal or within the hood result in outward air movement away from the wearer's nose and mouth. PAPRs also provide cooling of the wearer and are more comfortable to wear over extended work shifts.
46. While the various vaccines released for use in the U.S. have been developed to reduce the symptoms of severe Covid-19 according to the CDC, they do not prevent the transmission of the airborne virus in the workplace. Under OSHA, employers have the duty to eliminate or reduce employee's exposure to the airborne hazards such as the SARS-CoV-2 virus and/or variants that cause Covid-19. OSHA's Bloodborne Pathogens Standard provides the closest analogous healthcare employment requirements for employers. Where the employer's Bloodborne Pathogen mandatory Exposure Control Plan identifies employee exposure to pathogens such as those containing Hepatitis B, the employer's duty is limited to making the Hepatitis B vaccine (which is the only reference to vaccines in the standard) available to pathogen exposed employees (not mandating the vaccine).
47. OSHA Section 1910.1030(f)(1)(i)⁸ states:
- “The employer shall make available the hepatitis B vaccine and vaccination series to all employees who have occupational exposure, and post-exposure evaluation and follow-up to all employees who have had an exposure incident.”

48. For all airborne pathogens, OSHA requires employers to provide the most effective controls to prevent exposure. When respiratory protection is required, the HEPA filtered PAPRs provide the highest filtration efficiency rate of 99.97% (and an OSHA protection factor of 1,000) to prevent inhalation of airborne infectious aerosol or particles that could lead infection, severe Covid-19, and death. PAPRs and supplied-air respirators are routinely worn when treating patients with more virulent infectious diseases, including viral hemorrhagic fevers (such as Ebola) that have a greater risk of causing immediate death than SARS-CoV-2 Covid-19. They are a proven and effective hazard control measure for employees.
49. Based on my knowledge of the various occupational industries like various manufacturing, allied trades such as welding, and chemical companies in the U.S. where engineering controls are not feasible and workers are exposed to highly toxic and carcinogenic chemicals, respiratory protection programs are routinely implemented to prevent worker exposures. Similarly, hospitals, biomedical laboratories, and other healthcare facilities, implement respirator protection programs as part of their infection prevention and control programs to mitigate risks of the transmission of infectious airborne aerosols that can lead to severe illness and death caused by respiratory pathogens. Therefore, respirator protection programs are feasible and demonstrated to be effective in the workplace.
50. The OSHA requirements cited are applicable to state and city governments, including New York City, through the State's OSHA Plans.

PRELIMINARY CONCLUSORY OPINIONS

51. Based on my review of the foregoing facts and based on my review of the relevant applicable OSHA regulations, guidelines, and mandates along with the New York State

and City Covid-19 emergency public health laws, I make the following preliminary opinions, with a reasonable degree of certainty as a certified industrial hygienist with experience in federal and state compliance, as follows:

- a. Under OSHA, employers have the duty to furnish to each of their employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees.
- b. The OSHA regulations do not require employees to prevent severe injury and death in the workplace. The regulations only require employees to be trained in the proper use and limitations of safety equipment provided by the employer to eliminate or mitigate workplace hazards.
- c. Employers have the duty to identify workplace hazards, utilize a hierarchy of controls strategy to eliminate, isolate or mitigate all workplace hazards, including airborne infectious aerosols.
- d. Employers cannot delegate its hazard identification and mitigation duties under OSHA to employees and employers must bear the cost of implementing hazard controls measures to protect employees.
- e. Employers must conduct and certify a written hazard assessment to identify hazards and the appropriate risk mitigation control for employees to minimize injury and exposure from such hazards.
- f. Where respirators are to be used to prevent exposure, employers must conduct a hazard evaluation specific to airborne inhalation hazards to select the appropriate respiratory protection for employees to prevent occupation exposures to infectious airborne aerosols, such as the SARS-CoV-2 virus.
- g. Where it is not feasible to eliminate or otherwise control the airborne hazards associated with the infectious airborne SARS-CoV-2 virus that causes Covid-19 in

a healthcare workplace with engineering or administrative controls alone, wearing of NIOSH-certified respirators such as a HEPA-equipped PAPR provides the highest-level employee respiratory protection to prevent virus transmission through inhalation and mitigate exposure from other routes of entry, such as ocular and mucous membranes, without the use of vaccines.

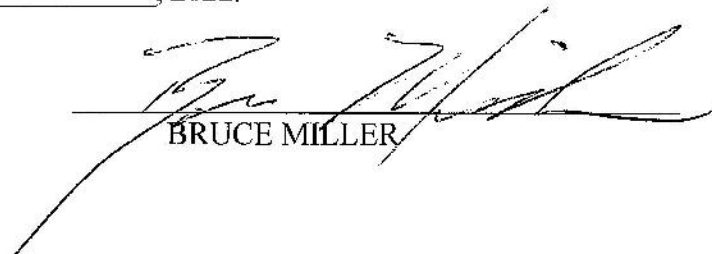
- h. Eliminating and mitigating the airborne transmission of SARS-CoV-2 infectious aerosols that can lead to severe Covid-19 and Covid-19 related deaths in the workplace, is clearly the employer's duty, not the employees.
- i. Although the Covid-9 vaccines can reduce the symptomology and severity of the Covid-19 infection, vaccines are not effective in preventing exposure to or inhalation of the airborne aerosolized virus in the healthcare workplace setting. Therefore, the use of effective respiratory protection such as a HEPA-filtered PAPR by healthcare workers provides the greatest level of prevention from both exposure and infection.
- j. Employees that work remotely outside of the employer workplace, who work in single worker vehicles or single worker workspaces or work outdoors and do not have contact with the public and can perform most of the essential functions of their jobs without contact with other workers, are not at risk for occupational exposure to the SARS-CoV-2 virus while performing their duties. Therefore, employer mandated vaccinations for these employees are not necessary because these administrative controls effectively eliminate exposure to the employee or other employees.
- k. Providing remote work option for employees whose jobs can be performed remotely serves as an effectively occupational exposure control. Even if the employee becomes infected and is symptomatic with Covid-19 or variants other

employees remain protected since they are not in the workplace. Remote work is a risk control that should be used to protect an employee while allowing the employee to remain on the job.

52. The statements and opinions made in this Affidavit are preliminary and I reserve the right to add to, amend or modify my opinions as more facts are provided during the course of any litigation of the claims by Plaintiffs for which this affidavit is provided.

I declare under penalty of perjury under the laws of the State of Idaho that the foregoing is true and correct.

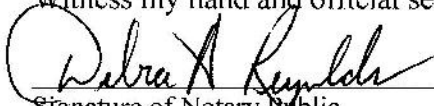
Dated this 13th day of APRIL, 2022.


BRUCE MILLER

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

Subscribed and sworn to (or affirmed) before me on this 13th day of April, 2022, by BRUCE MILLER, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Witness my hand and official seal.


Signature of Notary Public

[Affix Notary Seal]

DEBRA A. REYNOLDS
COMMISSION NUMBER 13448
NOTARY PUBLIC
STATE OF IDAHO

CURRICULUM VITAE – BRUCE MILLER, M.S., CIH

Area of Expertise

- Comprehensive Industrial Hygiene and Safety
- Department of Energy Former Worker Retrospective Exposure Assessments
- Expert Health and Safety Consulting Services
- Workplace Accident Investigation and Regulatory Compliance
- Microbial Investigations and Indoor Air Quality

Education & Certification

- M.S., Industrial Hygiene, Central Missouri State University, Warrensburg, MO, 1993
- B.S., Industrial Technology, Southern Illinois University, Carbondale, IL, 1990
- A.A.S., Bioenvironmental Engineering Technology, Community College of the Air Force, 1988
- Certified Industrial Hygienist (CIH), American Board of Industrial Hygiene, (ABIH) #6439

Professional Organizations & Memberships

- Member, American Industrial Hygiene Association (AIHA)
- Member, American Conference of Governmental Industrial Hygienist (ACGIH)
- Member, Health Physics Society (HPS)
- Associate Member, American College of Occupational and Environmental Medicine (ACOEM)

SUMMARY OF QUALIFICATIONS

Mr. Miller is a board-certified industrial hygienist with more than 33 years of experience in comprehensive health and safety practice and 25 years of specialized environmental remediation and construction consulting experience at the Department of Energy (DOE), U.S. Army Corps of Engineers (USACE), and Department of Defense (DOD) clients and sites. He has managed and supervised health, safety, and health physics personnel and provided project management, planning, regulatory support, and oversight to numerous environmental remediation, waste management, construction, decontamination and decommissioning, and microbial and indoor air quality investigations, and remediation projects. He has served as an expert conducting investigations and preparing expert reports for both plaintiffs' and defendants' cases. Specialized project and legal experience researching, developing expert reports, and testifying in worker retrospective occupational exposure assessments and causation illness compensation court cases related to former defense weapons facilities and DOE national laboratories workers.

Mr. Miller has developed and implemented comprehensive health and safety programs and the supporting field documents to meet federal (DOE, DOD, USACE, Federal Aviation Authority (FAA), Department of Interior (DOI), and Homeland Security (HLS)), state, and local regulatory compliance. He has provided project management, direct health, safety, environmental, radiological field oversight of remedial investigation/feasibility study (RI/FS), remedial design/remedial action (RD/RA), construction and D&D projects at some of the most complex hazardous and mixed waste sites in the country. Projects have included large scale excavation, drilling, sampling; hurricane recovery; nuclear facility construction and demolition, and waste retrieval and characterization in radioactive and transuranic (TRU) mixed waste pits; remediation of high explosive fragment sites, and clearance of unexploded ordinance throughout the DOE Complex and numerous DOD facilities. He has broad-based experience in health, safety, and radiological regulatory compliance at national

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DOE laboratories, DOD facilities, US Navy facilities, numerous USACE Districts, construction sites, for industrial and commercial clients. He currently serves on national committees for the American Industrial Hygiene Association (AIHA) (Past Chair/Member of the Law Committee & Member of Indoor Environmental Quality Committee member) and was a past Chair of the AIHA's Consultants Special Interest Group (SIG).

CURRENT AND PAST EXPERT LEGAL WORK

Claimant Expert – Board of Industrial Insurance Appeals, State of Washington, Employer Motions for Summary Judgement, Washington Labor & Industry Cases (February 2020 – Present) - Serving as an industrial hygiene expert for current, former employees, and deceased (spouse) (Claimants) of the U.S. Department of Energy Hanford Site, who have filed affirmative claims under the “Hanford Site Employees—Occupational Disease Presumption,” or Washington Substitute House Bill 1723 (“HB 1723”) law. These claims are being challenged by the Department of Energy. Expert services have been provided through contracts with the State of Washington Attorney General's Office (AGO) and other law offices supporting these Claimants. Work scope includes providing expert consultation, preparing declaration opinions (as needed), and testifying in discovery and perpetuating depositions and Washington State Board of Industrial Insurance hearings. Expert testimony addresses current and past exposures directly related to Claimants' presumptive claims illness or diagnosis. Specific expertise includes detailed research of worker exposures to Hanford's chemicals, hazardous agents, and radiological hazards, examination of historic industrial hygiene and radiological exposure data, interviewing claimants, reviewing medical records, occupational medical surveillance data, developing claimant-specific exposure profiles and qualitative exposure assessments, review of toxicological and epidemiological data, studies, and NIOSH cohorts for relevant exposure agents, and evaluating claimant medical diagnosis against known toxicological chemicals or radiation for specific occupation exposure causation. Mr. Miller has provided testimony in more than 50 cases.

Defendant Expert – Case No. 4:18-cv-05189, United States of America, Plaintiff, v. State Of Washington; Jay Inslee, in his official capacity as Governor of the State of Washington; Washington State Department of Labor & Industries; Joel Sacks, in his official capacity as Director of the Washington State Department of Labor & Industries December 2018 – December 2019) Served as an industrial hygiene expert for the State of Washington Attorney General's Office (AGO) (Defendant), in the aforementioned case involving United States Department of Justice that has brought a suit against the State of Washington based on the enactment of a workers' compensation law, entitled “Hanford Site Employees—Occupational Disease Presumption,” or Washington Substitute House Bill 1723 (“HB 1723”) claiming that HB 1723 singles out and discriminates against the Federal Government. Mr. Miller provided expert consultation and rendering opinions related to the current and past exposures of Hanford workers for the AGO within the context of this lawsuit. U.S. District Court ruled against the U.S. Department of Justice in this case. The District Court decision affirming the WA State statute was appealed to the U.S. 9th Circuit Court of Appeals.

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Plaintiff Expert - Hanford Challenge, et al. v. United States Department of Energy and Washington River Protection Solutions, No. 4:15-cv-05086 – Settlement Agreement (March 2017 – December 2019) Mr. Miller served as the ‘Qualified Technical Person’ providing technical reviews and comments of several Hanford contractor respiratory protection program documents in support of the Washington Attorney General’s Office (AGO) under the Settlement Agreement with the U.S. Department of Energy. Technical reviews of numerous respirator cartridge testing reports and supporting documents (prepared by the Pacific Northwest National Laboratory on behalf of Washington River Protection Solutions as well as independent third-party consultants) were completed and comments provided the AGO. Cartridge testing was conducted to determine the ability of cartridges to effectively filter and absorb vapor and gases from the Hanford Tank Farm vapor phase at various tank wastes and to estimate cartridge service-life to develop cartridge changeout schedules. Technical reports were evaluated based on test design and chemical analysis methodology, National Institute for Occupational Safety and Health (NIOSH) respirator cartridge design and testing criteria, manufacturer’s cartridge NIOSH technical approvals, and known Hanford contaminants of concern properties.

Plaintiff Expert – Case No. 4:15-cv-05087, State of Washington, Plaintiff, v. Ernest J. Moniz, Secretary of the United States Department of Energy, the United States Department of Energy, and Washington River Protection Solutions LLC, Defendants (May 2016 – September 2018) – Served with a team of experts as the State of Washington Attorney General’s Office (AGO) (Plaintiff) industrial hygiene expert in this case involving long standing worker exposures to tank farm vapors at the Department of Energy, Hanford Site Tank Farms. Services included review of the AGO complaint, declaration for injunctive relief, discovery documents and reports, worker exposure incidents and medical surveillance, plaintiff regulatory requirements, and contractor implementing program and procedures and other related expert reports, declarations and depositions. Researched tank farm processes and history, contractor health and safety programs, DOE, NIOSH, and Government Accountability Office inspection reports, tank farm industrial hygiene exposure assessment and characterization, industrial hygiene program and implementation, toxicological data for tank content and vapors, and nature and extent of past worker exposure events. Prepared declarations in support of the AGO’s injunctive relief and supplemental preliminary injunction as well as draft expert reports. Additional support included preparing potential lines of inquiry for Defendant (Department of Energy and Contractor) health and safety experts and management personnel depositions related to worker health and safety and exposure events. Provided expertise on exposure mitigation, work process, engineering controls, personal protective equipment, respirator cartridge testing, medical surveillance, and ongoing technical expertise and support during settlement discussions with the U.S. Department of Justice.

Defendant Expert – Case No. CV-2014-300, Danita Bachman and Clayton Snook (P) v. The Jud 2000 Trust, Eugene D. Jud and Janice A. Jud, Trustees; Cid E. Hayden and John Doe Persons or Entities I through V (D), State of Idaho, in and for the County of Lemhi (August 2015 – April 2017) – Served as Defense industrial hygiene expert investigating water damage and subsequent microbial growth at the Plaintiff’s residence. Plaintiff asserts Defendants irrigation methods are flooding the crawlspace of the home. Conducted an investigation of the residence including visual and physical inspection, testing of building materials for moisture content, performed thermo-imaging of building materials, and collected air samples for laboratory analysis to quantify types of

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mold spores present; reviewed Plaintiff's expert's report and methodology and prepared lines of inquiry for Defendant counsel use during Plaintiff expert's deposition; prepared and submitted expert report with opinions to Defense counsel. Testified at trial as Defense expert for nature and extent of water damage and mold growth, sources of water damage and mold growth and required remediation for reoccupancy.

Plaintiff Expert - Case 4:15-cv-00165-EJL, Ralph Stanton (P) v. Battelle Energy Alliance (D), U.S. District Court, District of Idaho (February 2015 – October 2015) – Served as Plaintiff safety and health expert examining nature of accident and exposure of workers to plutonium contamination at the Zero Power Physics Reactor facility located at the Department of Energy, Idaho National Engineering Laboratory. Reviewed all relevant radiological, safety and industrial hygiene data and procedures; operational procedures and work packages; prepared lines of inquiry for deposition of Defendant key management and technical staff; reviewed deposition transcripts and supported Plaintiff counsel during and following depositions. Served as the technical manager and prepared the scope of work for radiological survey of Plaintiff's home by third party and analysis of all samples collected. This case was settled prior to the completion of my expert report and opinions, deposition or expert testimony.

Defendant Expert - Case No. 4:10-CV-184-EJL, Roy Santo (P) v. Acuity Brands Lighting, Inc; Lon Ricks Electric, Inc. (D), United States District Court for the District of Idaho – Served as Defense safety and health expert for the construction accident case involving a fall from a ladder resulting in a severe laceration from an exposed metal light fixture resulting in a permanent disability. Reviewed nature of the accident and conducting an accident investigation and multiple root causal analysis based upon available records and photos. Analysis consisted of reviewing all available accident reports and witness statements; Occupational Health and Safety Administration construction regulatory review of applicable standards including multi-employer worksites; ladder manufacturer's use and limitation; Plaintiff's and Defendant's witness's deposition review; and developed lines of inquire for Defendant counsel for Plaintiff deposition. Prepared expert report with opinions and submitted to Defense counsel. This case was settled prior to my being called as an expert to offer my opinions for deposition or at trial.

Plaintiff Expert - Case No. CV-09-4235, Scherr & Scherr, LLC (P) v. Kirk Wolfe (D), District Court of the Seventh Judicial District of the State of Idaho in and for the County of Bonneville – Served as Plaintiff industrial hygiene expert in case involving construction defects and latent damage caused by water damage to Plaintiff's professional building during construction. This expert work followed a water damage and microbial assessment of the Plaintiff's building (The Sleep Institute). Expert analysis on the nature and extent of the water damage was conducted. Analysis included a complete review of my previously microbial assessment and report; review of the construction timeline and material storage practices on site; analysis of the weather condition at the time of the construction activities where building materials were not enclosed; comparative water damage analysis with other assessments that I had conducted. My expert report was prepared and submitted to Plaintiff counsel. This case was settled prior to my being called as an expert to offer my opinions at deposition and trial.

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Plaintiff Expert – Case No. CV-06-275, Sherry Fuqua V. Paul Olsen dba Paul Olsen Trucking; Paul Olsen, Individually; Marion Jerry Weaver, and John Does I-V, District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Blaine – Served as Plaintiff safety and health expert examining nature of an industrial work accident involving the Plaintiff who was a driver for the Defendant. Plaintiff was atop a truck when another driver moved the vehicle causing the Plaintiff to be dragged then thrown from the truck against a wall. A comprehensive review of Defendant’s accident investigation, records and photos was conducted; Defendant trucking and operational facility procedures reviewed; training and other human resources records for the Plaintiff reviewed; fall restraint and other safety device manufacturer’s use and limitations literature analyzed; and an accident root cause analysis developed. Additionally, lines of inquiry for Defendant witness depositions were prepared and discovery item requests submitted to Plaintiff counsel for consideration. This case was resolved before the expert report and opinions were completed. No expert deposition or testimony was given in this case.

Defendant Expert – Hymas v. Rockwell Homes, Inc., United States District Court for the District of Idaho – Served as Defendant safety and health expert for the construction accident case involving a fall of a worker from an elevated platform onto a piece or exposed rebar at a residential construction site resulting in an injury. Case involved multiple construction contractors, sub-tier contractors and staffing agency that the Plaintiff worked through. A review of all available accident records, medical information, and photos was conducted; construction contracts were reviewed for terms and conditions and areas of responsibilities/oversight at the site; and applicable Occupational Safety and Health Administration Construction Regulations were reviewed and workplace requirements for fall protection identified. Lines of inquiry for the Plaintiff witnesses were prepared and an outline of the expert report was drafted. Prior to the expert report and opinions submittal date, this case was settled. No expert deposition and testimony was given in this case.

Third Party Expert – Farm Bureau Insurance Company, Pocatello, Idaho – Conduct an expert review and evaluation of the restoration of a water damage claim, subsequent mold growth, and area remediation conducted at a private residence in Idaho. The insured alleged that mold spores were released during the preliminary water and mold restoration activities and migrated to their occupied areas resulting the mold spore contributed negatively to the Insured’s health. Mr. Miller prepared a expert report with opinions based on a site visit to the insured residence, inspection of the home and interview with insured; review of the adjuster’s case file, field notes, and interview; interview with the water and mold restoration contractor; interview with the project industrial hygienist and review of their report; and review of the air, swab, and bulk microbial sampling data contained within the industrial hygienist report. All opinions were provided in my expert report. No deposition or court testimony was taken.

RELEVANT EXPERIENCE

President, Health and Safety Services, LLC

Idaho Falls, ID

2013 - Present

Responsible for day-to-day operations and marketing services for Health and Safety Services, LLC (HSS) which is focused on providing high-quality expert health and safety consulting services to

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clients. Primary HSS technical consulting services consist (1) Health and Safety Compliance and Consulting - compliance, inspections, violation mitigation and corrective actions, and development of regulatory complaint programs and policies; (2) Worker and Area Exposure Assessments - development of occupational exposure assessments in compliance with AIHA Exposure Assessment methodology including evaluation of exposure groups, engineering controls, work procedures, and personal protective equipment usage. This generally includes conducting exposure monitoring or sampling to document exposures and provide defensible exposure data as required by OSHA; (3) Expert Consulting and Report Writing - provide health and safety legal expert consulting and prepare expert reports for cases involving worker injuries and exposures, accidents and regulatory compliance matters; (4) Expert Testimony - serve as a testifying health and safety expert for cases involving worker injuries, exposures, accidents and regulatory compliance matters typically following expert consulting and report writing services. HSS specializes in expert case consulting in matters involving worker accidents, occupational exposures, retrospective exposure assessments, injuries and OSHA compliance and has represented both plaintiffs and defense in cases.

President, North Wind Solutions, LLC
North Wind Group
Idaho Falls, ID
February 2011 – April 2013

As President, Mr. Miller provided vision and leadership by identifying new clients, business lines, and opportunities and ensuring that all work is carried out in a professional, technically complete manner. He served as the single point of contact with the Small Business Administration (SBA) and is responsible for developing and approving all business plans, joint venture agreements, and SBA 8(a) program compliance. He supervised project managers and met directly with clients to ensure all technical and contractual deliverables were completed on schedule and within budget. Mr. Miller ensured that operations of NW Solutions meet the philosophy, mission, strategy, and business goals and objectives of the North Wind Group. He ensured that corporate policies and programs related to health and safety, quality, procurement, contracts, and human resources are implemented on a daily basis and provided quarterly operational reports. Under Mr. Miller's leadership, North Wind Solutions grew from a startup to successful SBA 8(a) certified firm with a second SBA certified 8(a) Joint Venture with a combined backlog of more than \$12M in less than two years. Additionally, he was responsible for obtaining an Alcohol, Tobacco, Firearms and Explosives (ATF) explosive license and served as the corporate Responsible Person for the ATF license responsible to ensure all employee possessors purchasing, storing and handling explosives were compliance with ATF regulations and license requirements.

Sr. Vice President, Corporate Health, Safety and Security; Facility Security Officer
North Wind Group and all subsidiary companies
Idaho Falls, ID
February 2009 – February 2011

Served as the corporate point of contact for health, safety and security matters for the North Wind Group and 6 subsidiary companies consisting of over 400 employees working from 18 offices throughout the US and with revenues exceeding \$100M annually. Reported to the President of the North Wind Group and developed and implemented all health, safety and security programs and

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procedures, tracked and report performance metrics and took correction actions where needed to improve performance. Under Mr. Miller's leadership, the North Wind Group and subsidiary companies maintained an experience modification rate (EMR) well below their industry averages, obtained and maintained two OSHA Voluntary Protection Program (VPP) STAR sites, was awarded the OSHA VPP Star among Stars award, and was successful at having several years with zero OSHA recordable or lost-time injuries.

As the Facility Security Officer (FSO), Mr. Miller controlled all aspects of the North Wind Group and subsidiary Department of Defense and Department of Energy facility security clearances including developing all security and operational security plans, maintaining government contractor required security databases, facilitating new subsidiary company and personnel clearances, and interfacing with government agency security and counter-intelligence/terrorism counterparts during audits and program oversight to ensure compliance with security regulations.

Vice President, Corporate Health and Safety Director

North Wind, Inc.

Idaho Falls, ID

February 2004 – February 2009

Developed and maintained all corporate health, safety, and radiological programs; reviews and approves project health and safety plans and procedures for all North Wind Group Companies including natural and cultural resources, remediation, treatment, construction, demolition projects and operating facilities. Health, safety and security lead for 18 North Wind offices and provide direct support to projects in all North Wind Group geographic locations. Worked with workers compensation policy holder, professional organization, OSHA VPP Program office and remediation industry H&S professionals to ensure all programs provided for an effective safety culture and corporate H&S goals are met. Supported strategic planning, teaming and proposal development, project management, and served as a technical resource for internal and external customers. Provided expert consultant and witness industrial hygiene and safety services and testimony for attorneys regarding accidents, exposure assessments, microbial/IAQ, safety issues and other health and safety related cases.

He has written procedures, conducted training, and established medical surveillance programs to control exposure to radionuclides, heavy metals (arsenic, asbestos, beryllium, cadmium, chromium, lead), mercury, and solvent contaminants in compliance with OSHA substance standards at uncontrolled hazardous waste sites. Project sites have included waste pits/trenches, contaminated soils and underground storage tanks, mine tailing piles, landfills, drummed hazardous waste, UXO/MEC, radioactive structures and piping, and radioactive and mixed (hazardous/radioactive) waste and debris locations throughout the US for the DOE, US Air Force, US Coast Guard, US Army, NAVFAC, USACE, commercial, and private clients.

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PAST MAJOR PROGRAMS & PROJECTS

Program Consultant, HSS, LLC – North Wind Solutions, LLC for the U.S. Navy, Space and Naval Warfare Systems Command (SPAWAR), SPAWAR Systems Center Pacific, Marine Mammal Program (MMP), San Diego, CA (2013) – Served as the program consultant to transition program manager responsibilities to new program manager. Facilitated client and staff meetings, reviewed program operations metrics and budgets, provided budgeted staffing levels and recommended changes to increase efficiency. Additionally, wrote the North Wind Dive Safety Manual and developed all Dive Plans/Dive Hazard Analysis for all topside and underwater dive operations to meet requirements of OSHA 29 CFR Subpart T, Commercial Diving requirements. Developed fiscal year end program metrics to Navy client demonstrating all contractual performance objectives were met or exceeded with zero change orders or client concerns.

Corporate Sponsor/Program Manager – U.S. Navy, Space and Naval Warfare Systems Command (SPAWAR), SPAWAR Systems Center Pacific, Marine Mammal Program (MMP), San Diego, CA (2012-2013) – Developed the technical and cost proposal and served as chief negotiator to secure this \$6M+ 3-year firm fixed price contract to serve as the construction and maintenance contractor for the Navy's MMP. Program included constructing, maintaining, and cleaning mammal enclosures and associated docks and platforms, storage sheds, and support MMP operational buildings. Routine diving and boat operations were required to maintain MMP locations throughout the San Diego Bay area. Additional responsible for emergency and requested maintenance of two additional MMP locations in the Pacific Northwest and South Atlantic regions. Developed all operational operations metrics, budgets, and conducted oversight to ensure client requirements and MMP animal safety requirements were met. Developed new dive program, dive medical surveillance protocol, upgraded all dive gear, created new maintenance database, and improved dive efficiency through better scheduling and coordination of dive tasks with MMP personnel. Exceeded all contractual performance metrics with zero safety incidents while exceeding project profit target.

Project Health and Safety Manager - U.S. Department of Homeland Security, United States Coast Guard, Base Support Unit, Pier 36, Building 3, Seattle, WA (2012) – Served as project health and safety manager and principal certified industrial hygienist to provide direct support and oversight of lead paint removal and encapsulation of the Pier 36, Building 3, a single-story warehouse structure constructed in 1930 with a footprint of approximately 200,000 ft². The \$15M contract required extensive scaffolding erection (large area scaffolding spanning approximately 12,000 ft² for each area abated with levels 4 through 6 greater than 50 feet high). A negative pressure HEPA-filtered lead abatement containment was constructed over existing occupied office and command facilities to isolate personnel and allow for continuous operations during media blasting, cleaning and encapsulation of lead-based paint located on building metal trusses, asbestos corrugated roofing and walls. Extensive air sampling and continuous ventilation pressure monitoring of containments was conducted to provide objective evidence to USCG Command and occupants that lead control work area containment integrity and controls were functioning adequately during their occupancy. All work was completed with zero OSHA recordable injuries and all lead exposures to abatement workers and outside containment were well below the established occupational exposure limits.

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Project Health and Safety Manager – U.S. Department of Energy (DOE), Idaho National Laboratory (INL), Pit 10 Accelerated Retrieval Project (ARP) VII Nuclear Facility Design/Build Construction Project (2010-2011) – Served as project health and safety manager responsible for preparation of all health and safety documentation to meet DOE requirements for the \$17M design and construction of a retrieval enclosure structure to be used to remediate transuranic mixed waste located in the Subsurface Disposal Area of the Radioactive Waste Management Complex at the INL. Facility was constructed as a Category 2 nuclear facility. Health and safety documentation including 10 CFR 851, *Worker Safety and Health Program*, Integrated Safety Management System, Construction Safety Plan, Hoisting and Rigging Plan, and all work packages and associated Job Safety Analysis in compliance with Occupational Safety and Health Administration (OSHA) 10 Code of Federal Regulation (CFR) 1926, *Construction* standards. Additionally, responsible for developing and overseeing all medical surveillance requirements, served as the North Wind representative for all INL site stabilization agreements and collective bargaining associated with trade unions workers that were direct hired by North Wind for construction.

Project Manager/Lead Investigator – U.S. Army Corps of Engineers, Savannah District, Air Sampling Analysis for Mold Prevention Technology Demonstration Project, Ft. Gordon, GA (2009-2010) - Served as Project Manager/Lead Investigator evaluating two ventilation system treatment technologies (UV light and hydrogen peroxide) installed to destroy airborne biological contaminants in multiple HVAC air handling units serving Army Barracks where Warriors in Transition (service members from Operations Enduring Freedom and Iraqi Freedom injured in combat who are transitioning back to civilian status). Study consisted of conducting a series of five rounds of air sampling (baseline and 4 quartering rounds) for microbial contaminants using culturable media (MEA and GD18) and non-viable spore traps up and down streams of the return air HVAC treatment units in two barracks, two control barracks, and outdoor background locations to determine speciation and count for vegetative and non-vegetative of fungi. Additionally, HVAC parameters such as particle counts, air flow, temperature, relative humidity, CO₂ and percent fresh air are being measured for each HVAC air handling unit and branches are being measured. The final report and results were used for the selection of the preferred HVAC treatment system technology throughout the Army Engineering Command Southeast District.

U.S. Department of Homeland Security, United States Coast Guard (USCG), Integrated Support Command, Kodiak Air Station, AK (2008 – 2012) - Served as health and safety manager and lead industrial hygiene technical consultant for multiple task orders at the Kodiak, Alaska USCG station and USCG facilities in Seattle, WA. Projects completed included asbestos and lead based paint remediation projects of barracks, dining facilities, and other common areas; lead contaminated soils characterization and removal; installation of a vapor recovery extraction system in barracks/common area crawlspaces to mitigate groundwater chlorinated solvent contaminants; conducting IAQ study of occupied barracks and common areas to define military/patron risk; remediation and demolition of housing, surplus USCG facilities, and contaminated areas.

Prepared all hazardous materials abatement plans, oversight of CIH conducting asbestos Phase Contrast Microscopy (PCM for occupational) and Transmission Electron Microscopy (TEM for area clearance) air sampling, approved all asbestos and lead abatement plans, and write technical project reports summarizing hazardous materials abatement and clearance of common areas.

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Provided industrial hygiene technical consulting for the design, installation and commissioning and balancing of multi-building vapor intrusion remediation systems to place crawlspaces under negative pressure (with respect to occupied areas above) to eliminate ground water contaminant trichloroethylene (TCE) and perchloroethylene (PCE) vapors from entering barracks and common areas above. Conducted commissioning testing and balancing of all ventilation system components and all associated baseline and post-commissioning indoor air studies using EPA Method TO-15, Volatile organic compounds (VOCs). Prepared technical memorandums for USCG summarizing air study results and supported USCG with technical discussions with U.S. EPA Region 10 related to military occupant/patron risk and reoccupancy.

Technical Consultant – U.S. Department of Energy, Office of River Protection (ORP), Hanford Site, WA (2009) – Provided a technical compliance and Independent Government Cost Estimate (IGCE) evaluation and report of the Washington River Protection Solutions (WRPS) 10 CFR 850, Chronic Beryllium Disease Prevention Program (CBDPP): Final Rule implementation cost submittal to DOE Office of River Protection (ORP). This WRSP CBDPP compliance review and costs estimate was developed for the Hanford Tank Farm Beryllium Program to align all programmatic elements with the Hanford Sitewide CBDPP. IGCE was developed using engineering assessments, cost estimating relationships, vendor quotes, and technical basis for differing CBDPP element costs approaches. All assumptions and methodology were provided in the final report to DOE ORP.

U.S. Department of Homeland Security, United States Coast Guard, Integrated Support Command, USCG Kodiak Air Station, AK (2008-2012) - Served as health and safety manager and lead industrial hygiene technical consultant for multiple task orders at the USCG station Kodiak Island, Alaska. Projects completed included asbestos and lead based paint remediation projects of barracks, dining facilities, and other common areas. Prepared all hazardous materials abatement plans, oversight of CIH conducting asbestos phase contrast microscopy (PCM) occupational and transmission electron microscopy (TEM) clearance air sampling, approved all asbestos and lead abatement plans, and writing technical reports summarizing hazardous materials abatement and clearance of common areas. Provided industrial hygiene technical consulting for the design, installation and commissioning and balancing of multi-building vapor intrusion remediation systems to place crawlspaces under negative pressure (with respect to occupied areas above) to eliminate TCE and PCE vapors from entering barracks and common areas above. Conducted commissioning testing and balancing of all ventilation system components and all associated baseline and post-commissioning indoor air studies using EPA Method TO-15 for volatile organic compounds (VOCs). Prepared technical memorandums for USCG summarizing air study results and supported USCG with technical discussions with U.S. EPA Region 10 related to military occupant/patron risk.

Program Health and Safety Manager – Bureau of Land Management, Hazardous Materials Emergency Response Contracts (State of Utah and Idaho), statewide locations (2004 – 2012) - Served as the health and safety manager developing all programmatic H&S documents and approving all project-specific Health and Safety Plans, prescribed medical surveillance and monitoring, OSHA 29 CFR 1926 regulatory interpretations, and provided oversight for all emergency and planned remediation actions conducted under these state-wide contracts. Projects completed included emergency response to numerous spills and illegal dump sites. Planned

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responses have included reclamation of mine sites, illegal asbestos dump sites, contaminated structures and heavy metal mine tailings, and the safe demolition and closure of BLM structure and mine adits.

LANL Environmental Program Support – Department of Energy, Los Alamos National Laboratory, NM (2006-2010) - Provided technical project support services for numerous task orders issued under North Wind, Inc's master service contract with Los Alamos National Security, LLC (LANS). Prepared Environmental Program-Wide Environmental Safety and Health Plan and project specific Site Safety and Health Plans to meet the requirements of 10 CFR 851, Worker Safety and Health Program and 29 CFR 1926.65, HAZWOPER, respectively. Projects included, TA-21 ISS tritium component removal, LANL Baseline Industrial Hygiene Exposure Assessment, Industrial Hygiene Support for LANL Beryllium Project, TA-54 Performance Assessment and Low-Level Waste Operations, and LANL Master Drilling Contract.

Program Health and Safety Manager – Bureau of Land Management, Anvil Points Remediation Project, Rifle, CO (2008-2009) - Served as the health and safety manager and providing ongoing technical project support to removal of over 200,000 cubic yards of spent oil shale tailings and placement in a North Wind design/build repository. Prepared and approved Site-safety and health plans, developed area and personal air sampling strategies, directed medical surveillance, and provided engineering controls to minimize airborne and contact exposure to arsenic, lead and PAH contaminants associated with shale tailings as well as buried asbestos transite piping. Provided safety oversight and direction for mine adit closure and construction of 70,000 cubic yards of spent shale yard in an engineered repository.

Beryllium Decontamination and Demolition Project – Former American Beryllium Company, Sarasota, FL (2008) - Served as the project certified industrial hygienist (CIH) for Environmental Dimensions, Inc for the decontamination and demolition of portions of the former American Beryllium Company. This project was being conducted for Lockheed-Martin Corporation (LMC). Primary activities included reviewing/revising the project health and safety plan, developing exposure assessments for personnel conducting decontamination tasks, reviewing all personal and area air sampling data, interacting with the LMC and community advocates to communicate beryllium exposure and airborne controls and to facilitate understanding of the health controls to ensure no releases to the adjacent housing areas.

Program Health and Safety Manager, Sustainment, Restoration, and Modernization Task Order Contract (SATOC), U.S. Air Force Civil Engineering Support Agency, Worldwide (2005-2010) – Served as the Health and Safety Manager for all SATOC task orders. Prepared, reviewed and approved all site safety and health plans; subcontractor safety programs and plans, and H&S-related technical submittals; oversaw all H&S compliance; performed program H&S audits and inspections; supervised and provided technical guidance to all assigned field site safety officers; determined/oversaw medical surveillance requirements; served as subject matter expert for all H&S issues and compliance. Projects on-going or completed have included:

- Charleston AFB, SC – Runway/Taxiway Replacement and Upgrades- \$28M
- Malmstrom AFB, MT – Mechanical System Upgrades/Replacement - \$3M

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- Holloman AFB, NM – Various civil projects – \$6M
- Moody AFB – Lighting and ECIP Installation - \$1.9M.

Former Hanger 6 Site Characterization and Remediation, U.S. Army Corps of Engineers-Alaska District, Fort Wainwright, Alaska (2006-2007) - Mr. Miller served as the Health and Safety Manager and USACE Program Certified Industrial Hygienist performing various airborne volatile, semi-volatile, metals, and chemical warfare agent compounds sampling during soil disturbance, liner installation, and excavation of potentially contaminated soils at the former Hangar 6 site located at Fort Wainwright, Alaska. All work was conducted in Level B (supplied air/chemical resistant clothing) and included personal, perimeter (project fence line), soil gas, and direct reading air monitoring was conducted to gather chemical source and exposure data used to further evaluate potential construction worker reported symptoms who were excavating soil at the former Hangar 6 site in July 2006.

Area and personal air samples were collected and analyzed in accordance with selected National Institute of Occupational Safety and Health (NIOSH), Occupational Safety and Health Administration (OSHA), Environmental Protection Agency (EPA) Toxic Organic (TO) Compendium Method TO-15, and Laboratory Modified NIOSH methods.

Direct reading instruments (including a photoionization detector [PID] with an 11.7 eV lamp, flame ionization detector [FID], and MSA HAZMATCAD Plus [material chemical agent detector/chemical warfare agents] were calibrated and operated in accordance with the manufacturer's operating instructions. All air and soil gas sampling and direct reading monitoring of workers was performed by the Mr. Miller.

Beryllium Hazard Assessment - DOE National Engineering Technology Laboratory, Albany, OR (2006-2007) – Served as the project technical lead for the development of a beryllium hazard assessment for the DOE National Engineering Technology Laboratory Albany Research Facility located in Albany, OR. Scope of services include a comprehensive review of existing DOE NETL Albany CBDPP; review existing occupational exposure assessment process and procedures; review and assessment of the current baseline beryllium inventory; review and assessment of existing and ongoing Beryllium facility characterization including wipe, bulk and air sampling; statistical analysis of characterization and personal exposure data utilizing left-censored statically modeling approaches such as "R"; development of similar exposure groups and hazard ranking of these groups and specific operational areas; preparation of the written hazard assessment to provide a quantification of beryllium as a health and safety hazard as it relates to the NETL-Albany site and its operations; updating the existing NETL Albany CBDPP; and certification of the hazard assessment by a third party accredited/certified board.

Project Health & Safety Manager, Rocky Mountain Arsenal Projects, Denver, Co (2005-2007) – Served as Health and Safety Manager for multiple projects at the Rocky Mountain Arsenal site in Denver, CO under contract with Tetra Tech EC, Inc. Developed and approved all Task-specific Health and Safety Plans (THASPs), determined PPE and medical surveillance, personal and areas monitoring, site s controls, and other requirements for degraded chemical warfare agents and other hazardous materials requiring level D-Level B PPE. Representative projects have included well sampling, well installation and abandonment, at various Lime Basins project sites. Met OSHA

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VPP STAR requirement for all site activities.

LMAES Structures and Equipment Dismantlement and Disposal (Pit 9 Facilities D&D), DOE Idaho National Laboratory, ID (2005-2007) - Served as the Corporate Health and Safety Director and project ES&H oversight for the D&D of all LMAES structures (Retrieval Building, Remediation Treatment Facility, and all tanks, piping, and equipment located in and around the facilities) and equipment located within the Radioactive Waste Management Complex Pit 9 Subsurface Disposal and Administrative Areas. Demolition methods included deconstructing the retrieval building to relieve stress on structure; physical demolition of the concrete RTF using a combination of wrecking ball, tracked excavator with shears and processors; and shearing, sizing, and processing structures in the administrative area. Project involved significant hoisting and rigging of large (100') steel structural members and equipment as well as handling and hauling of demolition debris. Mr. Miller was responsible for writing the integrated Safety Management System (DEAR 970.5223-1, "Integration of Environment, Safety and Health into Work Planning and Execution"), Contractor Assurance System (DOE Order 226.1), Project Health and Safety Plan, and preparing North Wind prime contractor 10 CFR 851, Worker Safety and Health Program for DOE-ID approval. All contractually required plans were submitted and approved within contractually defined schedule.

Hurricane Damaged Facility Demolition and Reconstruction, U.S. Air Force AFCEE Worldwide Environmental Restoration and Construction (WERC), Various Gulf Coast Bases (2005-2007) - Served as the project health and safety manager for several projects totaling \$15M involving structure demolition and debris removal, reconstruction, and renovations at Hurlburt Field Air Base in Ft. Walton Beach, FL and Keesler Air Force Base (AFB), Biloxi, MS a result of Hurricanes Ivan, Dennis and Katrina. These projects were performed under NWI's US Air Force (USAF) WERC contract and NWI served as the general contractor. Mr. Miller has prepared the health and safety plans and specifications other for all projects that have included a wastewater treatment plant, marina, construction of a bridge, and renovation of the USAF Special Forces headquarters building. Additionally, Mr. Miller was onsite at Keesler AFB in Biloxi, MS within 10 days following Hurricane Katrina performing water damage assessments of multiple base facilities, assisted in the preparation of demolition workplans, prepared project health & Safety plans, and specifications for remediation contractors.

FWA-102 (Taku Garden) Site Characterization and Remediation, U.S. Army Corps of Engineers-Alaska District, Fort Wainwright, AK (2005-2006) - Served as the project health and safety manager and NWI Alaska Division Manager overseeing several Stryker Brigade projects at Ft. Wainwright located in Fairbanks, AK from April 2005 through December 2006. Projects included site characterization to delineate the extent and nature of PCB and other hazardous materials and unexploded ordinance (UXO) at a 52-acre construction site where legacy military hazardous materials were discovered through initial soils screening and excavation tasks. Mr. Miller has prepared all accident prevention plans, site safety and health plans, worker and area exposure monitoring plans, developed engineering controls to ensure no off-site releases to adjacent residential areas, and approved all munitions of concern (MEC)/UXO support plans. Project activities included surface geophysical studies (GPR, EM-31, EM-51); surface and subsurface soil sampling (direct push); installation of temporary and permanent water monitoring wells; field

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screening with polychlorinated biphenyl (PCB) assay kits; excavation of test pits and trenches; stockpile sorting for MEC/UXO and associated UXO and scrap disposal; handling, repacking and sampling of excavated waste drums; PCB contaminated soil handling and transportation; and comprehensive worker, resident, and area exposure monitoring. This scope of work also included two additional sites where UXO and known and unknown soil contaminants have been found. Project tasks were conducted in Level D, C and B personal protective equipment.

Hurricane Katrina Damage Assessments, Demolition and Reconstruction, U.S. Air Force Center for Environmental Excellence (AFCEE), Worldwide Environmental & Construction (WERC) Contract, Kessler AFB, MS (2005-2006) – Served as the health and safety manager for this \$12M+ project and task lead for all damage assessments. North Wind is providing turnkey damage assessments, demolition and reconstruction services of facilities and grounds in response to hurricane Katrina damage at Keesler Air Force Base (AFB), located in Biloxi, Mississippi under North Wind's the US Air Force Worldwide Environmental Restoration and Construction (WERC) contract. North Wind mobilized to the base within 3 days in response to a Government notice to proceed and conducted damaged assessments of several facilities and base grounds. Mr. Miller served as the lead for all water damage and mold assessments of occupied and abandoned structures performing visual inspections of all buildings, thermal imaging of building surfaces, taking moisture meter measurements of building materials, and delineating all materials to be remediation through each structure. He also prepared all asbestos and mold remediation specifications for all water damaged and mold affected building materials including containment requirements, remediation protocols, structural drying, and post-remediation assessment criteria. In addition, Mr. Miller prepared all project health and safety plans (HASPs) and specifications for each scope of work that addressed all project activity hazards, hazard mitigation, and contingencies associated with facility demolition and reconstructions as well as grounds remediation. Demolition and reconstruction scope included the Keesler AFB marina and associated facilities, security building, contracting building, dormitories, NCO billeting building, debris and stump removal and repair/replacement of various docks. He oversees all safety and health officers assigned to the project. *All project work was completed without a single recordable or lost time injury.*

U.S. Army Corps of Engineers, Nationwide Remediation Services (2004-2008) – Prepared all health and safety plans and served as Program CIH for North Wind U.S. Army Corps of Engineering projects in the Sacramento, Savannah, Omaha, Mobile, and Alaska Districts. Projects include remediation of contaminated release sites; installation, operations and maintenance of vapor extraction systems; construction projects; and investigation of unexploded ordinance/ordnance and explosive (UXO/OE) sites including remote USACE formerly used defense sites (FUDS) located on Alaskan Aleutian Islands and St. Lawrence Island.

In Situ TRU Waste Delineation and Waste Removal at Hanford 618-10/618-11 Burial Grounds, DOE Hanford, WA (2004-2007) - Served as Project Health and Safety Manager – Major Project Lead for DOE-HQ Environmental Management, Technology Development and Deployment Program In Situ TRU Waste Delineation and Waste Removal at DOE Hanford, Washington 618-10/618-11 Burial Grounds. The project goal is to identify, develop, and demonstrate technologies to support accelerated Hanford site remediation. DOE fabricated fuel for the Hanford Site nuclear production reactors in the 300 Area that produced large volumes of many types of radioactive wastes,

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including transuranic (TRU) wastes that were disposed on in trenches and vertical pipe units (VPUs). North Wind has developed VPU retrieval technology that is being demonstrated as a proof-of-principal in a cold testing facility prior to applying this technology to the 618-10/18-11 Hanford Area. Work to date has included preparation of all work plans, health and safety plans, test plans, and procedures necessary to conduct full scale cold testing of a large diameter casing driven by a pile driver to over core and retrieve the simulated VPU. In addition, development and field testing of surface geophysical technology and downhole nuclear logging methods are being tested to verify the technology for hot operations. The final project Phase II task will be to retrieve radioactive materials containing VPU from the Hanford 618-10/618-11 area.

Los Alamos National Laboratory, DOE TA-73 Airport Landfill Closure Project, Los Alamos, NM (2004-2006) – Prepared comprehensive safety and health plan for Los Alamos National Laboratory TA-73 airport landfill RD/RA closure project. Project included conducting large scale excavation of closed landfill, retrieving debris and waste from a steep slope located approximately 100-ft above the Pueblo Canyon valley with a drag line and excavation equipment. Final fill and grading cover requirements will meet voluntary consent order RCRA Subtitle C landfill requirements. The entire landfill area was regraded. Additionally, all heavy equipment operations were conducted adjacent to the active Los Alamos County Airport runway. Health and safety procedures and plans have been prepared to be compliant with DOE O 441, 29 CFR 1910.120 HAZWOPER, 29 CFR 1926, Construction, and relevant FAA requirements.

Kadlec Hospital DOE Building 748 Decontamination and Decommissioning Project, DOE Richland, WA (2004-2005) - Served as the Project Health and Safety Manager – Major Project Lead for D&D of the Kadlec Medical Center DOE Building 748 (Emergency Decontamination Facility) located adjacent to the Kadlec Medical Center in Richland, Washington. Contract scope included preparation of all work plans, demolition plan, health and safety plan, and final characterization sampling and analysis plan (prepared in accordance Multi-Agency Radiation Survey and Site Investigation Manual [MARSSIM]); removal and decontamination of radiologically contaminated equipment and surfaces to meet DOE Order 5400.5 (Radiation Protection of the Public and the Environment) release requirements; characterization, removal, and packaging for transportation of hazardous materials and waste (lead, mercury, PCBs, creosote, tritium); and abatement of friable and nonfriable asbestos containing building materials. North Wind used a track excavator equipped with various buckets, specialized shears, and processors to demolish and size above grade concrete structure and piping, excavate of buried sumps, tanks, ductwork and remove underlying contaminated soils. Building 748 facility was located within 75 feet from the hospital surgical suite and is adjacent to the emergency entrance. All demolition tasks were completed with minimal impact to the ongoing Kadlec Medical Center operations.

Operable Unit 1-10 (V-Tanks) and CERCLA Soil Area Decontamination and Decommissioning Project, Idaho National Engineering and Environmental Laboratory, ID (2004) - Prepared all health and safety documentation including site-specific health and safety plans (HASP), job safety analysis (JSA), technical procedures, and hazard screening checklists for this D&D project that consisted of removal, transfer, and treatment of PCB contaminated radioactive liquid and sludges from underground tanks, piping systems, and vaults located at Test Area North at the Idaho National Engineering and Environmental Laboratory (INEEL).

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U.S. Army Yuma Proving Ground, Yuma, AZ (2004) – Provided all health and safety oversight for the U.S. Army Yuma Proving Ground investigation and remediation of 600-acre range area. The area was used for range practice, demolition activities, open detonation, and open burning of explosive ordinance. Unexploded ordinance (UXO) consisted of live rounds, submunitions, anti-personnel mines, and ordinance and explosives elements were nitrocellulose, TNT, RDX, and other nitrogen-based explosives.

SWSD TRU Waste Container Retrieval, DOE Hanford, WA (2004) – Provided procedure development, technical approach, and safety support services to Fluor Hanford, Inc. management in support of transuranic (TRU) container retrieval operations at the Hanford Solid Waste Storage and Disposal (SWSD) area. Services include review and revision of operating procedures for TRU container retrieval operations, container handling, and special handling for deformed, damaged, and breached containers. Included safety approach and contingencies for container handling and retrieval.

White Sand Missile Range (WSMR) Operational and Safety Services, Las Cruces, NM (2004) – Provided safety and health technical services to BAE Systems, Inc at the DOD White Sand Missile Range (WSMR). Services include reviewing and revising the site-wide health and safety documentation, preparing multimedia inspection criteria, conducting compliance safety and health audits of operational, support, and tenant facilities. Continued periodic support of the High Energy Laser Test Facility (HELSTF) with respect to operational safety issues is also being provided.

President/Principal Technical Consultant

Vortex Enterprises, Inc

Idaho Falls, Idaho

December 1998 – February 2004

Wrote and reviewed safety analysis reports, hazards assessments, health and safety plans, and other related safety programs for government and commercial clients. Managed and supervised industrial hygiene (IH), safety, and health physics personnel and provides project management, planning, regulatory support, and oversight to numerous Department of Energy (DOE) environmental restoration, waste management, construction, and decontamination & decommissioning (D&D) projects. Provided expertise in health, safety, and radiological engineering and hazard controls The DOE project listed above including onsite investigations, evaluations, and risk assessment studies. Conducted hazard/OSHA 1910 (General Industry) and 1926 (Construction) regulatory compliance assessments and develop strategies/products to resolve deficiencies and enhance programs. Served as the project manager, field team leader, and health and safety officer for drilling, remedial investigations, removal actions, construction, site investigations and D&D projects. Mr. Miller provided project management and direct nuclear operations, industrial hygiene, safety, environmental compliance, and radiological field oversight for remedial investigation/feasibility study (RI/FS), remedial design/remedial action (RD/RA), and radiological D&D projects. In addition to DOE projects, he provided health and safety services for construction, private industry remediation projects, and water damage and microbial investigations.

Water Damage and Microbial Assessments and Investigations (1998-2004) - Specialty project investigative work conducting water damage and microbial assessments for residential,

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commercial, insurance company, hotel and medical facility clients. Conducted investigative assessments utilizing physical inspection methods such as moisture meters, infrared thermal imaging camera, indoor air quality (IAQ) parameter meters, laboratory air samples for viable and non-viable fungi, bioaerosol sampling, and particle counters. Prepared assessment reports that included detailed remediation specifications and protocols in accordance with industry standards and conducted post-remediation assessments to ensure all remediation protocol requirements were met. Served as water damage and microbial consulting expert, wrote expert reports and was a speaker at the 2004 National Mold Symposium in Las Vegas, NV.

Bechtel BWXT Idaho, LLC (BBWI) Management and Technical Services (1998 – 2004) – Provided technical and management support services to Bechtel BWXT Idaho, LLC (BBWI) at the Department of Energy Idaho National Engineering and Environmental Laboratory (INEEL). Mr. Miller's support included serving as the project field team leader (FTL) and health and safety officer (HSO); writing Health and Safety Plans (HASPs), detailed technical procedures, system operability (SO) test procedures, and operational test plans. Ensuring project compliance with DOE Order 5480.19 Conduct of Operations, OSHA Voluntary Protection Program (VPP), Integrated Safety Management Systems (ISMS), nuclear facility operational training requirements, and related safety analysis documents. Served as the FTL for numerous site investigation, remediation, technology development/deployment, and testing at transuranic (TRU) mixed waste subsurface disposal areas. Participated as member of technology design team and lead field activities for all BBWI/DOE readiness assessments for start-up and implementation of new field Category 2 nuclear operations as described below.

OU 7-10 Glovebox Excavator Method Project (2003-2004) – \$90 million dollar project involved remote excavation and retrieval of TRU mixed Rocky Flats Plant waste drums and debris in OU 7-10 (Pit 9) located in the Subsurface Disposal Area (SDA) at the Radioactive Waste Management Complex (RWMC). Provided key health, safety and nuclear operational expertise including writing the comprehensive operational health and safety plan; evaluation of engineering controls; development and implementation of a test plans for cold and hot (radiological) operations, detailed operating and SO test procedures for a full-scale excavation mockup facility and OU 7-10 "hot" operations at the Pit 9 category 2 nuclear facility; wrote numerous facility system startup procedures (ventilation system, dust suppression system, air emissions system, and CCTV system); preparing all job hazard analysis for cold and hot operations and incorporated hazard mitigation steps into operating procedures; drafted all decontamination and dismantlement procedures (retrieval confinement structure (RCS) Fogging, RCS and packaging glovebox system (PGS) Housekeeping, Grouting the Waste Pit, RCS and PGS Characterization, Immobilizing Residual Contamination, and Decontamination of the RCS and PGS); and developed emergency plan contingencies for this state-of-the-art remote TRU mixed waste retrieval facility. The Glovebox Excavator Method Project was successfully completed eight months ahead of the enforceable regulatory milestone date.

Operable Unit 7-13/14 Integrated Probing Project (IPP) (2002-2004) - Project involved sonic drilling, sampling, and retrieval of TRU mixed waste samples buried in pits and trenches within the Subsurface Disposal Area (SDA) at Radioactive Waste Management Complex (RWMC). Mr. Miller prepared comprehensive Health and Safety Plans (HASPs) for cold tests and all OU 7-13/14 IPP

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“hot” (buried radioactive material areas) operational activities. Served on design team developing specialized exposure monitoring, engineering controls (HEPA drill string enclosure, and glove bags), and work practices designed to mitigate TRU mixed waste hazards. Presented health, safety, and exposure mitigation strategies to state of Idaho, DOE and EPA Region 10 regulators. Prepared detailed technical operating procedures and served as the Field Team Leader (FTL) for first-of-a-kind sonic drill rig installation of probes (lysimeters, tensiometers, vapor ports, visual, and moisture) within the TRU waste pits to obtain data related to radiological and organic contaminants and source term migration and transport. Served as the FTL for nuclear logging of probes (radioactive Cf source and neutron generator), core drilling and retrieval, glovebag sampling of installed instrumented probes (including developing the radionuclide source term for shipping of the leachate samples), extensive surface geophysical studies, and diffraction tomography. Additional served on engineering design team developing the second-generation instrumented probes. All document submittals for regulatory (DOE-ID/HQ, EPA-Region 10, and IDEQ) and project reviews were ahead of the project schedule and within or below the contractually defined budget.

Mr. Miller provided continuous technical and management services to Bechtel BWXT, Lockheed-Martin Idaho Technology Company and Parsons Infrastructure and Technology Group for the Operable Unit 7-10 (Pit 9) and Operable Unit 7-13/14 IPP projects 1998 - 2004.

Advance Mixed Waste Treatment Project (AMWTP), British Nuclear Fuels Ltd, DOE Idaho National Engineering and Environmental Laboratory, ID (2000-2001) – Provided industrial hygiene expertise to British Nuclear Fuels Ltd. (BNFL), Inc. for the \$400 million dollar Advance Mixed Waste Treatment Project (AMWTP) located at the DOE Idaho National Laboratory (INL). Served as the consulting CIH for industrial safety and hygiene programs during the retrieval, treatment, and disposal of more than 65,000 cubic meters of transuranic (TRU) mixed waste at this CERCLA site. Project activities include large scale excavation of clean overburden soils, retrieval of 55-gallon drum, boxes, and other TRU stacked waste containers, chemical and radiological screening and assaying of each container, transportation to processing facility, and size reduction (compaction) of containers for final shipment to repository. Focus areas of technical support included development of the personnel and area exposure assessments; sampling strategy for beryllium, heavy metals, silica, physical hazards; and oversight of the chronic beryllium disease prevention program (10 CFR 850). Additional support and oversight was provided in the areas of respiratory protection, atmospheric monitoring and testing, statistical analysis of exposure monitoring data, and supervision of staff industrial hygienists. Provided on-site management support services during DOE HQ Operational Readiness Review (ORR) and follow-up DOE-HQ ORR verification to resolve technical issues related to exposure assessments.

Industrial Hygiene Laboratory Audit (2000) - Conducted comprehensive laboratory audit of DataChem Laboratories Industrial Hygiene laboratory facilities and procedures (Salt Lake City, UT Lab) for BNFL, Inc. Prepared audit criteria based on AIHA LQAP; DataChem SOPs, IHQAP, QAPP, 29 CFR 1910.1450, 10 CFR 20, and previous audit findings. Generated detailed summary report with findings, conditions adverse to quality, and recommendations.

In-Situ Grouting (ISG) Project Comprehensive Sampling (2002) – Conducted all geotechnical and chemical analysis sampling for the In-Situ Grouting (ISG) project demonstration at the Idaho

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Engineering and Environmental Laboratory (INEEL) Radioactive Waste Management Complex (RWMC). Sampling included all geotechnical cylinder (compressive strength) and rare earth tracer samples associated with the high-pressure jet grouting of like-TRU waste forms at the RWMC study area. Samples were collected from the drill string, thrust blocks, drill string decontamination liquid, waste streams and high-volume air samplers placed around the high-pressure jet grouting rig to determine the extent and nature of potential TRU contamination via the rare earth tracers. Following a high-pressure grout pump failure, participated in the DOE Type B investigation to determine the root cause and contributing causes of pump failure focusing on the safety aspects.

INEEL CERCLA Disposal Facility Construction Health and Safety (1999) - Prepared Health and Safety Plan for the INEEL CERCLA Disposal Facility (ICDF) Operations. The HASP presented the systematic approach to identify and control ICDF operational hazards related to facility processes in accordance with 29 CFR 1910.120 (HAZWOPER) Treatment, Storage, and Disposal facility requirements.

(Private Client) Highly Flammable Material Sort, Segregate, Repackage, and Disposal Project (1999) - Conducted sorting, segregating, repackaging, and destructive preparation, and transportation activities for over 15,000 55-gallon drums of highly flammable nitrocellulose product at private client facility. Prepared a Site-Specific Safety and Health Plan, conducted detailed project-specific hazard-based training for workers, established engineering controls, personal protective equipment requirements, and monitoring requirements to ensure worker protection during handling, storage transport, and sizing operations.

DOE Pantex Plant Burning Ground Characterization and Remediation Project (2003) - Served as the decontamination and decommissioning (D&D) radiological task manager and health and safety officer for the remediation of high explosive and radiologically contaminated soil area at the DOE Pantex Plant, Burning Grounds Site, Amarillo, TX. Provided all radiological services including conducting in-progress, post excavation, and confirmation radiological surveys. Conducted all confirmation sampling in accordance with Multi-Agency Radiation Survey and Site Investigation Manual (MARSIMS) requirements. Approximately 300 yards of contaminated soil were excavated and loaded in roll-off bins for disposal within an expedited schedule resulting in early site closure.

In-Situ Grouting and In-Situ Vitrification Demonstration Projects (2002) – Prepared health and safety plans for the Idaho National Engineering and Environmental Laboratory (INEEL) In Situ Grouting (ISG) and In-Situ Vitrification (ISV) project demonstrations at the Radioactive Waste Management Complex (RWMC).

DOE Argonne West Cask Tunnel D&D Project (1999) - Developed industrial hygiene program and performed comprehensive air sampling and sound level evaluation in support of the Cask Tunnel Decontamination & Decommissioning (D&D) project located at the Idaho National Engineering and Environmental Laboratory (INEEL), Argonne West reactor facility. Air sampling was conducted for beryllium and respirable silica dusts and noise dosimetry/octave band analysis was performed during concrete and rock demolition tasks being conducted with a remotely operated hydraulic ram (Rubble Maker) to evaluate D&D worker exposures.

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(Commercial Client) Glovebox Fabrication Lead Brick Exposure Assessment (2002) - Performed air sampling and engineering control evaluation of glovebox lead brick cutting and fabrication facility. Compliance to OSHA Lead Standard (29 CFR 1910.1025) and respiratory protection standard (29 CFR 1910.134) was evaluated and ventilation system efficiency examined. Submitted comprehensive report with recommendation for improving engineering controls, work practices, and ventilation efficiency to reduce worker lead exposures in accordance with OSHA Lead Standard.

Yuma Proving Ground Open Burn/Open Detonation Project (1999) - Wrote comprehensive health and safety plan (HASP) for the OB/OD Burn Pad Soil Excavation project at the Department of the Army, Yuma Proving Ground (YPG), Yuma, AZ. Project involved excavation and characterization of soils areas contaminated with residue from explosives (TNT/high explosives) and propellant burning operations. This HASP included a comprehensive lead medical surveillance program and other specialized training requirements associated with YPG explosive site operations.

DOE INEEL Construction Subcontractor Services (1998-2003) - Provided full range of industrial hygiene and safety consulting services to INEEL construction subcontractors conducting facility upgrades, new facility construction, and D&D activities. Expertise in 29 CFR 1910 (General Industry) and 29 CFR 1926 (Construction) regulatory requirements provided. Additional services included, conducting industrial hygiene exposure assessments, serving as competent person for excavation, consulting on OSHA substance-specific standards, and conducting full-period exposure monitoring for airborne contaminants such as metals, silica, asphalt fumes/emission constituents, and other organic compounds in compliance with National Institute for Occupational Health and Safety (NIOSH) analytical methods.

Expert Consultant and Witness Services (200-2004) - Provided expert consultant and witness industrial hygiene services and testimony for attorneys regarding exposure assessment and other health and safety related cases.

Corporate Health and Safety Director
S.M. Stoller Corporation
Boulder, CO - Idaho Falls, ID Office
February 1995 – December 1998

Wrote all corporate health, safety, and radiological programs; wrote and implemented health and safety plans for remediation and decontamination and decommissioning (D&D) projects; prepared technical proposals/costs/teaming agreements; and presented technical approach for Stoller proposal team during formal government contracting proposal oral presentations. Served as Corporate H&S technical manager for projects and offices throughout the U.S. and represented Stoller at national remediation and D&D conferences. While serving as the Corporate Health and Safety Director, Stoller had zero recordable injuries/illnesses and no lost time injuries even while conducting complex large-scale excavation, remediation, and radiological D&D projects.

DOE Pantex Plant Remediation and Health and Safety Services (1997-1998) - Served as the environmental, Safety and health (ES&H) manager for two large scale environmental remediation

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projects at the DOE Pantex Plant. Health and Safety Plans (HASPs) were prepared for both the Accelerated Clean-up Activities (ACA) of chemically contaminated sites and Phase III of the decontamination and decommissioning (D&D) of Firing Site 5 (depleted uranium contaminated site and structures) projects. Mr. Miller prepared submittal to meet all technical requirements for large scale excavations, radiological D&D, high explosives handling, and other hazards analysis for approval by Pantex Environmental Restoration (ER) technical representatives. Served as the task manager for much of the Firing Site 5 characterization and D&D including, conducting U.S. Nuclear Regulatory Commission (NUREG) radiological surveys, excavation of contaminated soils, and demolition of existing structures to meet unrestricted release criteria of DOE Order 5400.5 and Multi-Agency Radiation Survey and Site Investigation Manual (MARSSIM) site closure requirements.

DOE INEEL Investigative-Derived Mixed Waste Sampling, Sorting, and Repackaging Project (1996-1997) - Served as subcontractor project manager (PM) and FTL for waste management facilities investigative-derived waste (IDW) sampling and repackaging at the Idaho National Engineering and Environmental Laboratory (INEEL). Project involved characterization, sorting, lab packaging of low-level and mixed radioactive waste. Work was performed in airborne radioactivity, radiation and contamination areas in Level C and B personal protective and anticontamination equipment. More than 200 waste streams and 3,000 samples were sorted, treated, repackaged, and lab packed for shipment to on/off-site TSD facilities for further treatment and/or disposal. No contamination migration or events occurred due to excellent radiological control work practices and rigorous implementation of conduct of operations.

DOE INEEL Waste Management Services (1996) - Served as subcontractor PM and FTL for several waste operations facility mixed waste projects. Projects included characterization of the ash following a critical burn campaign at the Idaho National Engineering and Environmental Laboratory (INEEL) Waste Experimental Reduction Facility (WERF) and “decompaction” of a WERF low-level waste bin to locate and remove a mixed waste container and conduct characterization of the surrounding waste. Tasks were identified as “critical” by the contractor and DOE facility managers based on meeting regulatory milestones and involved direct regulator participation. These tasks were conducted in Level B (supplied air) anticontamination personal protective equipment inside of high radiological contamination areas and airborne radioactivity areas. All tasks were successfully accomplished in a timely manner with no contamination migration. This allowed WERF to restart nuclear operations with minimal down-time and meet EPA regulatory milestones.

DOE Rocky Flats Plant T-1 Trench Remediation Project (1995) - Provided technical support to Stoller team performing Level B protective equipment remediation and repackaging activities at T-1 Trench at the DOE Rocky Flats Plant, Golden, Colorado.

DOE Pantex Plant Firing Site 5 Radiological Characterization and D&D Project (1997-1998) - Served as the Health and Safety Manager and assistant Project Manager for the DOE Pantex, Firing Site 5, Depleted Uranium (DU) cleanup project to meet DOE Order 5400.5 (Radiation Protection of the Public and the Environment) and Multi-Agency Radiation Survey and Site Investigation Manual (MARSSIM) site closure requirements. Wrote several health and safety plans for different phases of this project, developed job hazard analysis, and provided health, safety, and radiological oversight for all project tasks. This project required obtaining more than 250,000 radiological

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surface readings with board mounted radiation detectors and collecting of more than 1,000 surface and subsurface soil samples for analysis. Once the site was fully characterized, over 13,000 cubic feet of DU radiologically contaminated soils and fragments were excavated with trackhoes, the two remaining FS-5 structures (shot pad and concrete bunker) were surveyed, contaminated concrete scabbled (18 ton shot pad removed), and the remaining clean bunker structure demolished in place.

DOE Pantex Plan High Explosive/Radiation Remediation Project (1997) - Served as the Health Safety Manager for the Pantex High Explosive/Radiation (HE/RAD) sites remediation project. Wrote all health and safety required documents including, health and safety plan, task hazard analysis, high explosive fragment handling procedures, decontamination plans, and site-specific training requirements. Project involved remediation of soils contaminated with high explosives (HDX, RDX, TNB and TNT) and heavy metals.

DOE Pantex Plant Ditches ICM Remediation Project (1997) - Served as the Health and Safety Manager for the Pantex Ditches Interim Corrective Measures (ICM) remediation project. Wrote the health and safety plan, job hazard analysis, and related documentation for the work plan. More than 5,500 surface and subsurface soil samples were collected and over 22,000 separate analysis conducted by the on-site mobile analytical laboratory. Following contamination delineation, more than 400,000 cubic feet of contaminated soil was excavated at depths to 30+ feet and hauled from the sites for disposal at a hazardous waste landfill.

DOE INEEL Legacy Waste Management Project (1996-1997) - Served as a principal participant in the dispositioning of more than 1,845 legacy samples (in approximately four months) and 147,747 pounds of bulk legacy waste to the appropriate Idaho National Engineering and Environmental Laboratory (INEEL) or off-site EPA-permitted treatment, storage and disposal facility as part of the technical team providing support to Lockheed-Martin's Environmental Restoration Department. Project included providing turn-key services to characterize, sort, and package waste and samples; waste management; writing hazardous waste determinations; entering all shipping data into the INEEL IWITS shipping system; coordinating the shipment of legacy samples and waste; dispositioned samples back to the area of contamination; and creating close-out files to document each sample of waste "Lot" disposition action to meet EPA regulatory requirements. Additionally, performed solidification of low-level waste streams using cement to stabilization prior to shipment to the INEEL Radioactive Waste Management Complex (RWMC) facility in accordance with INEEL radiological waste acceptance criteria requirements.

DOE INEEL CFA OU 4-17 and OU 4-42 Site Characterization and Remediation Project (1996) - Served as the subcontractor project manager and field team leader (FTL) providing technical support services to Parsons Infrastructure and Technologies Group during the removal actions at the CFA Operable Unit (OU) 4-17/47 and OU 4-42 petroleum contaminated sites. Services included: conducting field screening of contaminated soils using PetroFlag™ immunoassay screening kits to provide "real time" evaluation of cleanup activities, writing Sampling and Analysis Plan document and revisions to meet changing field requirements, and preserving, packaging, shipping all samples to meet 48-hour analysis requirements. Additionally, collected over 100 laboratory confirmation samples ensure excavation of contaminated soil met the risk-based corrective action (RBCA) goals.

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DOE INEEL WAG 4 Comprehensive Remedial Investigation/Feasibility Study Project - INEEL Served as the subcontractor Project Manager (PM) and field team leader (FTL) for Waste Area Group (WAG) 4 comprehensive Remedial Investigation/Feasibility Study (RI/FS) activity. This project included sampling of over 600 surface and subsurface soil locations using hand augering, drilling, and trenching methods to meet RI/FS data requirements. Analysis for hazardous and radiological analytes was conducted. Responsible for all aspects of drilling subcontracting, sample collection, packaging and shipment of analytical samples. Although the scope of work was increased by approximately 20% midway through the project, the project was still completed two weeks ahead of schedule and under the original budget.

DOE INEEL CFA-04 Mercury Retort Sampling Project (1996) - Provided technical support to Parsons Infrastructure during the pumping and transport of 18,000 gallons of mercury contaminated water and sludge at the Central Facilities CFA-04 Mercury Retort site and direct field sampling support for characterization of Waste Area Group 4 Time Critical Removal Action at the Operable Units CFA-13, CFA-15, CFA-42, and CFA-47 sites at the Idaho National Engineering and Environmental Laboratory.

DOE INEEL In-situ Grouting Soil Isolation Project (1995) - Served as the subcontractor project manager providing sampling and analysis support, laboratory statement of work development, waste management, health and safety support, and training services for the Soil Isolation Project (Cold Test Pit and Acid Pit) at the Idaho National Engineering and Environmental Laboratory (INEEL). A patented in-situ stabilization technology was used to inject high-pressure grout in buried waste to create a permanent stabilization form for radioactive and hazardous (mixed) waste located in the RWMC Acid Pit. Mr. Miller collected all contamination control samples including - high volume air samples, swipe samples of the drill string and thrust block surfaces, grout returns, project waste streams, decontamination water, and HEPA filter system. All samples were collected, preserved, packaged and shipped within the analytical holding times and shipped to one on-site and five off-site laboratories.

DOE INEEL RWMC Acid Pit Sonic Drilling Project (1995) - Served as subcontract project manager for sonic drilling and coring of a Tech™ grout stabilized subsurface monolith at the Idaho National Engineering and Environmental Laboratory (INEEL) Acid Pit (Operable Unit 7-13/14). The “Soilcrete” monolith was created using a high-pressure jet grout injection method to stabilize subsurface metal, organic and radiological contaminants. Responsible for conducting all core logging, drill steel decontamination, characterization and subsampling of cores, packaging and shipping analytical samples, and waste management tasks.

Technical Leader, Industrial Hygiene

Lockheed-Martin Idaho Technologies Company (LMITCO)

Department of Energy, Idaho National Engineering and Environmental Laboratory

Idaho Falls, Idaho

October 1994 -February 1995

Directed staff of six industrial hygienists and three health and safety technicians supporting environmental restoration, waste management, and decontamination and decommissioning (D&D) activities at the Idaho National Engineering and Environmental Laboratory (INEEL). Managed department industrial hygiene programs and budgets, served as cognizant industrial hygiene

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professional on all document review committees, LMITCO subject matter expert for 29 CFR 1910.120, Hazardous Waste Operations and Emergency Response (HAZWOPER) regulation ensuring federal and DOE regulatory compliance. Represented the INEEL at national hazardous waste conferences, DOE-HQ working groups, technical issue teams, and HAZWOPER committees. Served on ad hoc environmental safety and health committees, that developed “fast track” health and safety procedures as requested by executive management.

Technical Leader, Industrial Hygiene

EG&G Idaho, Inc.

Department of Energy, Idaho National Engineering Laboratory Idaho Falls, Idaho

February 1994 -October 1994

Same position description as with Lockheed-Martin Idaho Technologies Company with the following additions: Drafted first model (template) Idaho National Engineering Laboratory (INEL) environmental restoration (ER) health and safety plan (HASP) to meet 29 CFR 1910.120, HAZWOPER regulatory requirements that was used by the ER Group and subcontractors for all INEL Remedial Investigation/Feasibility Study (RI/FS), Remedial Design/Remedial Action (RD/RA), and decontamination and decommissioning (D&D) projects. Developed and delivered ER and D&D hazard-specific HAZWOPER training course to workers, field team leaders, and project managers. Participated on DOE-Wide HQ Chemical Vulnerability Assessment evaluating chemical vulnerabilities throughout the DOE complex. Wrote sections of final report and recommendation for mitigating potential chemical vulnerabilities throughout the DOE complex.

Senior Engineer

EG&G Idaho, Inc.

Environmental Restoration & Waste Management Department (ER&WM)

Department of Energy, Idaho National Engineering Laboratory

March 1993 - February 1994

Idaho Falls, Idaho

Recognized, evaluated, and controlled all physical, chemical, and biological hazards resulting from environmental restoration (ER) and decontamination and decommissioning (D&D) projects at Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) sites on the Idaho National Engineering Laboratory. Conducted risk assessments of mixed hazardous waste (chemical and radiological) sites, designed engineering controls and process modifications to minimize worker exposures, determined all personal protective equipment requirements for project tasks, developed strategies for state-of-the-art personnel and area monitoring in mixed waste environments, authored and served as technical reviewer and editor for all project health and safety documentation, and approved work control documents (safe work permits, hot work permits, construction permits, etc.). Mr. Miller directly supported D&D projects at the following facilities: Test Area North (TAN) Operable Units 1-04, 1-05, 1-10, Radioactive Waste Management Complex (RWMC), Test Reactor Area (TRA), Chemical Processing Plant (CCP), Auxiliary Reactor Area (ARA) I/II/III, Special Power Excursion Reactor Test (SPERT) IV, Power Burst Facility (PBF), and Waste Area Group (WAG) 10 site-wide projects.

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**Director, Technical Services, Bioenvironmental Engineering
United States Air Force (USAF), 509th Operations Group, 509th Medical Group
Whiteman Air Force Base, Missouri
January 1992 -March 1993**

B-2 Stealth Bomber Industrial Hygiene Director - As the 509 B-2 Stealth Bomber Program industrial hygiene director, reviewed Title I/II facility designs and conducted comprehensive occupational health evaluations of 20 new aircraft maintenance and support facilities housing 1,400 workers. Performed risk assessments on all hazardous processes and materials including unique B-2 bomber “skin” composite material exposures and attended USAF toxicological workshops on stealth technology exposures and thermo-degeneration (fire) constituents. Developed all new aircraft composite exposure monitoring programs and provided medical surveillance recommendations to Aerospace Medicine Commander and ensured implementation of new engineering controls.

Base Radiation Safety Officer - As the base radiation safety officer, controlled all aspects of comprehensive base radiological protection program in accordance with U.S. Air Force and Nuclear Regulatory Commission (NRC) requirements. Conducted ionizing and non-ionizing radiation surveys (industrial, medical x-ray, special nuclear material, sealed sources, radar, and laser) and ensured compliance with two NRC radioactive material licenses. Established and managed base radiation protection program requirements (ALARA goals, training, etc), and monitored whole body, extremity, and neutron doses of more than 50 radiation workers in 7 exposure areas through base dosimetry program. Briefed 509th Operations Group Base Command on Radiation Safety Program.

Special Projects Manager - Served as Bioenvironmental Engineering unit advisor and trainer for industrial hygiene technical matters. Conducted risk assessments to identify teratogenic reproductive hazards for all pregnant workers on base and provided duty restrictions to attending physician. Directed all high-profile occupational incident and illness investigations (radon, radiation exposures, asbestos, indoor air quality, surgical suite HVAC problems, tuberculosis quarantines, bioaerosol issues, and carcinogenic aircraft composite constituent studies). Worked with Chief of Aerospace Medicine to determine occupational exposure medical surveillance and monitoring requirements.

**Director, Industrial Hygiene Section, Bioenvironmental Engineering
United States Air Force, 509th Operations Group, 509th Medical Group
Whiteman Air Force Base, Missouri
March 1991 - January 1992**

Planned, implemented, and monitored adequacy of comprehensive occupational health program supporting 90 industrial facilities, 40 missile launch sites, and 2 reserve bases. Scheduled and assigned workload for five industrial hygiene technicians. Coordinated all environmental and special projects studies (air, soil, water, noise, radiation, asbestos, ventilation). Managed several base programs including, respiratory protection, hazard communication, confined space, and radiation dosimetry. Served with occupational physician on Occupational Health Exposure Committee, which established medical surveillance and biological monitoring requirements for more than 3,000 workers. Reviewed plans and hazardous materials requests for environmental

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and health directives compliance, determined hazard codes for carcinogen product usage, handling and disposal requirements, evaluated engineering controls, and recommended personal and area exposures.

**Manager, Industrial Hygiene Section, Bioenvironmental Engineering
Unite States Air Force, 52nd Tactical Fighter Wing, 52nd Aerospace Medical Group
Spangdahlem Air Force Base, (West) Germany
November 1987 - March 1991**

Industrial Hygiene Section Manager - Scheduled and prioritized industrial hygiene evaluations and special projects for 130 industrial facilities and 3 support bases. Assigned workload to four industrial hygiene technicians and managed human and technical resources to ensure its timely completion. Conducted special surveys and incident and accident investigations and wrote summary reports. Directed training and prepared technical guidance for implementation of base occupational exposure programs (asbestos, hazard communication, risk assessments, respiratory protection). Tracked on-site and off-site environmental monitoring status on database and determined sampling priorities, strategies, and appropriate methods. Researched toxicology of highly hazardous products and substituted less toxic products for use. Served on base disaster response team (aircraft and weapon accidents, chemical and fuel spills, and fire incidents). Negotiated with local German union representatives regarding use of protective equipment and exposure monitoring requirements for base construction trades activities.

Industrial Hygienist - Conducted baseline, annual, and special occupational health evaluations of aircraft fabrication, maintenance, launch, weapons, radar, communication, vehicle maintenance, allied construction trades, welding, and medical center facilities. Collected exposure data, updated workplace and medical exposure casefiles. Prepared occupational workplace summary reports for the 52nd Medical Group flight surgeon and base medical director addressing engineering controls, protective equipment adequacy, chemical exposure risk assessments, ergonomics, and overall USAF, OSHA, and EPA directive compliance.

Emergency Response Team - Served as member of base emergency response team, which advised on-scene commander on establishing toxic corridors, health hazards, required protective equipment, and environmental impact from spills, aircraft accidents, weapon incidents, and special nuclear material loss or releases including determining radiation stay times, tracking radiological doses, and measuring fallout to establish radiation and contamination boundaries.

Wartime Duties - Wartime duties consisted of providing all nuclear, biological, and chemical (NBC) exposure monitoring to base commander and medical director during North Atlantic Treaty Organization (NATO) and U.S. Air Force Europe attacks in theater, establishing duty station at 2nd echelon hospital, and deployed wartime locations. Served on 2nd echelon hospital decontamination team decontaminating patients arriving at hospital, performed unexploded ordinance (UXO) sweeps following conventional warfare attacks, utilized chemical warfare agent (CWA) monitoring kits following chemical attacks, and performed all radiological monitoring and stay-time calculations following nuclear device detonations or radioactive fallout.

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Professional Development and Training

Attended more than 80 American Industrial Hygiene Association (AIHA) professional development course (PDCs) (continuing education) for American Board of Industrial Hygiene (ABIH) Certified Industrial Hygienist (CIH) certification maintenance. Course in industrial hygiene, exposure assessment, and other technical courses have completed annually since 1993 in the fields of construction safety, accident investigations, medical surveillance, exposure modeling and banding, biostatistics, epidemiological studies, occupational exposure limit adjustment, remediation technology and engineering, microbial and bioaerosol investigations, legal and expert witness/testimony, Biosafety Level 3 laboratory assessments and practices, and other industrial hygiene and safety related topics. A complete list of PDC courses completed is available upon request.

Department of Energy-Specific training includes -

- DOE Radiological Worker I & II Instructor (Mr. Miller was a DOE RW I & II Training instructor to DOE and contractors at the DOE Idaho National Laboratory)
- DOE Radiological Worker II
- Nuclear Criticality Safety
- Radiological Glovebag Installation, Inspection, and Use
- DOE Conduct of Operations and Maintenance
- OSHA 40-Hour HAZWOPER (with 8-hour refresher courses)
- OSHA HAZWOPER Site Supervisor
- OSHA Confined Space Entrant, Attendant, and Job Entry Supervisor
- Respirator Qualification Training (APR and supplied air)
- Medic 1st Aid/CPR
- HAZMAT General Awareness (DOT Sample Shipping)
- EPA CERCLA/RCRA TAA and SAA Inspections
- OSHA Institute - Indoor Air Quality Investigations

U.S. Air Force Training includes but not limited to:

- Industrial Hygiene Advanced Topics, USAF School of Aerospace Medicine
- Radiological Health Physics Course, USAF School of Aerospace Medicine
- Bioenvironmental Engineering Technician Course, USAF School of Aerospace Medicine.

Presenter and Instructor Courses

- Course Developer and Instructor: AIHA Professional Conference on Industrial Hygiene (PCIH) 2010, *WS-4 Mock Trial: Multi-employer Work Site*, Dallas, TX October 11, 2010.
- Arranger, Moderator, Presenter: American Industrial Hygiene Conference and Exhibition (AIHce 2009), Round Table - *249 Mock Trial: Liability Issues for the Industrial Hygienist*, June 4, 2009,

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Toronto, Canada.

- Presenter: AIHce 2008, Round Table - *209 Mock Trial: Meth Lab Cleanup*, June 2, 2008, Minneapolis, MN.
- Course Developer/Instructor: AIHA Teton Local Section Professional Development Conference, *OSHA Multi-Employer Worksite Compliance*, December 9, 2005, Idaho Falls, ID.
- Speaker: Advanced Perspectives in Mold Prevention & Control: *Crafting Professional Judgment for Assessment & Remediation Approaches to Varying Occupancies/ Building Types* (November 7-9, 2004 Riviera Hotel and Casino, Las Vegas, Nevada)
- Course Developer and Instructor: 2004 Idaho Governor's Health and Safety Conference Mold Investigation and Remediation, University of Idaho, Pocatello, ID.

Other Specialties/Experience

Extensive experienced in operation of multiple industrial hygiene, environmental, and radiological monitoring and sampling instruments and equipment.

- Air/Direct Reading: personal and area air samplers, multi-gas meters, PID, FID, IR, photo-acoustical analyzer, portable GC, aerosol, thermal anemometer (ventilation), optical and laser particle counters.
- Environmental Media Characterization: conductivity/turbidity/dissolved oxygen/pH meters, coliwasa, bailers, environmental immuno-assay/ kits, soil augers (split, core, sludge, tube), liquid sampling pumps.
- Radiological Instruments: *Ionizing Instruments* - ion chambers, GM, scintillation, proportional counters, panoramic survey meter, *Non-Ionizing instruments* - infrared, radio frequency, radar, laser energy measurement instrumentation.
- Physical Hazard Monitoring: Noise meters/dosimetry, heat stress (WBGT), ergonomic stressors, vibration, infrared thermoimaging.
- Microbial Investigation/Sampling/Remediation: Culturable and nonculturable air sampling methodologies; collection of microbial specimens through direct tape lift, bulk sampling, dust collection; invasive inspection methods using borescopes, wall samplers; noninvasive inspection methods using non/penetrating moisture meters, infrared thermoimaging cameras, relative humidity measurements. Preparation of remedial specifications including establishing containment and decontamination areas, removal protocols, pre- and post-remedial sampling, and HVAC assessments.

Hardware and Software Capabilities

- Skilled in the use of Internet ES&H resources (toxicological registries and databases, exposure modeling, statistical exposure analysis, modeling, and program development)
- Proficient with various software packages (EXEL, WORD, Power Point, ACCESS, exposure modeling) and their applications for occupational and environmental hygiene.

Professional Organizations

- Past Chair, Committee Member, American Industrial Hygiene Association (AIHA), Law Committee

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- Past Chair, Member, AIHA Consultants Special Interest Group
- Committee Member, AIHA Indoor Environmental Quality Committee
- Past Committee Member, AIHA Environmental Affairs Committee
- Member, American Industrial Hygiene Association.
- Member, Health Physics Society
- Associate Member, American College of Occupational & Environmental Medicine.

Security Clearance (previously held)

- Department of Energy (DOE) “Q” Clearance
- Department of Defense “Top Secret” Clearance)

Work History

2013 – Present: Health and Safety Services, LLC

2011 – 2013: North Wind Solutions, LLC

2009 – 2011: North Wind Group

2004 – 2009: North Wind, Inc.

1998 – 2004: Vortex Enterprises, Inc.

1995 – 1998: S.M. Stoller Corporation

1994 – 1995: Lockheed Martin Idaho Technologies Company

1993 – 1994: EG&G Idaho, Inc.

1991 – 1993: U.S. Air Force (USAF), Bioenvironmental Engineering, Whiteman Air Force Base, MO

1987 – 1991: USAF, Bioenvironmental Engineering, Spangdahlem Air Force Base, Germany

Publications

- DOE Report, "Chemical Safety Vulnerability Working Group Report," DOE/-0396P, September 1994 – as member of US DOE-HQ Chemical Safety Vulnerability Working Group.
- B.P. Miller, *Engineering Design File - OU 7-10 Staged Interim Action Phase II Respiratory Protection Requirements*, EDF-ER-171, July 6, 2000.
- Numerous Detailed and Standard Operating Technical Procedures (TPRs), project plans (PLNs), list (LST) documents, and Test Plans for DOE prime contractors at the INL (see list below).
- Numerous Health and Safety Plans for characterization, remediation, D&D, and treatment projects at DOE, DoD, BLM, and USACE facilities (see projects below).
- Sampling and Analysis Plans for private sector clients including matrices such as sand blasting media, hazardous sludges, petroleum contaminated soils, microbial, fungal, groundwater, etc.
- More than 200 microbial investigation and remedial specification documents for microbial affected residential, commercial, and industrial structures.
- B.P. Miller, 1992, Central Missouri State University Library, Department of Safety Science and Technology Technical Reference, *Radiological Hazards: Evaluation and Control*.

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Partial List – Technical Procedures & Health and Safety Plans

Department of Energy Projects

Technical Procedures/Test Plans

- Technical Procedure, TPR-154, “OU 7-13/14 Integrated Probing Project Operational Support Activities”, DOE Idaho National Engineering & Environmental Laboratory, Environmental Restoration, May 21, 2001.
- Technical Procedure, TPR-1664, “Type B Probe Testing at the Cold Test Pit”, DOE Idaho National Engineering & Environmental Laboratory, Environmental Restoration, November 30, 2000.
- Technical Procedure, TPR-1669, “Type B Probe Datalogging Procedure”, DOE Idaho National Engineering & Environmental Laboratory, Environmental Restoration, April 2, 2003.
- Technical Procedure, TPR-1672, “Type B Soil Moisture Probe Installation”, DOE Idaho National Engineering & Environmental Laboratory, Environmental Restoration, May 30, 2002.
- Technical Procedure, TPR-1672, “Type B Visual Probe Installation”, DOE Idaho National Engineering & Environmental Laboratory, Environmental Restoration, July 16, 2001.
- Technical Procedure, TPR-1674, “Glove Bag Supported Sample Acquisition from Type B Probes in the Subsurface Disposal Area”, DOE Idaho National Engineering & Environmental Laboratory, Environmental Restoration, August 16, 2001.
- Technical Procedure, TPR-1692, “Type B+ Probe Testing”, DOE Idaho National Engineering & Environmental Laboratory, Environmental Restoration, September 3, 2002.
- Technical Procedure, TPR-1760, “Type A Probe Installation”, DOE Idaho National Engineering & Environmental Laboratory, Environmental Restoration, May 29, 2003.
- Technical Procedure, TPR-6875, “Data Acquisition System Test For OU 7-13/14 Probing Project”, DOE Idaho National Engineering & Environmental Laboratory, Environmental Restoration, June 11, 2003.
- Technical Procedure, TPR-1763, “Type B Tensiometer Operation and Maintenance”, DOE Idaho National Engineering & Environmental Laboratory, Environmental Restoration, January 24, 2002.
- Technical Procedure, TPR-178, “OU 7-13/14 Site Preparation”, DOE Idaho National Engineering & Environmental Laboratory, Environmental Restoration, April 23, 1999.
- Technical Procedure, TPR-179, “Probehole Installation OU 7-13/14”, DOE Idaho National Engineering & Environmental Laboratory, Environmental Restoration, April 23, 1999.
- Technical Procedure, TPR-1650, “Use of the Gamma Spectroscopy Logging System at the RWMC”, DOE Idaho National Engineering & Environmental Laboratory, RWMC Technical, September 24, 2001.
- Technical Procedure, TPR-1650, “Use of the Gamma Spectroscopy Logging System at the RWMC”, DOE Idaho National Engineering & Environmental Laboratory, RWMC Technical, September 24, 2001.
- Technical Procedure, TPR-7481, “V-Tanks – Supernate Consolidation, Sludge Removal and Tank Cleaning”, DOE Idaho National Engineering & Environmental Laboratory, Technical, November 30, 2004.

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- Technical Procedure, TPR-7515, “V-Tanks – Operate Off-Gas System”, DOE Idaho National Engineering & Environmental Laboratory, Technical, November 22, 2004.
- Technical Procedure, TPR-7514, “V-Tanks – Operate Consolidation Tank Systems and Perform Phase I Treatment”, DOE Idaho National Engineering & Environmental Laboratory, Technical, November 23, 2004.
- Technical Procedure, TPR-1629, “Overburden Screening”, Glovebox Excavation Method Project, DOE Idaho National Engineering & Environmental Laboratory, RWMC Technical, May 2, 2002.
- Technical Procedure, TPR-6649, “Geophysical Tomography”, Glovebox Excavation Method Project, DOE Idaho National Engineering & Environmental Laboratory, RWMC Technical, July 12, 2002.
- Technical Procedure, TPR-1697, “Waste Handling and Overpacking in Approved RCRA/CERCLA Storage Areas”, Glovebox Excavation Method Project, DOE Idaho National Engineering & Environmental Laboratory, RWMC Technical, April 30, 2003.
- Technical Procedure, TPR-1791, “OU 7-10–Initial Facility Startup”, Glovebox Excavation Method Project, DOE Idaho National Engineering & Environmental Laboratory, RWMC Technical, July 31, 2003.
- Technical Procedure, TPR-1788, “OU 7-10–Setup and Operate the Standby Power System”, Glovebox Excavation Method Project, DOE Idaho National Engineering & Environmental Laboratory, RWMC Technical, June 17, 2003.
- Technical Procedure, TPR-1789, “OU 7-10—Drum Repackaging”, Glovebox Excavation Method Project, DOE Idaho National Engineering & Environmental Laboratory, RWMC Technical, August 6, 2003.
- Technical Procedure, TPR-1792, “OU 7-10–Handle and Remove Overburden”, Glovebox Excavation Method Project, DOE Idaho National Engineering & Environmental Laboratory, RWMC Technical, August 4, 2003.
- Technical Procedure, TPR-1793, “OU 7-10—Retrieve Waste”, Glovebox Excavation Method Project, DOE Idaho National Engineering & Environmental Laboratory, RWMC Technical, June 10, 2003.
- Technical Procedure, TPR-1794, “OU 7-10—Waste Handling, Sampling, and Packaging”, Glovebox Excavation Method Project, DOE Idaho National Engineering & Environmental Laboratory, RWMC Technical, August 5, 2003.
- Technical Procedure, TPR-1795, “OU 7-10—Drum-In Materials and Drum Changeout”, Glovebox Excavation Method Project, DOE Idaho National Engineering & Environmental Laboratory, RWMC Technical, June 18, 2003.
- Technical Procedure, TPR-1796, “OU 7-10–Glove Change-Out Operations”, Glovebox Excavation Method Project, DOE Idaho National Engineering & Environmental Laboratory, RWMC Technical, August 1, 2003.
- Technical Procedure, TPR-1797, “OU 7-10–Waste Sample Storage and Transfer”, Glovebox Excavation Method Project, DOE Idaho National Engineering & Environmental Laboratory, RWMC Technical, August 6, 2003
- Technical Procedure, TPR-1798, “OU 7-10–Underburden Sampling and Sample Transfer”, Glovebox Excavation Method Project, DOE Idaho National Engineering & Environmental Laboratory, RWMC Technical, June 23, 2003

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- Technical Procedure, TPR-1799, “OU 7-10—Bag-In/Bag-Out Operations”, Glovebox Excavation Method Project, DOE Idaho National Engineering & Environmental Laboratory, RWMC Technical, August 6, 2003
- Technical Procedure, TPR-1801, “OU 7-10 – Set Up and Operate the Dust Suppression System”, Glovebox Excavation Method Project, DOE Idaho National Engineering & Environmental Laboratory, RWMC Technical, August 1, 2003
- Technical Procedure, TPR-1802, “OU 7-10—Set Up and Operate the CCTV System”, Glovebox Excavation Method Project, DOE Idaho National Engineering & Environmental Laboratory, RWMC Technical, July 8, 2003
- Technical Procedure, TPR-1803, “OU 7-10—Operate The Fissile Material Monitor”, Glovebox Excavation Method Project, DOE Idaho National Engineering & Environmental Laboratory, RWMC Technical, August 5, 2003
- Technical Procedure, TPR-1804, “OU 7-10—Drum Assembly”, Glovebox Excavation Method Project, DOE Idaho National Engineering & Environmental Laboratory, RWMC Technical, August 1, 2003.
- Technical Procedure, TPR-1805, “OU 7-10—Set Up and Operate Emissions Monitoring System”, Glovebox Excavation Method Project, DOE Idaho National Engineering & Environmental Laboratory, RWMC Technical, August 1, 2003.
- Technical Procedure, TPR-1806, “OU 7-10—Operation of the Ventilation System”, Glovebox Excavation Method Project, DOE Idaho National Engineering & Environmental Laboratory, RWMC Technical, July 3, 2003.
- Technical Procedure, TPR-1845, “Canberra CAS-300N Operation and Testing”, Glovebox Excavation Method Project, DOE Idaho National Engineering & Environmental Laboratory, RWMC Technical, May 29, 2003.
- Technical Procedure, TPR-1832, “OU 7-10—Characterization of Facility Structures”, Glovebox Excavation Method Project D&D, DOE Idaho National Engineering & Environmental Laboratory, RWMC Technical, November 20, 2003.
- Technical Procedure, TPR-1833, “OU 7-10 – Decontamination of RCS”, Glovebox Excavation Method Project D&D, DOE Idaho National Engineering & Environmental Laboratory, RWMC Technical, July 1, 2003.
- Technical Procedure, TPR-1834, “OU 7-10 – Decontamination of the PGS”, Glovebox Excavation Method Project D&D, DOE Idaho National Engineering & Environmental Laboratory, RWMC Technical, July 28, 2003.
- Technical Procedure, TPR-1835, “OU 7-10—Grouting the Waste Zone”, Glovebox Excavation Method Project D&D, DOE Idaho National Engineering & Environmental Laboratory, RWMC Technical, December 18, 2003.
- Technical Procedure, TPR-1836, “OU 7-10 – Immobilization of Residual Contamination”, Glovebox Excavation Method Project D&D, DOE Idaho National Engineering & Environmental Laboratory, RWMC Technical, June 12, 2003.
- Technical Procedure, TPR-1837, “OU 7-10—Shutdown of WES Equipment”, Glovebox Excavation Method Project D&D, DOE Idaho National Engineering & Environmental Laboratory, RWMC Technical, November 20, 2003.
- Technical Procedure, TPR-7370, “OU 7-10 Fogging the WMF-671 Primary Containment”, Glovebox Excavation Method Project D&D, DOE Idaho National Engineering & Environmental Laboratory, RWMC Technical, December 20, 2003.

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- Emergency Alarm Response Procedure, EAR-108, “OU 7-10–Respond to Fire”, Glovebox Excavation Method Project, DOE Idaho National Engineering & Environmental Laboratory, RWMC: OU 7-10 Emergency Alarm Response Manual, October 19, 2003.
- Emergency Alarm Response Procedure, EAR-127, “OU 7-10–Respond to Criticality Alarm”, Glovebox Excavation Method Project, DOE Idaho National Engineering & Environmental Laboratory, RWMC: OU 7-10 Emergency Alarm Response Manual, October 19, 2003.
- Emergency Alarm Response Procedure, EAR-128, “OU 7-10–Respond to Drum Explosion”, Glovebox Excavation Method Project, DOE Idaho National Engineering & Environmental Laboratory, RWMC: OU 7-10 Emergency Alarm Response Manual, October 19, 2003.
- Emergency Alarm Response Procedure, EAR-676, “Abnormal Radiological Situations”, Glovebox Excavation Method Project, DOE Idaho National Engineering & Environmental Laboratory, RWMC: OU 7-10 Emergency Alarm Response Manual, October 19, 2003.
- Emergency Alarm Response Procedure, EAR-676, “Abnormal Radiological Situations”, Glovebox Excavation Method Project, DOE Idaho National Engineering & Environmental Laboratory, RWMC: OU 7-10 Emergency Alarm Response Manual, October 19, 2003.
- Test Plan, Requirements and Test Plan for System Operability and Integrated Testing for the OU 7-10 Glovebox Excavator Method Project, ID-PLN-1154, December 4, 2003.

DOE Program & Project Health & Safety Plans

- WSHPD, “Worker Safety and Health Program Description for Idaho National Laboratory Construction Projects,”, 10 CFR 851 Compliance, Department of Energy, September 21, 2010.
- “Safety Management System and Environmental, Safety, and Health Program for Idaho National Laboratory Construction Projects,” Accelerated Retrieval Project VII (ARP VII) Facility and Ancillary Structures over Pit 10 West at the Subsurface Disposal Area (SDA), SMP-NWS, Department of Energy, September 9, 2010.
- “Construction Safety Plan for Idaho National Laboratory Construction Projects,” Accelerated Retrieval Project VII (ARP VII) Facility and Ancillary Structures over Pit 10 West at the Subsurface Disposal Area (SDA), SMP-NWS, Department of Energy, December 10, 2010.
- SSEHASP-10005-004, “Site-Specific Environmental Health and Safety Plan Drilling and Installation of Wells In support of Task Order 4,” Los Alamos National Laboratory, July 16, 2010.
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Appendix #14

8. There are numerous peer reviewed studies on the benefits of a plant-based diet and lifestyle interventions in fighting disease.¹
9. Currently, as President and CEO of Houston Associates of Cardiovascular Medicine, PA, I am responsible, with my staff, for the oversight and compliance with state and federal workplace and patient safety laws applicable to all healthcare facilities.
10. Therefore, I have general knowledge and working experience with the standards, regulations and guidance provided by the Department of Labor, Occupational Safety and Health Administration (OSHA). As part of my day-to-day duties as a healthcare clinical practitioner and compliance administrator during this Covid Pandemic, I constantly worked to ensure that my healthcare facility complies with patient and employee workplace safety standards.
11. Since March 2020 when the Pandemic was declared, I have treated many patients who have either tested positive for the virus that causes Covid-19, or have had Covid-19 related symptoms and I make this affidavit based on my clinical patient experience as well as based on my knowledge and experience as a practicing physician.
12. I have been retained by Attorney Jo Saint-George and Attorney Donna Este-Green of the non-profit organization the Women of Color for Equal Justice to give expert opinions based on my knowledge and experience as a licensed medical professional.
13. Specifically, I have been retained to provide opinions regarding whether or not employees who work in a healthcare setting with or without direct patient care responsibilities, or who work for municipal or private employer entities with or without direct public contact or have minimal public contact should be terminated by an employer for refusing to submit to the FDA emergency authorized injection called the “Covid-19 vaccine” based on applicable healthcare and general workplace safety standards as it relates to the medical efficacy of the COVID-19 vaccines and their potential risks.

¹ See Plant-based Research Database - <https://plantbasedresearch.org/>

14. In preparation of providing my opinions herein, I have reviewed the following: 1) New York City Department of Health and Mental Hygiene vaccine orders from August 10, 2021 to December 13, 2021, 2) applicable regulations of the U.S. Department of Labor, Occupational Safety and Health Administration, and 3) the affidavit and documents provided by Certified Industrial Hygienist, Mr. Bruce Miller, MS, CIH, President of Health & Safety, LLC.

BACKGROUND & PRELIMINARY OPINIONS

15. Between August 10, 2021 and December 13, 2021, the New York City Department of Health and Mental Hygiene (NYCDOHMH) issued approximate twelve (12) Covid-19 Emergency Orders applicable to New York City employees within its various agencies (“NYC Emergency Orders”).²
16. Based on my review of the NYC Emergency Orders, the primary purpose of the orders was to mandate all New York City employee to submit to taking Covid-19 vaccinations as a workplace safety and health standard that reduces the spread and contraction of the virus that causes the communicable disease “Covid-19” in New York City facilities.
17. While the Covid Emergency Orders state that the Covid-19 vaccine requirements are for the benefit of the “health, safety, and welfare” of New York City residents, the orders only apply to New York City employees and do not indicate that there is a direct impact on the residents of the City. Based on my general public health knowledge as a clinician, the Emergency Orders are directed at City Employees in their workplace.

² See List of New York City Department of Health & Mental Hygiene list of Orders at <https://www1.nyc.gov/site/doh/about/hearings-and-notices/official-notices.page>

OPINIONS REGARDING COVID-19 WORKPLACE SAFETY REQUIREMENTS

18. My opinions regarding workplace safety requirements in general and for healthcare facilities are as follow and are made to a degree of medical certainty:
- a. the Covid-19 vaccines utilized in the United States are pharmacological medical treatments used to reduce symptoms that result from an infection of the viral pathogen and/or various variants of the Sars Cov2 virus, which causes the infectious disease identified by the Centers for Disease Control as Covid-19.
 - b. “Covid-19 vaccines” do not eliminate the virus that causes infections of Covid-19 from the atmosphere of any in door facility. The virus that causes Covid-19 and/or its variants is an atmospheric contaminant or airborne hazard that should be controlled in any in-door facility which could stop or prevent the contraction of any infectious communicable diseases that can cause serious injury or death.
 - c. Based on my general clinical knowledge of workplace safety standards for healthcare facilities and general industry facilities, the OSHA Standard at 29 C.F.R. § 1910.134 et seq.³ titled “Respirator Protection” provides the minimum health and safety standard that any facility can utilize to reduce the risks of severe injury or death associated with any airborne contaminant that cannot be eliminate or controlled by other OSHA standards or methods.
 - d. Because the Covid-19 vaccines cannot remove the virus that causes Covid-19 infections from the atmosphere of any facility, based on my clinical experience and hospital experience, N95 respirators or Powered Air Purification Respirators, which have the highest efficacy in reducing exposure to any airborne contaminate and can be used and are necessary, when nothing else eliminates the virus, to prevent the spread

of any airborne communicable disease according to the OSHA and CDC published guide titled “Hospital Respiratory Protection Program Toolkit – Resources for Respiratory Program Administrators” published in May 2015.⁴

- e. There are entire industries of employees that are required to wear N95 respirators or PAPR’s everyday eight hours a day, specifically industrial workers in the automotive, welding, commercial painting utilize this equipment to protect their employees from airborne contaminants. Therefore, employees in any workplace that have a risk of exposure to or can spread a viral airborne contaminant should be provided by an employer with at least an N95 respirator or a PAPR consistent with the OSHA standards set forth in 29 U.S.C. 1910.134, especially when necessary to protect the health of an employee as indicated in 1910.134(a)(2).
- f. Based on my clinical experience treating patients with communicable disease, when the existing OSHA Respiratory Protection standards contained in Section 1910.134⁵ are properly implemented in any facility, along with all other OSHA standards applicable to addressing communicable disease, vaccines, including the Covid-19 vaccine, (which cannot stop the spread or transmission of the virus) are not needed to provide a safe workplace for a employees.
- g. While the OSHA standard 1910⁶ titled Bloodborne pathogens recommends making Hep B vaccine available to employees who have occupational exposure to hepatitis B, the vaccine does not cure nor remove the blood-borne virus that can cause chronic infection in the liver.

⁴ See Hospital Respiratory Protection Program Toolkit, May 2015 at <https://www.osha.gov/sites/default/files/publications/OSHA3767.pdf>

⁵ See OSHA Section 1910.134 Respiratory Protection at <https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.134>

⁶ See OSHA Bloodborne pathogens – Section 1910.1030 - <https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.1030>

- h. In general, no vaccine, whether the hepatitis B vaccine or a Covid-19 vaccine, cures or eliminate a communicable diseases 100%.
- i. While the main purpose of New York City Department of Health Covid Emergency Orders is to reduce the spread of Covid-19 in the workplace of New York City facilities, the Emergency Orders also carry the unintended consequence of introducing “new hazards” into the body of City employees via the Covid vaccines that can directly affect the health and safety of the City’s employees which conflicts with OSHA.
- j. The new hazard(s) include the known and reported severe and life-threatening adverse effects from the injection of the Covid-19 vaccine. All healthcare administrators of vaccines are required to report adverse effects of any vaccine to the Centers for Disease Control and Prevention (CDC) Vaccine Adverse Events Reporting System. As of March 18, the system reported that between December 14, 2020, and March 11, 2022, 1,183,495 reports of adverse events from all age groups following COVID vaccines, including 25,641 deaths and 208,209 serious injuries have been reported. As of the dates of the NYC and NYS Covid Emergency Orders were issued, in the VAERS data released September 17, 2021, by the CDC showed a total of 701,561 reports of adverse events from all age groups following COVID vaccines, including 14,925 deaths and 91,523 serious injuries between Dec. 14, 2020 and Sept. 10, 2021.⁷
- k. Because the OSHA General Duty Clause at 29 U.S.C. §654⁸ requires employers to recognize hazards that are “likely to cause death or serious physical harm to ...employees” and to comply with the OSHA standards promulgated to eliminate or reduce a hazard, when evaluated comprehensively, the OSH Act does not list vaccines

⁷ See VAERS Reporting Requirements for Covid-19 Vaccines at <https://vaers.hhs.gov/reportevent.html>

⁸ See OSH Act of 1970 General Duty Clause 29 U.S.C. 654 at <https://www.osha.gov/laws-regs/oshact/section5-duties>

as a promulgated standard that eliminates or reduces occupational environmental airborne contaminants or atmospheric contaminants in a workplace.⁹

- i. Finally, OSHA standards allow employers to modify work locations also to eliminate an employee's exposure to hazards in the workplace. Remote work is effective in eliminating employee exposures to airborne contaminants that may be in a workplace and is required to be used by employers before the use of other methods that introduce hazards like vaccines.
19. I am not aware of employees having been terminated for refusing a Hep B vaccine after exposure, therefore there is not need to terminate an employee for refusing to submit to the Covid-19 vaccine.

Additional Opinions Regarding Other Workplace Safety Duties Related to Covid-19

20. According to a CDC report around November 2020¹⁰ before Covid vaccines became available in the U.S., the primary cause of a person suffering severe Covid or a Covid related death after exposure to the respiratory hazard is the existing of one or more pre-existing chronic disease like heart disease, diabetes, chronic livers disease, chronic pulmonary disease, to name a few.
21. The CDC for years has identified poor diet as one of four causes of chronic disease¹¹ in the U.S., which are the leading causes of all death.¹²
22. For many years, scientific medical journals have concluded that the consumption of red meat and processed meat are the leading cause of most chronic disease and death in the United States.¹³

⁹ See OSH Act of 1970 Comprehensive Table of OSHA laws & Regulations - <https://www.osha.gov/laws-regs/regulations/standardnumber>

¹⁰ Centers for Disease Control and Prevention (CDC). Coronavirus disease 2019 (COVID-19)—people with certain medical conditions. Atlanta (GA): US Department of Health and Human Services, CDC; Nov. 2020. <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html>

¹¹ Centers for Disease Control and Prevention (CDC), Publication by the National Center for chronic Disease Prevention and Health Promotion – “About Chronic Disease” <https://www.cdc.gov/chronicdisease/about/index.htm>

¹² National, Heart, Lung and Blood Institute - publication “Americans poor diet drives \$50 billion a year in health care costs December 17, 2019” <https://www.nhlbi.nih.gov/news/2019/americans-poor-diet-drives-50-billion-year-health-care-costs>

¹³ “Red meat and processed meat consumption and all-cause mortality:” a meta-analysis

23. New York law defines “potentially hazardous food” as any food that consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, edible crustacea, cooked potato, in a form capable of supporting: (1) rapid and progressive growth of infectious or toxigenic microorganisms; or (2) the slower growth of *C. botulinum*.¹⁴
24. While the NY State and FDA defines potentially hazardous foods based on the ability of the “food” to support or serve as reservoirs of harmful and infectious pathogens, which include pathogenic protozoans, bacteria, and viruses, as a public health researcher and practitioner, it is my opinion that potentially hazardous foods also include animal foods whose intrinsic factors (which include but are not limited to animal blood, fat and flesh) when consumed have demonstrated in over a dozen scientific studies to cause chronic disease and impairment of the body’s natural immune response.
25. Base on my medical experience and knowledge as a medical practitioner who prescribes (as a scientifically supported evidence based intervention) whole plant-based foods and lifestyle interventions to treat chronic disease, including heart disease, renal disease, obesity, both in the clinical and acute and intensive care setting, it is my opinion that employers that provide employees food or meals in the workplace also have a duty to remove and eliminate “potentially hazardous food” from employer operated or contracted cafeterias and specifically from patient meal services and vending machines to also reduce the risk of employees and patients suffering severe Covid or Covid related illnesses.
26. In a study published June 11, 2018 by the CDC that included 5,222 employees across the US, it was found that the foods people get at work tended to be high in empty calories —

Susanna C Larsson, Nicola Orsini, *Am J Epidemiol* Feb. 1, 2014;179(3):282-9. doi: 10.1093/<https://pubmed.ncbi.nlm.nih.gov/24148709/> see also “The global diabetes epidemic as a consequence of lifestyle-induced low-grade inflammation” by H. Kolb and T. Mandrup-Poulsen, *Diabetologia* Jan, 2010;53(1):10-20. - <https://pubmed.ncbi.nlm.nih.gov/19890624/>

¹⁴ See New York Codes, Rules and Regulations Section 14-2.3.

those from solid fats and/or added sugars — with more than 70 percent of the calories coming from food that was obtained for free in the workplace.¹⁵

27. In a 2019 scientific study by a Dr. Robert Vogel (which was summarized in the documentary *The Game Changers*,¹⁶) on the impact of the daily consumption of animal fat on human endothelial function, it was determine that the consumption of a single meal that consists of “potentially hazardous food” impairs blood flow throughout the body.
28. Many studies have shown that impaired endothelial function has a direct impact on immune function that can cause severe disease and death.
29. In a study published in April 2021, before any Covid-19 mandates were order, it was reported that endothelial dysfunction and immunothrombosis as key pathogenic mechanisms in severe COVID-19 and Covid related deaths.¹⁷
30. Therefore, while implementing the most~~potentially~~ effective risk mitigation control to remove the existence of Covid viral pathogens from the workplace atmosphere either through: 1) HEPA filtration systems, 2) ~~reducing an employee’s risk of exposure~~ through ~~the use of~~ remote work, or 3) through the use of PAPR respirators to eliminate an employees exposure to the airborne pathogen (either singularly or in combination), in my opinion, removing the “potentially hazardous foods” is equally necessary, if not more important to preventing severe Covid-19 and death in employees.
31. The statements and opinions made in this Affidavit are preliminary and I reserve the right to add to, amend or modify my opinions as more facts are provided during the course of any litigation of the claims by the Classes of Plaintiffs for which this affidavit is provided.

¹⁵ Foods and Beverages Obtained at Worksites in the United States by Stephen Onufrak CDC Epidemiologist, in *Journal of the American Academy of Nutrition and Dietetics* 119(6) DOI:10.1016/j.jand.2018.11.011

¹⁶ 3 Minute video on the Impact on Animal Fat on Endothelial Function study by Dr. Robert Vogel, Cardiologist– 2019 study from the “Game Changers” documentary <https://tinyurl.com/5du5nuke>

¹⁷ Endothelial dysfunction and Immunothrombosis as key pathogenic mechanisms in COVID-19 By Aldo Bonaventura, and Alessandra Vecchié.... *Nat Rev. Immunol.* 2021; 21(5): 319–329 – see <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8023349/>

I declare under penalty of perjury under the laws of the State of Texas that the foregoing is true and correct.

Dated this 19th day of April, 2022.



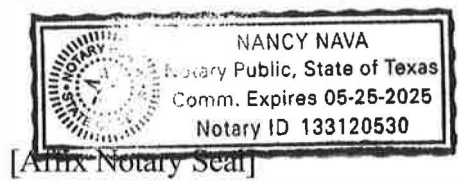
DR. BAXTER MONTGOMERY

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Subscribed and sworn to (or affirmed) before me on this 19th day of April, 2022, by Dr. Baxter Montogery, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Witness my hand and official seal.


Signature of Notary Public



[Attn: Notary Seal]

1. The California Respirator Program Administrators toolkit can be accessed at: <https://www.cdph.ca.gov/Programs/CCDPHP/DEODC/OHB/Pages/RespToolkit.aspx> external icon
2. Beckman S, Materna B, Goldmacher S, Zipprich J, D'Alessandro M, Novak D, Harrison R [2013]. Evaluation of respiratory protection programs and practices in

BAXTER DELWORTH MONTGOMERY, MD

The Plant-Based Physician
[Montgomery Heart & Wellness](#)
[Video Bio](#)

- EXPERIENCE:** Clinical Assistant Professor
The University of Texas Health Science Center
Department of Medicine
Division of Cardiology/Clinical Cardiac Electrophysiology
- President and CEO
Houston Associates of Cardiovascular Medicine, PA.
(1997-Present)
- Executive Director
The Johnsie and Aubary Montgomery Institute of Medical Education and
Research (a 501(c) 3 nonprofit organization)
- BIRTHPLACE:** Houston, Texas
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- OFFICE ADDRESS:** 10480 South Main Street
Houston, Texas 77025
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bmontgomery@drbaxtermontgomery.com
- UNDERGRADUATE
EDUCATION:** William Marsh Rice University
Houston, Texas
Bachelor's Degree in Biochemistry (1986)
- GRADUATE EDUCATION:** The University of Texas Medical Branch at Galveston
Galveston, Texas
Doctor of Medicine
- RESIDENCY:** Baylor College of Medicine
Houston, Texas
Internal Medicine
- FELLOWSHIP:** The University of Texas Health Science Center at Houston
Houston, Texas
Cardiovascular Diseases
Clinical Cardiac Electrophysiology

CERTIFICATION: Diplomat of the American Board of Internal Medicine, Cardiovascular Diseases
Diplomat of the American Board of Internal Medicine, Clinical Cardiac Electrophysiology

LICENSURE: Texas State Board of Medical Examiners (Since 1999)
Permit Number H9549

HOSPITAL APPOINTMENTS:

Attending Physician
Memorial Hermann Hospital - The Texas Medical Center
Houston, Texas

Attending Physician
The Heart and vascular Institute
Memorial Hermann Hospital - The Texas Medical Center
Houston, Texas

Consulting Physician
Select Specialty Hospital - Heights
Houston, Texas

TEACHING RESPONSIBILITIES:

Teaching Faculty for Cardiology Fellows and Clinical Advanced Nurse Practitioners
The Heart and Vascular Institute
Memorial Hermann Hospital - The Texas Medical Center
1997 - Present

Cardiovascular Disease Lecturer
GlaxoSmithKline, Inc.
2000 - Present

Cardiovascular Disease Lecturer
Novartis, Inc.
2006 - Present

Cardiovascular Disease Lecturer
Boston Scientific, Inc.
2006 - Present

Co-Director and Lecturing Faculty
Cardiology Concepts for Non-Cardiologists
(An Annual Houston Area Educational Symposium)

JAM Institute, Inc.
2006 - 2008

Steering Committee Member and Lecturing Faculty
Close the Gap
Boston Scientific, Inc.
2006 - Present

RESEARCH:

CLINICAL STUDIES:

ALLHAT: Antihypertensive and Lipid-Lowering Treatment to Prevent Heart Attack Trial. ALLHAT was a blinded, randomized trial that investigated the relative efficacy of different classes of antihypertensive agents in reducing stroke, illness and death from cardiovascular diseases. A subgroup of patients with hyperlipidemia was randomized comparing Pravastatin compared to usual care.
A Houston Site - Principal Investigator (1998)

INVEST: The International Verapamil SR/Trandolapril Study. INVEST was a randomized controlled clinical trial comparing a calcium antagonist treatment strategy (Isoptin® SR) with a non calcium antagonist treatment strategy for the control of hypertension in a primary care coronary artery disease patient population.
A Houston Site - Principal Investigator (2000)

INVEST SUB-STUDY: This study was a sub-study of the INVEST patient population designed to evaluate the impact of genetic differences on pharmacokinetics.
A Houston Site - Principal Investigator (2000)

The Safety and Efficacy of PNU-182716 Versus Rosiglitazone: This was a one-year, randomized, double blind, parallel group, and active comparator study.
A Houston Site - Principal Investigator (2000)

FACTOR: Fenofibrate and Cerivastatin Trial Optimizing Response. FACTOR was a multicenter, randomized, double blind, placebo controlled, parallel group, study of the safety and efficacy of Cerivastatin in combination with Fenofibrate compared to Cerivastatin alone, Fenofibrate alone and placebo in a population of Type 2 Diabetic Men and Women.
Grant Sponsor - Bayer 2001
A Houston Site - Principal Investigator

ADHERE: ADHERE was a national registry of patients admitted to hospitals with acute decompensated congestive heart failure.

A Houston Site - Principal Investigator (2001)

STELID TM AND STELIX TM LEADS STUDY: This study was a

safety and efficacy study of steroid-eluting cardiac pacing leads.

Grant Sponsor - Ella Medical 2002

ARRHYTHMIA PATHWAY STUDY: This was a patient registry study designed to assess the efficacy of a clinical algorithm for identifying and assessing patients at risk of sudden cardiac arrest.

Grant Sponsor - Medtronic, Inc. 2002

A Houston Site - Principal Investigator

RAPIDO CATHETER STUDY: This study was to evaluate the efficacy of a left ventricular defibrillator-pacemaker lead delivery system.

Grant Sponsor - Guidant, Inc. 2003

A Houston Site - Principal Investigator

PROTOS HEART RATE DISTRIBUTION STUDY: This was a clinical study designed to compare the heart rate distribution in patients undergoing pacemaker implants requiring heart rate response therapy. This study compared the heart rate distribution of accelerometer rate response therapy to the BIOTRONIK Closed Loop System therapy.

Grant Sponsor - Biotronik, Inc. 2003

A Houston Site - Principal Investigator

CSPP100A2404 - A 54 week, randomized, double-blind, parallel-group, multicenter study evaluating the long-term gastrointestinal (GI) safety and tolerability of Aliskiren (300 mg) compared to Ramipril (10 mg) in patients with essential hypertension.

Sponsored by Novartis, since April 4, 2008.

A Houston Site - Principal Investigator

CSPP100AUS03 - An 8 week Prospective, Multicenter, Randomized, Double-Blind, Active Control, Parallel Group Study to Evaluate the Efficacy and Safety of Aliskiren HCTZ versus Amlodipine in African American Patients with Stage 2 Hypertension.

Sponsored by Novartis, since August 2008.

A Houston Site - Principal Investigator

CSPP100A2409- An 8 week randomized, double-blind, parallel-group, multicenter, active-controlled dose escalation study to evaluate the

efficacy and safety of Aliskiren HCTZ (300/25 MG) compared to Amlodipine (10 mg) in patients with stage 2 systolic hypertension and diabetes mellitus.

Sponsored by Novartis, since December 2008.

A Houston Site - Principal Investigator

SPAIOOAUSOI - An 8 week randomized, double-blinded, parallel-group, multicenter, active-controlled dose escalation study to evaluate the efficacy and safety of Aliskiren Administered in Combination with Amlodipine (150/5 mg, 300/10 mg) versus Amlodipine alone (5 mg, 10 mg) in African American patient with Stage 2 Hypertension.

Sponsored by Novartis, since February 2009.

CLAF237B22OI- A multicenter, randomized, double-blind study to evaluate the efficacy and long-term safety of vildagliptin modified release (MR) as monotherapy in patients with type 2 diabetes.

Sponsored by Novartis, since February 2009.

A Houston Site - Principal Investigator

CLAF237B2224 - A multi-center, randomized, double-blind study to evaluate the efficacy and long-term safety of vildagliptin modified release (MR) as add-on therapy to metformin in patients with type 2 diabetes.

Sponsored by Novartis, since February 2009.

A Houston Site - Principal Investigator

Galaxy study: An aftermarket registry of one of the Biotronik implantable cardioverter defibrillators ICD leads (2009 to present)

A Houston Site - Principal Investigator

Paradigm study: A multicenter, randomized, double-blind, parallel group, active-controlled study to evaluate the efficacy and safety of LCZ696 compared to enalapril on morbidity and mortality in patients with chronic heart failure and reduced ejection fraction. 2009 -2014

A Houston Site - Principal Investigator

BASIC RESEARCH:

In Rapid Separation of Mitochondria from Extra- mitochondrial Space Applied to Rat Heart Mitochondria. An abstract presented at an NIH sponsored student research poster session, Univ. of Texas Medical Branch, Galveston, TX, June 17, 1987.

Regulation of the Adenine Nucleotide Pool-Size of Heart Mitochondria by the ADP/ATP Translocase. Abstract and poster presented at the Galveston-Houston Conference for Cardiovascular

Research, Univ. of Texas, Medical Branch, Galveston, TX, February 26, 1988.

The Adenine Nucleotide Pool-Size of Heart Mitochondria is Regulated by the ADP/ATP Translocase. Abstract presented at the 29th Annual National Student Research Forum, University of Texas Medical Branch, Galveston Texas, April 6-8, 1988.

Increased Frequency of the Deletion Allele of the ACE Gene in African-Americans Compared to Caucasians. This study evaluated the prevalence of the deletion allele of the ACE gene in a population of African Americans compared to Caucasians. The findings were presented at the annual meeting of the American College of Cardiology in March of 1996.

Determination of the effect of Calcium infusion on CGRP mRNA Production. A pilot study investigating a possible mechanism by which calcium supplementation may increase CGRP (Calcitonin gene-related peptide, a potent peripheral vasodilator) content in afferent neurons of Sprague Dawley rats, 1990.

PUBLICATIONS:

Montgomery, B, D, MD. A Review of Microanatomy for Medical Students, 1987, chapter 1-8.

Baxter D. Montgomery, MD, Elizabeth A. Putnam, Ph.D., John Reveille, MD, Dianna M. Milewicz. MD, Ph.D.: Increased Frequency of the Deletion Allele of the ACE Gene in African-Americans Compared to Caucasians. (Abstract) J. American College of Cardiology March, 1996

Doyle, N.M., Monga, M., **Montgomery, B.**, Dougherty, A.H.: Arrhythmogenic right ventricular cardiomyopathy with implantable cardioverter defibrillator placement in pregnancy. J Mat Fetal Neo Med 18:141-4, 2005

Baxter D. Montgomery, MD Co-Author of Dreams of the nation Book: "Improving Health" with focus on strengthening the food and health connection and replacing unnatural foods from our diet and replacing them with natural foods as a way of reversing illness. 2009

Montgomery, Baxter D: The Food Prescription for Better Health, Houston: Delworth Publishing, 2011

Montgomery,B.D, MD, Effects of the Montgomery Food Prescription on Clinical Biomarkers of Cardiovascular Disease. Plant-based diet can improve clinical biomarkers associated with cardiovascular disease. This study was submitted to the 10th annual Texas A&M University System Pathways Student Research Symposium 2012.

Baxter D. Montgomery, MD Co-Author of the book Rethink Food: About the need for revolutionary change in how to address chronic illness with optimal nutrition.2014

CLINICAL PRESENTATIONS:

Clinical Concepts for Non Cardiologist, Director and Faculty. An educational symposium held for primary care and other non-cardiology specialists in the Houston area. October 2006

Patients at Risk for Sudden Cardiac Arrest Dinner Symposium at the Houston Forum June, 2007

Clinical Concepts for Non Cardiologist, Director and Faculty. An educational symposium held for primary care and other non-cardiology specialists in the Houston area. October 2007

Clinical Concepts for Non Cardiologist, Director and Faculty. An educational symposium held for primary care and other non-cardiology specialists in the Houston area. October 2008

Houston Town Hall Meeting, Director and Faculty. Health summit on the benefits of a healthy nutritional lifestyle for the management of chronic illnesses held for both health care professional and the general public in the Houston area. 2009

Houston Town Hall Meeting, Director and Faculty. Health summit on the benefits of a healthy nutritional lifestyle for the management of chronic illnesses held for both health care professional and the general public in the Houston area. 2010

Houston Health Summit (Town Hall Meeting), Director and Faculty. Health summit on the benefits of a healthy nutritional lifestyle for the management of chronic illnesses held for both health care professional and the general public in the Houston area. 2011

Houston Health Summit (Town Hall Meeting), Director and Faculty.
Health summit on the benefits of a healthy nutritional lifestyle for the management of chronic illnesses held for both health care professional and the general public in the Houston area. 2012

Houston Health Summit (Town Hall Meeting), Director and Faculty.
Health summit on the benefits of a healthy nutritional lifestyle for the management of chronic illnesses held for both health care professional and the general public in the Houston area. 2013

PROFESSIONAL APPOINTMENTS:

Clinical Assistant Professor of Medicine, University of Texas Health Science Center - Houston 1996 - Present

Steering Committee Member, Boston Scientific Close the Gap Initiative 2005 - Present

Scientific/Medical Board of Advisors, Nutritional Excellence, Inc. 2007 - Present

Medical Board of Directors, Twelve Oaks Medical Center Independent Physician's Association 2005 - Present

Medical Executive Committee (Twelve Oaks Hospital), Member at Large 2002 - 2006

Patient Safety Committee (Twelve Oaks Hospital), Chairman 2002 - 2004

Physician Peer Review Committee (Twelve Oaks Hospital) 2002 - 2005

Medical Director, SCCI (Specialized Complex Care) Hospital, 2003 - 2005

Physician Relation Council Advisory Board, Unicare, 2002 - 2004

Aldine Education Foundation: The mission of the Aldine Education Foundation is to provide community-based support to the Aldine Independent School District in pursuit of excellence in teaching, innovation in the classroom and superior learning opportunities for all students.

CLINICAL INTERESTS:

Nutritional Lifestyle Interventions for the Management of Chronic Illnesses
Cardiac Pacing and Electrophysiology

Diastolic and Systolic Heart Failure
 Hypertensive Heart Disease
 Cardiovascular Exercise Physiology
 Basic Echocardiography
 Nuclear Cardiology
 Diagnostic Cardiac Catheterization
 Cardiovascular Wellness and Nutrition

PROFESSIONAL ASSOCIATIONS:

American College of Cardiology (Elected as Fellow of the College in January, 1999)
 American Heart Association
 Heart Rhythm Society (North American Society of Pacing and Electrophysiology, NASPE)
 American College of Physicians
 Harris County Medical Society
 Houston Medical Forum

HONORS AND AWARDS:

Benjamin Spock Award for Compassion in Medicine - 2010

America's Top Physicians - 2007

Cumulative evaluation of "Superior" performance by senior house staff and faculty during first year of residency (Baylor College of Medicine), 1990

Outstanding Young Men of America, 1988

Kempner Award (University of TX Medical Branch) 1986-87 and 1987-88

Academic Scholarship (University of TX Medical Branch) 1986-87

Who's Who Among American Colleges and Universities (Rice University) 1986

Franz Brotzen Outstanding Senior Award (Rice University) 1986

Jones College Service Award (Rice University) 1986 and 1985

100 Black Men of Metropolitan Houston (Awarded in 2012) for the dedication to the improvement of the community.

Physicians Committee for Responsible Medicine- Member of Advisory Board- Current.

ACTIVITIES:

Gardening
Scouting
Physical Conditioning

CLINICAL INVESTIGATIONS

Consumption of a defined, plant-based diet reduces lipoprotein(a), inflammation, and other atherogenic lipoproteins and particles within 4 weeks

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Email: rnajjar@twu.edu**Funding information**

Johnsie and Aubary Montgomery Institute of Medical Education and Research

Background: Lipoprotein(a) [Lp(a)] is a highly atherogenic lipoprotein and is minimally effected by lifestyle changes. While some drugs can reduce Lp(a), diet has not consistently shown definitive reduction of this biomarker. The effect of consuming a plant-based diet on serum Lp(a) concentrations have not been previously evaluated.

Hypothesis: Consumption of a defined, plant-based for 4 weeks reduces Lp(a).

Methods: Secondary analysis of a previous trial was conducted, in which overweight and obese individuals ($n = 31$) with low-density lipoprotein cholesterol concentrations >100 mg/dL consumed a defined, plant-based diet for 4 weeks. Baseline and 4-week labs were collected. Data were analyzed using a paired samples *t*-test.

Results: Significant reductions were observed for serum Lp(a) (-32.0 ± 52.3 nmol/L, $P = 0.003$), apolipoprotein B (-13.2 ± 18.3 mg/dL, $P < 0.0005$), low-density lipoprotein (LDL) particles (-304.8 ± 363.0 nmol/L, $P < 0.0005$) and small-dense LDL cholesterol (-10.0 ± 9.2 mg/dL, $P < 0.0005$). Additionally, serum interleukin-6 (IL-6), total white blood cells, lipoprotein-associated phospholipase A2 (Lp-PLA2), high-sensitivity c-reactive protein (hs-CRP), and fibrinogen were significantly reduced ($P \leq 0.004$).

Conclusions: A defined, plant-based diet has a favorable impact on Lp(a), inflammatory indicators, and other atherogenic lipoproteins and particles. Lp(a) concentration was previously thought to be only minimally altered by dietary interventions. In this protocol however, a defined plant-based diet was shown to substantially reduce this biomarker. Further investigation is required to elucidate the specific mechanisms that contribute to the reductions in Lp(a) concentrations, which may include alterations in gene expression.

KEYWORDS

general clinical cardiology/adult, lipoproteins, preventive cardiology, vegetarian diet

1 | INTRODUCTION

Lipoprotein(a) [Lp(a)] is an atherogenic lipoprotein structurally similar to low-density lipoprotein cholesterol (LDL-C), although synthesis occurs through independent pathways. Key differences include the linkage of apolipoprotein B100 (Apo-B) to apolipoprotein(a) on the LDL surface.^{1,2} It has been estimated that expression of the genomic region encoding apolipoprotein(a) (*LPA* gene) accounts for approximately 90% of plasma Lp(a) concentrations.³ Elevated Lp(a) is independently associated with cardiovascular disease,⁴ and the *LPA* gene

was observed to have the strongest genetic link to cardiovascular disease.⁵ Individuals with Lp(a) plasma concentrations >20 mg/dL have twice the risk of developing cardiovascular disease and approximately 25% of the population may have this plasma concentration.⁶ The mode of action by which Lp(a) exerts its atherogenic effect is likely similar to that of LDL-C, by deposition in the sub-endothelial space and uptake by macrophages mediated via the VLDL receptor.⁷ Lp(a) is particularly atherogenic due to its unique property of being a carrier of oxidized phospholipids, in addition to its higher binding affinity to negatively charged endothelial proteoglycans.⁸ Lp(a) can facilitate

endothelial dysfunction when concentrations are elevated likely due to this effect.⁹

While PCSK9 inhibitors, high dose atorvastatin, ezetimibe and niacin have resulted in significant reductions in Lp(a),^{10–12} lifestyle interventions have not reliably demonstrated reduced Lp(a) to a clinically significant degree. Interestingly, even high saturated fat and high cholesterol diets known to induce hypercholesterolemia have had little influence on plasma Lp(a) concentrations.¹³ Despite the lack of evidence in the literature indicating a relationship between diet and Lp(a) concentrations, a defined, plant-based has not been previously evaluated with respect to its potential effect to reduce Lp(a). Previous investigations have found that a very-high fiber diet comprised of vegetables, fruits and nuts can reduce LDL-C by 33% and Apo-B by 26%,¹⁴ although Lp(a) was not measured. Since such a diet can result in dramatic reductions in LDL-C and Apo-B, secondary analysis of a previously published investigation¹⁵ employing a similar plant-based diet were analyzed to evaluate if Lp(a) could be significantly reduced after 4 weeks among other inflammatory indicators and atherogenic lipoproteins and particles.

2 | METHODS

2.1 | Study population

Participants were subjects of a previous study in which written informed consent was obtained to draw blood for analysis.¹⁵ Laboratory reports for each subject included biomarkers used for clinical purposes, and selected biomarkers are included in the present investigation. The study protocol was approved by the Texas Woman's University Institutional Review Board, Houston.

The study protocol has been previously described.¹⁵ Briefly, all participants were registered new patients of a cardiovascular center and were hypertensive (systolic blood pressure ≥ 140 mmHg or diastolic blood pressure ≥ 90 mmHg), had elevated LDL-C (≥ 100 mg/dL) and excess body weight (body mass index ≥ 25 kg/m²) at baseline. Exclusionary criteria included current tobacco use, current drug abuse, excessive alcohol use (>2 glasses of wine or equivalent for men or >1 glass of wine or equivalent for woman), a current cancer diagnosis, an ongoing clinically defined infection, a mental disability that would prevent a participant from following the study protocol, an estimated glomerular filtration rate < 60 mg/dL, current pregnancy or lactation, a hospitalization within the past 6 months, and previous exposure to the nutrition program.

2.2 | Intervention

Participants were instructed to consume a defined, plant-based diet for 4 weeks ad-libitum which included the consumption of foods within a food classification system.¹⁵ These foods fell within food levels 0 to 4b of the food classification system (Table S1, Supporting information). Briefly, excluded were animal products, cooked foods, free oils, soda, alcohol, and coffee. Allowed for consumption were raw fruits, vegetables, seeds, and avocado. Small amounts of raw buckwheat and oats were also permitted. Vitamin, herbal, and mineral

supplements were to be discontinued unless otherwise clinically indicated. All meals and snacks were provided to subjects, although they were free to consume food on their own within food levels 0 to 4b. In addition, subjects were not advised to alter their exercise habits. Adherence was measured daily as previously described¹⁵ with an adherence assessment tool. Participants indicated in writing each day whether they were adherent. Dietary recalls (24-hour) were conducted by a trained nutritionist at baseline and at 4 weeks. Nutrient intake was analyzed by the Nutrition Data System for Research software (University of Minnesota, version 2016). No lipid lowering medications were altered throughout the intervention.

2.3 | Measures

After a 12-hour fast, the following plasma biomarkers were obtained at baseline and after 4-weeks: total cholesterol (Total-C), LDL-C, high-density lipoprotein cholesterol (HDL-C), triglycerides, LDL particles (LDL-P), small-dense low-density lipoprotein cholesterol (sdLDL-C), Apo-B, high-density lipoprotein 2 cholesterol (HDL2-C), apolipoprotein A-1 (Apo A-1), and Lp(a). Additionally, high-sensitivity c-reactive protein (hs-CRP), endothelin, interleukin-6 (IL-6), tumor necrosis factor alpha (TNF- α), lipoprotein-associated phospholipase A2 (Lp-PLA2), myeloperoxidase, fibrinogen, troponin-I, N-terminal pro b-type natriuretic peptide (NT-proBNP), total white blood cell count (WBC), neutrophil count, lymphocyte count, monocyte count, eosinophil count, and basophil count were documented. These specific biomarkers of interest were analyzed by either True Health Diagnostics (Frisco, Texas) or Singulex (Alameda, California) depending on the subject's health insurance. The same company that analyzed the baseline labs for a participant was used for the follow-up labs to ensure consistency.

2.4 | Data analysis

Paired samples t-tests were used for the analysis of biochemical measures at baseline and 4-weeks, and significance was confirmed with non-parametric tests. Significance was determined to be a *P* value less than 0.05. SPSS (version 24) was used for data analysis.

3 | RESULTS

Baseline demographics are indicated in Table 1. Subjects represent a sample that was 81% obese with multiple clinical diagnoses. Two-thirds of subjects were women and 80% were African American.

Adherence to the dietary intervention was approximately 87% over the course of the 4 weeks as measured by the daily adherence assessment tool. Food group consumption is indicated in Table 2 at baseline and 4-weeks. Notably, total fruit consumption increased from 1.3 ± 2.0 servings to 11.8 ± 10.4 servings (808% increase, $P < 0.0005$) and total vegetable consumption increased 2.7 ± 2.0 servings to 16.0 ± 9.2 servings (493% increase, $P < 0.0005$). Additionally, total animal product consumption decreased from 7.9 ± 4.7 servings to 0.4 ± 1.4 servings (95% decrease, $P = 0.001$). The consumption of avocados, dark-green vegetables, deep-yellow vegetables, tomatoes,

TABLE 1 Baseline characteristics and clinical diagnoses

	Participants ^a
<i>n</i>	31
Age (years)	53.4 (32-69)
Sex	
Male	10 (33%)
Female	21 (67%)
Race, ethnicity	
African American	25 (80%)
Hispanic	3 (10%)
White	3 (10%)
Mean BMI (kg/m ²)	37.5 ± 8.3
Overweight (25-29.9 kg/m ²)	6 (19%)
Obesity class 1 (30-34.9 kg/m ²)	6 (19%)
Obesity class 2 (35-39.9 kg/m ²)	10 (33%)
Obesity class 3 (≥40 kg/m ²)	9 (29%)
Current diagnoses	
Coronary artery disease	10 (33%)
Type II diabetes mellitus	8 (27%)
Arthritic condition	7 (23%)
Pre-diabetes	5 (17%)

Abbreviation: BMI, body mass index.

^a Data are mean (range) unless otherwise indicated.

and other vegetables also significantly increased ($P \leq 0.006$). A decreased consumption of white potatoes, fried potatoes, total grains, refined grains, whole grains, added oils, added animal fat, red meat, white meat, eggs, and dairy were also observed ($P \leq 0.027$). The consumption of sweets (5% decrease, $P = 0.90$) and the consumption of nuts/seeds (17% increase, $P = 0.736$) did not significantly change between baseline and 4-weeks.

Body weight, BMI, total cholesterol, LDL-C, HDL-C, and triglycerides (Table 3) were significantly reduced after 4-weeks of the dietary intervention ($P \leq 0.008$). Lp(a) was also significantly reduced (-32.0 ± 52.3 nmol/L, $P = 0.003$). In addition, LDL-P, sdLDL-C, Apo-B, HDL2-C, and Apo A-1 were significantly reduced ($P \leq 0.03$). Of the atherogenic lipoproteins, sdLDL-C had the greatest relative reduction of approximately 30% (Figure 1). Lp(a) reduced 16% which was proportional to the decrease in Total-C, triglycerides and LDL-P.

Of the inflammatory indicators, hs-CRP, IL-6, Lp-PLA2, and fibrinogen significantly decreased ($P \leq 0.004$) (Table 4). The WBC, neutrophil, lymphocyte, monocyte, eosinophil and basophil count also significantly decreased ($P \leq 0.033$). Interestingly, no statistically significant changes were observed for endothelin-1, TNF- α , myeloperoxidase, troponin-I, or NT-proBNP ($P \geq 0.056$) between baseline and 4-weeks.

TABLE 2 Number of food group servings at baseline and 4-weeks^a

Food group	Serving size	Baseline ^b	Final ^b	Change ^c	<i>P</i> ^d
Fruits, total	1/2 cup chopped, 1/4 cup dried or 1 medium piece	1.3 ± 2.0	11.8 ± 10.4	808% (10.5 ± 10.8)	<0.0005
Avocado	1/2 cup chopped	0.1 ± 0.2	0.9 ± 0.9	800% (0.8 ± 0.9)	<0.0005
Vegetables, Total	1/2 cup chopped or 1 cup raw leafy	2.7 ± 2.0	16.0 ± 9.2	493% (13.3 ± 9.2)	<0.0005
Dark-green vegetables	1/2 cup chopped or 1 cup raw leafy	0.7 ± 1	5.2 ± 3.8	643% (4.5 ± 4.0)	<0.0005
Deep-yellow vegetables	1/2 cup chopped	0.2 ± 0.4	1.2 ± 1.1	500% (1.0 ± 1.3)	<0.0005
Tomatoes	1/2 cup chopped	0.4 ± 0.5	1.7 ± 2.4	325% (1.3 ± 2.4)	0.006
Other vegetables	1/2 cup chopped	1.4 ± 1.2	7.9 ± 6.6	464% (6.5 ± 6.3)	<0.0005
White Potatoes ^e	1/2 cup chopped or 1 medium baked potato	0.3 ± 0.7	0.0 ± 0.0	-100% (-0.3 ± 0.7)	0.03
Fried potatoes	1/2 cup chopped or 70 g french fries	0.5 ± 0.9	0.1 ± 0.3	-80% (-0.4 ± 0.9)	0.027
Grains, Total	1 slice of bread or halfcup cooked cereal	5.7 ± 3.5	0.7 ± 0.9	-88% (-5.0 ± 3.6)	<0.0005
Refined grains	1 slice of bread or half cup cooked cereal	3.8 ± 2.7	0.2 ± 0.7	-95% (-3.6 ± 3.0)	<0.0005
Whole grains	1 slice of bread or half cup cooked cereal	1.9 ± 2.6	0.5 ± 0.7	-74% (-1.4 ± 2.7)	0.007
Sweets ^f	4 g of sugar, 1 tbsp honey or 2 tbsp syrup	1.8 ± 2.3	1.7 ± 1.5	-5% (-0.1 ± 2.7)	0.90
Nuts/seeds	1/2 oz	1.2 ± 3.0	1.4 ± 1.6	17% (0.2 ± 3.4)	0.736
Added oils	1 tsp	3.2 ± 3.5	0.1 ± 0.2	-97% (-3.1 ± 3.5)	<0.0005
Added animal fat	1 tsp	1.3 ± 2.3	0.0 ± 0.1	-100% (-1.3 ± 2.3)	0.005
Animal products, Total ^g	1 oz	7.9 ± 4.7	0.4 ± 1.4	-95% (-7.5 ± 5.3)	0.001
Red meat	1 oz	2.1 ± 2.9	0.1 ± 0.2	-95% (-2.0 ± 3.0)	<0.0005
White meat	1 oz	3.9 ± 3.7	0.2 ± 1.1	-95% (-3.7 ± 4.1)	<0.0005
Eggs	1 large egg	0.5 ± 0.7	0.0 ± 0.1	-100% (-0.5 ± 0.7)	0.002
Dairy	1 cup of milk/yogurt or 1.5 oz of cheese	1.5 ± 1.6	0.1 ± 0.3	-93% (-1.4 ± 1.7)	<0.0005

^a Data are for subjects who completed 24-h recalls at both baseline and 4-weeks ($n = 30$).

^b Data are listed in serving size and are presented as mean ± SD.

^c Data indicated as % change (mean ± SD).

^d Paired samples *t*-tests for within-group comparisons of changes from baseline to final values.

^e Excludes fried potatoes.

^f Includes honey, candy, or other added sugars.

^g Excludes added animal fat.

TABLE 3 Atherogenic lipoproteins and particles at baseline and 4-weeks

	Baseline ^a	Final ^a	Change ^b	P ^c
Weight (kg)	108.1 ± 28.6	101.4 ± 26.3	-6% (-6.6 ± 3.6)	<0.0005
BMI (kg/m ²)	37.5 ± 8.3	35.2 ± 7.8	-6% (-2.2 ± 1.1)	<0.0005
Total-C (mg/dL)	216.6 ± 34.2	182.7 ± 29.9	-16% (-33.8 ± 25.9)	<0.0005
LDL-C (mg/dL)	143.0 ± 28.9	118.4 ± 26.4	-17% (-24.6 ± 21.3)	<0.0005
HDL-C (mg/dL)	54.8 ± 9.4	49.5 ± 10.6	-9% (-5.2 ± 6.2)	<0.0005
Triglycerides (mg/dL)	124.1 ± 58.1	104.5 ± 53.6	-16% (-19.6 ± 38.4)	0.008
Lp(a) (nmol/L) ^d	200.7 ± 150.0	168.8 ± 126.7	-16% (-32.0 ± 52.3)	0.003
Apo-B (mg/dL)	115.2 ± 24.5	101.9 ± 17.7	-11% (-13.3 ± 18.3)	<0.0005
LDL-P (nmol/L) ^e	1891 ± 586	1586 ± 508	-16% (-305 ± 363)	<0.0005
sdLDL-C (mg/dL)	33.7 ± 11.5	23.7 ± 8.7	-30% (-10.0 ± 9.2)	<0.0005
HDL2-C (mg/dL)	17.4 ± 9.8	15.6 ± 9.9	-10% (-1.8 ± 4.5)	0.030
Apo A-1 (mg/dL)	189.7 ± 150.7	160.2 ± 126.5	-14% (-27.0 ± 19.6)	<0.0005

Abbreviations: Apo A-1, apolipoprotein A-1; Apo-B, apolipoprotein B100; BMI, body mass index; HDL-C, high-density lipoprotein cholesterol; HDL2-C, high-density lipoprotein-2 cholesterol; LDL-C, low-density lipoprotein cholesterol; LDL-P, low-density lipoprotein particles; Lp(a), lipoprotein(a); sdLDL-C, small-dense low-density lipoprotein cholesterol; total-C, total cholesterol.

^a Mean ± SD ($n = 31$ unless otherwise indicated).

^b Data indicated as % change (mean ± SD).

^c Paired samples t -tests for within-group comparisons of changes from baseline to final values.

^d $n = 28$ due to premature coagulation of sample ($n = 1$) and incompatible units (mg/dL) when merging laboratory results ($n = 2$).

^e $n = 29$ due to premature coagulation of samples.

4 | DISCUSSION

The consumption of a defined, plant-based diet resulted in a significant reduction in Lp(a) after 4 weeks; thus, the study hypothesis was accepted. The reduction in Lp(a) was profound and is one of the largest reductions due to lifestyle reported in the literature. The magnitude of change was comparable to other leading medical therapies, such as niacin (~20% reduction) and PCSK9 inhibitors (~25% reduction).¹² It is important to note that this dietary intervention rapidly reduced Lp(a) by 16% in only 4 weeks, whereas shorter duration

niacin and PCSK9 inhibitor drug trials typically lasted 8 to 12 weeks. It should also be noted that niacin may reduce inflammation, such as *hs*-CRP, by 15% after 3 months, although PCSK9 inhibitors do not.^{16,17} After 4 weeks, the dietary intervention reduced *hs*-CRP by 30.7%. In addition, IL-6, Lp-PLA2, fibrinogen, and white blood cells were significantly reduced, as were sdLDL-C, LDL-P, and Apo-B, all of which represent a systemic, cardio-protective effect.¹⁸⁻²⁴ Thus, the use of this single dietary approach in the clinical setting, vs multiple drug therapy, may be an appropriate tool in treating complex patients with a myriad of elevated CVD-related biomarkers.

Elevated Apo A1, HDL-C, and HDL2-C are associated with reduced cardiovascular disease risk.^{24,25} While these HDL fractions were significantly reduced in this trial, this is a common phenomenon observed when consuming plant-based diets. A systematic review and meta-analysis of plant-based observational and clinical trials found that while HDL-C was significantly reduced compared to those consuming non-vegetarian diets, LDL-C and total-C were also reduced.²⁶ Despite reductions in HDL-C, those who consumed plant-based diets had a 25% reduced incidence of ischemic CVD compared with non-vegetarian counterparts.²⁷

Lp(a) concentrations in the present study represent a high-risk population.²⁸ This may be explained by the higher proportion of African Americans in this sample, as African Americans may have higher Lp(a) concentrations compared with Caucasians.²⁹ An evaluation of 532 359 patients found that an Lp(a) concentration > 50 mg/dL was common among patients.³⁰ This range roughly corresponds to the mean nmol/L Lp(a) concentration observed in the present study.

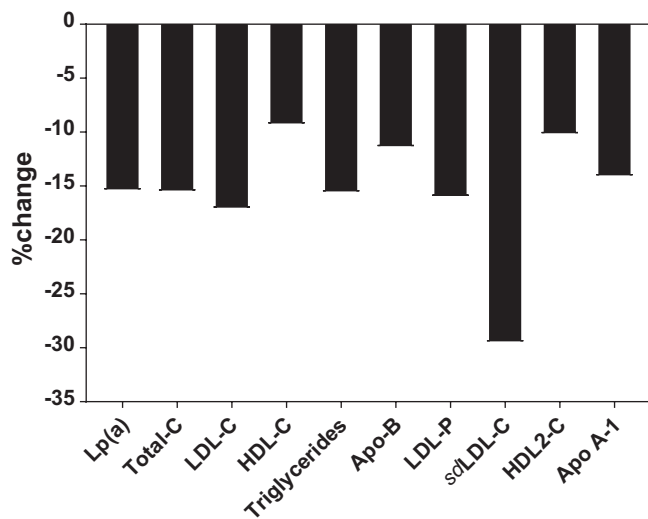


FIGURE 1 Percent change of atherogenic lipoproteins and particles from baseline to 4-weeks. All variable changes indicated are significant ($P < 0.05$). Lp(a), lipoprotein(a); Total-C, total cholesterol; LDL-C, low-density lipoprotein cholesterol; HDL-C, high-density lipoprotein cholesterol; Apo-B, apolipoprotein B100; LDL-P, low-density lipoprotein particles; sdLDL-C, small-dense low-density lipoprotein cholesterol; HDL2-C, high-density lipoprotein-2 cholesterol; Apo A-1, apolipoprotein A-1

4.1 | Effect of weight loss on plasma Lp(a) concentrations

An energy restricted diet was found to independently reduce serum Lp(a) in those with baseline concentrations >20 mg/dL, but not <20 mg/dL.³¹ Further studies have found that weight loss may not

TABLE 4 Inflammatory and other cardiovascular indicators at baseline and 4-weeks

	Baseline ^a	Final ^a	Change ^b	P ^c
hs-CRP (mg/dL)	7.8 ± 6.4	5.4 ± 4.7	-30.7% (-2.4 ± 3.7)	0.001
Endothelin (pg/mL) ^d	2.2 ± 0.7	2.2 ± 0.8	0% (0.0 ± 0.7)	0.916
IL-6 (pg/mL) ^d	2.6 ± 1.4	2.0 ± 1.0	-23.1% (-0.6 ± 1.0)	0.001
TNF-α (pg/mL) ^d	2.0 ± 0.9	2.2 ± 0.9	10.0% (0.2 ± 0.6)	0.096
Lp-PLA ₂ (ng/mL) ^d	252.3 ± 136.3	210.7 ± 119.1	-16.4% (-41.6 ± 64.6)	0.001
Myeloperoxidase (pmol/L) ^e	124.1 ± 58.1	104.5 ± 53.6	-23.0% (-28.5 ± 66.1)	0.056
Fibrinogen (mg/dL) ^f	561.4 ± 112.2	530.1 ± 102.9	-5.6% (-31.3 ± 50.7)	0.004
NT-proBNP (pg/mL) ^d	65.2 ± 71.2	69.4 ± 75.9	6.2% (4.1 ± 23.2)	0.337
Total WBC (K/μL) ^d	6.3 ± 2.0	4.8 ± 1.3	-22.2% (-1.4 ± 1.1)	<0.0005
Neutrophils (K/μL) ^d	3.5 ± 1.4	2.5 ± 0.9	-28.6% (-1.0 ± 0.8)	<0.0005
Lymphocytes (K/μL) ^d	1.9 ± 0.7	1.6 ± 0.6	-15.8% (-0.3 ± 0.4)	<0.0005
Monocytes (K/μL) ^d	0.46 ± 0.12	0.38 ± 0.09	-15.2% (-0.07 ± 0.1)	<0.0005
Eosinophils (K/μL) ^d	0.18 ± 0.11	0.15 ± 0.11	-16.6% (-0.03 ± 0.07)	0.033
Basophils (K/μL) ^d	0.029 ± 0.016	0.024 ± 0.015	-17.2% (-0.005 ± 0.010)	0.016

Abbreviations: hs-CRP, high-sensitivity c-reactive protein; IL-6, interleukin-6; Lp-PLA₂, lipoprotein-associated phospholipase A2; NT-proBNP, N-terminal pro b-type natriuretic peptide; TNF-α, tumor necrosis factor-alpha; WBC, white blood cells.

^a Mean ± SD (n = 31 unless otherwise indicated).

^b Data indicated as % change (mean ± SD).

^c Paired samples t-tests for within-group comparisons of changes from baseline to final values.

^d n = 30 due to premature coagulation of samples.

^e n = 25 due to premature coagulation of samples.

^f n = 27 due to premature coagulation of samples.

independently reduce Lp(a) concentrations. A pooled analysis of cohorts found that as weight loss ensued, Lp(a) concentrations surprisingly increased.³² Baseline Lp(a) concentrations on average between the four cohorts analyzed were approximately 40 mg/dL, well above the >20 mg/dL threshold reported in the initial study.³¹ Other investigations examining the effect of weight loss on Lp(a) concentration have not demonstrated a relationship between these two variables.^{33,34} Interestingly, the emphasis on consuming plant-based foods, even with a calorie restricted diet, did not result in Lp(a) reductions compared with a calorie restricted red meat centered diet.³⁵ The plant-centered diet in this trial³⁵ still contained a significant number of calories derived from animal-based sources in addition to processed plant foods. Also, both diets contained similar quantities of dietary fiber, a measure of plant-food intake. Based on these weight loss trials, Lp(a) concentration is likely not influenced by weight reduction.

4.2 | Effect of diet on plasma Lp(a) concentrations

Other trials using diets emphasizing plant-based foods have not demonstrated similar results. A low-fat and low-saturated fat diet with an increased intake of fruits and vegetables interestingly increased Lp(a) concentrations.³⁶ Subjects consumed four to five servings of fruits or berries and five to six servings of vegetables daily for 5 weeks and all food was provided. It is important to note that subjects still consumed animal products throughout the intervention³⁶ which included dairy products and lean meats. The fiber content (40 g vs 51 g in the present study) was not as high as would be expected when consuming a higher quantity of plant-foods, and the number of fruits and vegetables did not meet the levels observed in the present study (11.8 servings of fruits and

16 servings of vegetables). Based on this data, it is probable that exclusively increasing fruit and vegetable intake is not sufficient to elicit reduced Lp(a) concentrations.

It has also been reported that a low-carbohydrate, high-fat diet (45% carbohydrate, 40% fat) may have a favorable impact on Lp(a) concentrations compared with a high-carbohydrate, low-fat diet (65% carbohydrate, 20% fat), although it is unclear as to what precisely was consumed on either of these diets.³⁷ In addition, the differences were small, as only a 2.17 mg/dL difference was observed between both groups, and baseline Lp(a) concentrations were <20 mg/dL. The Omni Heart Trial also found that replacing calories from carbohydrates and protein with unsaturated fats produced a smaller increase in Lp(a) comparatively, but both diets still elicited increased plasma Lp(a) compared with baseline. The differences between groups were also small at the end of the intervention (<4 mg/dL difference).³⁸

In individuals with low baseline Lp(a) concentrations (approximately 5.5 mg/dL), the consumption of copious saturated fat, cholesterol (derived from egg consumption) and polyunsaturated fat did not influence Lp(a) concentrations.¹³ Carbohydrate intake was low in this trial as well (39% to 46% carbohydrate as a percent of energy). While fat consumption does not appear to influence serum Lp(a) concentrations in the fasting state, a variety of fats may significantly increase postprandial, transient plasma Lp(a) concentrations over the course of 8 hours.³⁹ Investigators found that linoleic, oleic, palmitic, and stearic acid all resulted in significant transient increases in Lp(a) concentrations which closely tied to a proportional increase in triacylglycerol concentrations. While saturated fats, stearic acid and palmitic acid, appeared to have the greatest increase in serum Lp(a) compared with oleic acid and linoleic acid, this differing response did not reach statistical significance.

4.3 | Mechanisms contributing to reduced plasma Lp(a)

The observed reduction in Lp(a) in the present study may be due to decreased hepatic synthesis of apolipoprotein(a) and Apo-B. This may be in part due to decreased expression of the LPA gene. Since the LPA gene is almost exclusively expressed in the liver,⁴⁰ hepatic influences, including the production of *hs*-CRP and inflammatory cytokines, such as IL-6, may upregulate LPA gene expression.⁴¹ Indeed, those with inflammatory conditions may have increased Lp(a) concentrations compared with healthy controls.⁴²

Current data in our plant-based study supports this hypothesis, as reduced *hs*-CRP and IL-6 was observed. In contrast, previous studies utilizing plant-centered diets to reduce Lp(a) were unsuccessful, as animal products were still substantially consumed.^{35,36} Animal-based foods, including lean meat, can induce a postprandial inflammatory response, including increased *hs*-CRP and IL-6.⁴³ Pooled data of those consuming non-vegan, plant-based diets have shown reduced *hs*-CRP and IL-6,⁴⁴ although to a lesser extent compared with the present study (*hs*-CRP; -0.55 mg/dL vs -2.42 mg/dL, IL-6; -0.25 pg/mL vs -0.64 pg/mL). The elimination of animal products and processed foods completely on a defined, plant-based diet may be a more prudent dietary strategy to avoid potential fluctuations in inflammation. Thus, the fact that there were only minimally processed plant foods consumed during this dietary intervention may account for the observed reduction in serum Lp(a) concentrations that may be associated with reduced LPA gene expression. Further mechanistic research is needed to confirm this hypothesis.

4.4 | Strengths and limitations

The high dietary adherence and provision of all food to subjects supports the conclusion that the intervention likely fully accounted for the observed biochemical changes among the subjects. Furthermore, the study took place in an outpatient clinical setting with established patients providing a real-world example of a standard clinical practice. This study provides a model for the implementation of this intervention across other medical practices. In contrast, a limitation in the design of this study was the lack of a control group and the small sample size. A larger sample size and a control group would be needed to strengthen a causal relationship.

5 | CONCLUSION

A defined, plant-based diet has a favorable impact on Lp(a) and other atherogenic lipoproteins and particles. Lp(a) concentration was previously thought to be only minimally altered by lifestyle interventions. In this study, however, a defined plant-based diet resulted in a substantial reduction in Lp(a) in only 4 weeks. Further investigations are warranted to elucidate the specific mechanisms that contribute to reduced Lp(a) concentrations, which may include alterations in LPA gene expression mediated via hepatic inflammation.

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Conflict of interest

The authors declare no potential conflicts of interest.

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SUPPORTING INFORMATION

Additional supporting information may be found online in the Supporting Information section at the end of the article.

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Appendix #15



Indoor Air Quality

[Frequently Asked Questions](#)[Schools](#)[Building Operations and Management](#)[Additional Resources](#)

Schools

Indoor air quality (IAQ) is a concern in many schools due in part to the age and poor condition of a number of school buildings. School IAQ is particularly important as it may affect the health, performance and comfort of school staff and students.

Managing IAQ in schools presents unique challenges. Unlike managing other building, managing schools involves the responsibility for public funds and child safety issues. In addition, occupants are close together. Typical schools have approximately four times as many occupants as an office building with the same amount of floor space. Schools frequently have a large number of heating, ventilating, and air-conditioning equipment, which places added strain on maintenance staff. As schools add space, the operation and maintenance of each addition are often different. Schools sometimes use rooms, portable classrooms, or buildings that were not originally designed to service the unique requirements of schools.

Employees who work for state and local governments are not covered by federal OSHA, but have OSH Act protections if they work in those states that have an OSHA-approved state program. Four additional states (Connecticut, Illinois, New Jersey, New York) and one U.S. territory (Virgin Islands) have OSHA approved plans that cover public sector employees. Private sector employees in these four states and the Virgin Islands are covered by federal OSHA. For more information on State OSHA plans, see [State Occupational Safety and Health Plans](#).

The EPA addresses IAQ concerns in its "Healthy Schools" programs and provides tools to assess and fix IAQ problems. For instance, EPA's IAQ Tools for Schools provides practical approaches to improving indoor air problems. The National Institute of Occupational Safety and Health (NIOSH) developed a series of safety checklists for schools, including an IAQ self-inspection checklist. Below are links to a number of websites on indoor air quality and schools, including the EPA and NIOSH resources.

Environmental Protection Agency (EPA):

- [Creating Healthy Indoor Environments in Schools](#)
 - [IAQ Tools for Schools Action Kit](#). Includes many guidance documents, including ones about inspections, maintenance, ventilation, renovation.
 - [Typical Indoor Air Pollutants](#).
- [School Advanced Ventilation Engineering Software \(SAVES\)](#). Free software package for architects, engineers, and school officials to determine what type of ventilation equipment is best for both health and energy efficiency; the software also has financial assessment and indoor humidity modules.

National Institute for Occupational Safety and Health (NIOSH):

- [Safety Checklist Program for Schools](#)
- [Indoor Air Quality Self-Inspection Checklist for Schools](#)

Other Resources:

- The American Federation of Teachers has a number of [Fact Sheets](#) on health and safety issues, including [What You Should Know About Indoor Air Quality](#).
- [School Indoor Air Quality Best Management Practices Manual](#). Washington State Department of Health, (November 2003).
- The New Jersey Department of Health and Senior Services (NJDHSS) provides [useful information](#) for school staff, school administrators, architects and engineers and parents.

COVID-19



MENU >

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[Create a COVID-19 Hazard Assessment Plan](#)

[Strategies for Controlling COVID-19 Exposures](#)

[Reducing the risks of COVID-19 in K-12 school worksites](#)

[Engineering controls](#)

[Administrative controls](#)

[Personal protective equipment \(PPE\)](#)

[Supporting Teacher and Staff Mental Health and Well-Being](#)

[Special Considerations](#)

[Teachers, substitute teachers, paraprofessionals, and specialists](#)

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[Office staff](#)

[School nutrition staff](#)

[School nurses/health professionals](#)

[School bus drivers and bus aides](#)

[Coaching staff and athletic trainers](#)

[Music, choir, and performing arts teachers](#)


[Other Information](#)



[Resources](#)

The information on this page provides an expanded focus on the health and safety of K-12 school staff. The strategies also provide workplace safety and health

Vaccine Toolkits for

the specific hazards and exposures associated with each position.

- Create small working groups or teams that can assess group-specific hazards and report back to the larger assessment team.
- Assemble health and safety working groups with employee and management representatives, from both the district and school levels, to assist with developing, implementing, and evaluating a health and safety plan and adjusting accordingly.
 - Work closely with occupational health and safety and/or occupational medical professionals, when possible.
 - Include representatives of authorized unions, if applicable.
- Conduct a thorough hazard assessment to determine if workplace hazards are present, or are likely to be present, and determine what type of controls or PPE are needed for specific job duties. For more information on conducting a [hazard assessment](#) , please refer to the [Interim Guidance for Businesses and Employers Responding to Coronavirus Disease 2019 \(COVID-19\)](#).
- Collect information regularly through a variety of channels (e.g., email, electronic surveys, virtual meetings, focus groups) to reach a wider cross-section of staff, and elicit deeper, more informative responses.

See the [OSHA COVID-19](#)  webpage for more information on how to protect workers from potential COVID-19 exposures. Guidance may also be available from state, local, or professional technical organizations. For example, the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) has published [Reopening Guide for Schools and Universities](#)  which includes useful plans and checklists to prepare buildings for occupancy and check on equipment and systems, as well as maintenance plans and checks during the academic year.

Strategies for Controlling COVID-19 Exposures

Infection prevention recommendations for staff and students are based on an approach known as the [hierarchy of controls](#). This approach groups actions by their effectiveness in reducing or removing hazards. In most cases, the preferred approach is for management to:

1. Reduce the risk of COVID-19 by having teachers, staff, and students stay home when sick or if they have been in [close contact](#) with a person with COVID-19. Monitor COVID-19 transmission rates in the immediate community and in the communities in which students, teachers, and staff live. Work collaboratively with local health officials to determine if temporary school closure is necessary.
2. Install engineering controls, including modifying work areas using physical barriers, incorporating required accessibility requirements, and improving ventilation, where feasible.
3. Establish administrative controls and safe work practices for all staff to follow, which include appropriate cleaning and disinfection practices and appropriate mask policies.
4. Provide PPE in accordance with the school administrator's worksite hazard assessment to protect staff from hazards not controlled by engineering and administrative controls alone (e.g., school health staff, janitorial and maintenance staff).



Reducing the risks of COVID-19 in K-12 school worksites

K-12 school administration, particularly in areas where community spread of COVID-19 is occurring, should develop and implement a comprehensive strategy aimed at preventing the introduction of COVID-19 into school facilities. Please refer to the CDC [Preparing K-12 School Administrators for a Safe Return to School](#) page for more information.

Strategies for reducing the spread of COVID-19 in schools include educating and training staff on at-home symptom screening (e.g., fever, cough, sore throat) and cooperating with federal and local health officials, including to facilitate [contact tracing](#), if exposures or infections warrant.

Screening K-12 school staff for COVID-19

Given the wide range of symptoms and the fact that some people with COVID-19 are presymptomatic or

asymptomatic, there are limitations to symptom screening for the identification of COVID-19. CDC does not currently recommend that schools conduct universal in-person symptom screenings. Refer to [Screening K-12 Students for Symptoms of COVID-19: Limitations and Considerations](#) for more information on screening students. Information about screening employees can be found on the [General Business Frequently Asked Questions](#) page. One option is to encourage staff to self-screen prior to coming onsite.

Testing of K-12 school staff

[CDC does not recommend universal testing of all students and staff.](#) CDC's [Interim Considerations for K-12 School Administrators for SARS-CoV-2 Testing](#) advises that schools should determine, in collaboration with local health officials, whether to implement any testing strategy and, if so, how to best do so. School administrators are encouraged to review [SARS-CoV-2 Testing Strategy: Considerations for Non-Healthcare Workplaces](#) when considering testing of all school employees.

Managing sick staff

When school staff or [students report or have symptoms](#) (e.g., fever, cough, sore throat) upon arrival at work or become sick during the day, school administrators should:

- Immediately separate the person(s) from others at the school. Individuals who are sick should immediately go home or to a healthcare facility depending on how severe their symptoms are, and follow [CDC guidance for caring for oneself and others who are sick](#).
- Actively encourage staff and students who are sick, or who have recently had [close contact](#) with a person with COVID-19, to [get tested](#) and stay home.
- Develop policies that encourage sick staff to stay at home but without fear of retaliation, and ensure employees are aware of these policies.
- Identify an isolation area to separate anyone who has COVID-19 [symptoms](#) and potential exposure, ideally with a dedicated restroom not used by others. Note: Considerations for screening and management of symptoms for adults may be different than those for [K-12 students](#). Additional considerations related to screening teachers and staff can be found on the [General Business FAQ page](#).
- Ensure that personnel managing sick employees or students are appropriately protected from exposure. See [What Healthcare Personnel Should Know About Caring for Patients with Confirmed or Possible COVID-19 Infection](#).
 - Only designated, trained staff should interact with people showing symptoms of COVID-19. At least one designated, trained staff member should be available at all times in case there is a need to isolate a symptomatic employee or student.
 - When providing care for anyone with suspected or confirmed SARS-CoV-2 infection, personnel who need to be within 6 feet of a sick colleague or student should be provided appropriate PPE (including gloves, a gown, a face shield or goggles, and an N95 or equivalent or higher-level respirator or a surgical facemask if a respirator is not available), and follow [Standard and Transmission-Based Precautions](#).
 - If respirators are needed, they must be used in the context of a comprehensive respiratory protection program that includes medical exams, fit testing, and training in accordance with OSHA's Respiratory Protection standard ([29 CFR 1910.134](#) [↗](#)).
 - If the district has health and safety professional/s, work with them to establish a respiratory protection program; if not, professional organizations, such as the [American Industrial Hygiene Association](#) [↗](#) (AIHA) and the [American Society of Safety Professionals](#) [↗](#) (ASSP), maintain lists of health and safety consultants across the U.S. who may be able to assist with implementing a respiratory protection program.
 - The [OSHA Respiratory Protection website](#) [↗](#) provides links to a variety of guidance documents, web pages, and online tools related to respiratory protection.
- On-site healthcare services staff, including school nurses, should follow appropriate CDC and OSHA guidance for healthcare and emergency response personnel. For additional information, refer to the [Special Considerations – School nurses/health professionals](#) section below.
- Have a procedure in place for the safe and accessible transport of an employee who becomes sick while at work. The employee may need to be transported home or to a healthcare provider.

- If a school staff member is confirmed to have COVID-19, contact the local public health authorities about [contact tracing](#).
 - Maintain the sick employee’s confidentiality, as required by the Americans with Disabilities Act (ADA) and other applicable federal and state laws. Instruct fellow staff about how to proceed based on the [CDC Public Health Recommendations for Community-Related Exposure](#).
- If a school staff member becomes or reports being sick, [clean and disinfect](#) the work area and any shared common areas (including restrooms) and any supplies, tools, or equipment handled by that staff member.
- Work with local health officials to facilitate the identification of other exposed and potentially exposed individuals, such as coworkers or students, in the school.
- Students, teachers, and staff who test positive or had [close contact](#) with an individual who tested positive for SARS-CoV-2 should be provided with [guidance](#) for [when it’s safe to discontinue self-isolation](#) or end [quarantine](#).



Engineering controls

Increasing ventilation

Consider steps to increase the delivery of clean air and dilute potential contaminants. Not all steps are applicable for all scenarios. Consult with experienced HVAC professionals when considering changes to HVAC systems and equipment. Some of these recommendations are based on ASHRAE [Guidance for Building Operations During the COVID-19 Pandemic](#) [\[1\]](#). Review additional [ASHRAE guidelines for schools and universities](#) [\[2\]](#) [\[3\]](#) for further information on ventilation recommendations for different types of buildings and building readiness for occupancy.

Improvement steps may include some, or all, of the following activities:

- Increase outdoor air ventilation, using caution when outdoor air quality is low.
 - When weather conditions allow, increase fresh outdoor air by opening windows and doors. Do not open windows and doors if doing so poses a safety or health risk (e.g., risk of falling, triggering asthma symptoms) to children and staff using the school.
 - Consider outdoor classes where circumstances allow.
 - Use fans to increase the effectiveness of open windows. Position fans securely and carefully in/near windows so as not to induce potentially contaminated airflow directly from one person over another (strategic window fan placement in exhaust mode can help draw fresh air into the room via other open windows and doors without generating strong room air currents).
 - Decrease occupancy in areas where outdoor ventilation cannot be increased.
- Ensure ventilation systems operate properly and provide acceptable indoor air quality as defined by [ASHRAE Standard 62.1, Ventilation for Acceptable Indoor Air Quality](#) [\[4\]](#), for the current occupancy level for each space.
- Increase total airflow supply to occupied spaces, whenever feasible.
- Disable demand-controlled ventilation (DCV) controls that reduce air supply based on occupancy or temperature during occupied hours.
- Further open minimum outdoor air dampers to reduce or eliminate HVAC air recirculation, if practical. In mild weather, this will not affect thermal comfort or humidity. However, this may be difficult to do in cold, hot, or humid weather.
- Improve central air filtration:
 - [Increase air filtration](#) [\[5\]](#) to as high as possible without significantly diminishing design.
 - Inspect filter housing and racks to ensure appropriate filter fit and check for ways to minimize filter bypass.
 - Check filters to ensure they are within service life and appropriately installed.
- Consider running the HVAC system at maximum outside airflow for 2 hours before and after occupied times.
- Ensure restroom exhaust fans are functional and operating at full capacity when the building is

Consider ventilation system upgrades or improvements and other steps to increase the delivery of clean air and dilute potential contaminants in the building. [Learn More.](#)

Always follow standard practices and appropriate regulations specific to your school for minimum standards for cleaning and disinfection. For more information on cleaning various surfaces and other cleaning guidelines, see [Cleaning and Disinfecting Your Facility.](#)

Integrating Cleaning into the Daily Plan

Staff and Scheduling

- **Plan with staff and teachers.** Discuss obstacles to routine cleaning and ways to overcome those obstacles.
- **Develop a schedule for routine cleaning.** Modify your standard procedures to accommodate regularly cleaning at least once a day or as often as needed.

High touch Surfaces and Objects

- **Clean high touch surfaces and objects** (such as, door handles, sink handles, drinking fountains) within the school and on school transport vehicles (such as, buses) at least once a day or as often as needed (for example, when visibly dirty).
- **Limit sharing of high touch objects that are difficult to regularly clean** (such as, electronic devices, pens, pencils, books, games, art supplies, lab equipment).
 - If certain conditions apply (such as, low mask usage or high community transmission), do not use difficult-to-clean shared objects for 72 hours.
 - If items need to be reused within 24 hours they should be disinfected.
- Staff should [wash hands](#) after removing gloves or after handling used items or other objects near students who are unmasked.
- **Regularly (at least once a day or as often as needed) clean surfaces** using soap or detergent.
- If choosing to disinfect, ensure [safe and correct use](#) and storage of cleaning products, including storing products securely away from children.
- Use gloves when removing garbage bags or handling and disposing trash.
- [Wash hands](#) after removing gloves.

Soiled Surfaces


- **Immediately clean surfaces and objects that are visibly soiled.**
 - Use soap or detergent to clean these surfaces or objects.
 - If choosing to disinfect, dirty surfaces should be cleaned before disinfection.
- If surfaces or objects are soiled **with body fluids or blood**, use gloves and other standard precautions to avoid coming into contact with the fluid.
 - Contain and remove the spill, and then clean and disinfect the surface.

Personal protective equipment (PPE)

Employers are responsible for providing a [safe and healthy workplace](#) [☑](#). Conduct a thorough [hazard assessment](#) [☑](#) of the school worksite to identify potential workplace hazards related to COVID-19. When engineering and administrative controls cannot be implemented or are not fully protective, employers are required by OSHA standards ([29 CFR part 1910, Subpart I](#) [☑](#)) to:

- Determine what PPE is needed for their specific job duties (e.g., school nurses or other health services staff performing job tasks that expose them to chemicals or particulate matter).
 - For example, some school staff need PPE in order to perform their jobs safely, such as janitorial and maintenance staff.
 - [Masks](#) are not PPE.
- Select and provide appropriate PPE to staff at no cost, if required.
 - Some barriers may offer better protection for a variety of chemicals. More information on

recommended barriers for common disinfectants can be located at the CDC [Hazard Communication for Disinfectants Used Against Viruses](#). Always review the label on the product before use and follow manufacturers' recommendations in the product's safety data sheet.

- [Train their staff](#)  on hazard identification and correct use (including [putting on and removing](#)) of PPE.

When respirators are not required to protect workers, employers may consider allowing voluntary use of filtering facepiece respirators (such as N95s) if staff wish to provide and use such equipment on their own. Owners and operators who allow voluntary use of respirators should ensure they comply with the voluntary use provisions of the OSHA Respiratory Protection standard (29 CFR 1910.134).

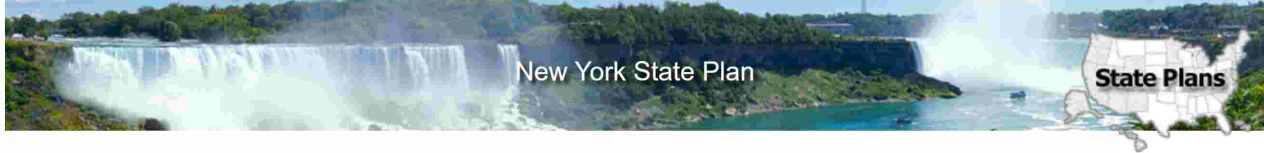
In light of potential PPE shortages, administrators should consider modifying staff and student interaction and use the suggested engineering and administrative controls, mentioned above, as primary prevention and control measures that reduce the need for PPE. See the [Special Considerations](#) section for information on limited circumstances in which PPE for K-12 staff may be necessary.

Supporting Teacher and Staff Mental Health and Well-Being

To protect and support the mental health of K-12 teachers and staff during the COVID-19 pandemic, administrators should consider these options:

- **Provide mental health benefits.** Circulate information about your district's Employee Assistance Plan and any mental health and counseling services that are available. Remind staff what mental health benefits are included in their insurance plans.
- **Implement flexible sick leave policies and practices.** Each staff member's life outside of work is different. Many have caregiving responsibilities and may need to provide care for ill loved ones, oversee virtual learning, and/or arrange child- or elder-care during a time when access to such care may be limited. Be understanding and flexible with leave policies and work schedules as circumstances change and needs arise.
- **Evaluate changes to work design.** Eliminate non-essential tasks so staff can focus on the critical ones. Reduce ambiguity by providing necessary resources and guidance for how to instruct and carry out job tasks under changing circumstances. Give staff more control over how they carry out work tasks.
- **Support coping and [resilience](#).** Encourage teachers and school staff to take breaks from watching, reading, or listening to news stories about COVID-19, including social media, if they are feeling overwhelmed or distressed. Encourage employees to talk with people they trust about their concerns and how they are feeling. Consider posting signage for the Disaster Distress Helpline: call or text 1-800-985-5990.
- **Foster wellness.** Consider holding all-staff meetings that focus on mental health awareness, if facilities allow for appropriate social distancing. If you educate staff about mental health and encourage open conversation about the challenges people are experiencing, employees may be more likely to access care when needed. If you have access to a wellness provider, consider hosting virtual mindfulness or discussion sessions. Consider the importance of [healthy sleep](#). Staff can also serve as valuable resources to one another by sharing strategies for coping with the pandemic.
- **Connect.** If remote work is necessary, remember that physical distance does not have to mean socially distant. Using virtual platforms to continue team building and staff meetings can be good for morale by fostering a sense of community and togetherness and easing feelings of loneliness. Be inclusive; provide opportunities for staff, at all levels, in all departments, to participate in these interactions.
- **Provide training.** Consider that staff members may have different levels of ability with using virtual platforms and new learning technologies. Offer training and technical support for new job demands may help to reduce stress.
- **Model healthy behavior.** Encourage all school leaders to take care of their own physical, social, and psychological needs. By doing so, they serve as role models and set the tone that it is acceptable and necessary to take care of oneself.

Appendix #16


[State Plans](#) / [New York](#)


Overview

- Initial Approval: June 01, 1984 (49 FR 23000)
- State Plan Certification: August 16, 2006 ([71 FR 47089](#))

The New York Public Employee Safety and Health (PESH) Bureau is part of the New York Department of Labor. The New York Department of Labor is headed by the Commissioner. The main office is located in Albany with nine district offices located throughout the state.

Coverage

New York PESH covers all state and local government workers in the state. It does not cover federal government workers. Federal government workers including those employed by the United States Postal Service and civilian workers on military bases, are covered by OSHA. OSHA also exercises authority over private sector employers in the state and federal OSHA standards apply to these workers. A brief summary of the New York State Plan is included in the Code of Federal Regulations (CFR) at [29 CFR 1952.24](#). OSHA retains the authority to monitor the State Plan under Section 18(f) of the OSH Act.

State Plan Standards and Regulations

New York PESH has generally adopted all OSHA standards applicable to state and local government employment. In addition, the Commissioner has the authority to develop alternative and/or state-initiated standards to protect the safety and health of state and local government workers in New York in consultation with the Hazard Abatement Board. The procedures for adoption of alternative standards contain criteria for consideration of expert technical advice and allow interested persons to request development of any standard and to participate in any hearing for the development or modification of standards. PESH's state-initiated standards include:

- Workplace Violence Prevention – 12 NYCRR Part 800.6
- Emergency Escape and Self-Rescue Ropes and System Components for Firefighters (*in cities below one million residents*)– 12 NYCRR Part 800.7
- Permissible Exposure Limits – 12 NYCRR Part 800.5
- Right-to-Know – 12 NYCRR Part 820

New York PESH also has its own regulation on the recording and reporting of occupational injuries and illnesses (12 NYCRR Part 801).

Enforcement Programs

New York PESH utilizes its Field Operations Manual (FOM) which provides policy guidance for its enforcement program. The Enforcement Branch conducts unannounced mandatory inspections which results in a "Notice of Violation and Order to Comply" for hazards and/or violations of OSHA standards. Abatement periods to comply with the violations are established and verification of abatement is required. Penalties may be assessed for failure to comply with abatement orders. For more information on these programs, please visit the [New York State Plan website](#).

Voluntary and Cooperative Programs

New York PESH offers voluntary and cooperative programs that focus on reducing injuries, illnesses, and fatalities. New York PESH also offers on-site consultation services which help employers comply with PESH's standards and identify and correct potential safety and health hazards. New York DOSH also has an agreement with OSHA, under Section 21(d) of the OSH Act, to provide free on-site consultation services to the private sector. For more information on these programs, please visit the [New York State Plan website](#).

Informal Conferences and Appeals

Employers and workers may seek formal administrative review of New York Department of Labor notices and orders to comply by petitioning the New York Industria Board of Appeals (IBA) no later than 60 days after the issuance of the notice and order. The IBA is the independent state agency authorized by McKinney's Labor Law §27(a)(6)(c) to consider petitions from affected parties for review of the Commissioner of Labor's determinations. For more information on these proceedings

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Disclaimer

OSHA makes every effort to ensure that this webpage is accurate and up-to-date; however, for the latest information please contact the State Plan directly.

review of the Commissioner of Labor's determinations. For more information on these proceedings, please visit the New York State Plan website.

contact the State Plan directly.



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Occupational Safety & Health
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Current through Register Vol. 44, No. 27, July 6, 2022

Section 800.3 - Adoption of standards

The Commissioner of Labor adopts, as the occupational safety and health standards for the protection of the safety and health of public employees, all of the standards in the below-listed parts of Title 29 of the Code of Federal Regulations:

Part 1910--General Industry Standards; June 1, 2016 edition, with the exception of Section 1910.1000 -Air Contaminants, which is addressed by Section 800.5 of this Part.

Part 1915--Shipyard Employment Standards; June 1, 2016 edition

Part 1917--Marine Terminals Standards; June 1, 2016 edition

Part 1918--Longshoring Standards; June 1, 2016 edition

Part 1926--Construction Standards; June 1, 2016 edition

Part 1928--Agricultural Standards; June 1, 2016 edition

N.Y. Comp. Codes R. & Regs. Tit. 12 § 800.3

Adopted New York State Register April 26, 2017/Volume XXXIX, Issue 17, eff.4/26/2017

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Public Employee Safety & Health



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[Safety and Health \(/safety-and-health\)](#)

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Public Employee Safety & Health

Petition to Modify an Abatement Date
([#petition-to-modify-an-abatement-date](#))

The Public Employee Safety and Health Bureau (PESH), created in 1980, enforces safety and health standards promulgated under the United States Occupational Safety and Health Act (OSHA (<https://www.osha.gov/>)) and several state standards.

The Public Employee Safety and Health (PESH) Act (<https://www.nysenate.gov/legislation/laws/LAB/27-A>) created this unit to give occupational safety and health protection to all public sector employees.

Public sector employers include:

- State
- County
- Town

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- School Districts
- Paid and Volunteer Fire Departments

The Public Employee Safety and Health Bureau responds to:

- Deaths related to occupational safety and health
- Accidents that send two or more public employees to the hospital
- Complaints from public employees or their representatives

The Public Employee Safety and Health Bureau also:

- Inspects public employer work sites
- Gives technical assistance during statewide emergencies

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resources\)](#)

SEE PUBLIC EMPLOYEE SAFETY & HEALTH FREQUENTLY ASKED QUESTIONS

[\(/public-employee-safety-and-health-programs-frequently-asked-questions\)](#)

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[date\)](#)

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To help prevent heat-related fatalities and illness among New York's public sector workers, the Public Employee Safety and Health (PESH) Bureau adopted OSHA's Heat National Emphasis Program (NEP) on June 8, 2022. The purpose of the NEP is to better protect workers from the hazards associated with outdoor work during heat waves, and indoor work near radiant heat sources. Heat stress can be safely managed using time-proven measures that are simple, common sense, and low cost. PESH has slightly altered implementation to cover appropriate public sector industries (see list below) and to allow for available resources. Protective measures will be assessed during

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ensure that procedures are in place before it is too late to implement them.

for-

inspections)
Overview

NAICS Code	Industry Description
------------	----------------------

([#overview](#))

Employee

2213	Water, Sewage and Other (Heating) Systems
------	---

Injury and Services -
Illness
PESH Can
Recordkeeping
Help

2373	Highway, Street and Bridge Construction (Highway, DPW)
------	--

([#employee-services---injury-and-pesh-can-illness-help-recordkeeping](#))

6117	Educational Support Services (Food Preparation/Groundskeeping/Maintenance)
------	--

622110	General Medical and Surgical Hospitals (Food Preparation/Laundry)
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623110	Health Services, Nursing Home (Food Preparation/Laundry)
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922160	Fire Protection
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712190	Nature Parks and Other Similar Institutions (Groundskeeping/Maintenance)
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922141	Correctional Institutions (Food Preparation/Laundry)
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985112	Commuter Rail Systems (Multi-level Terminals/Stations)
--------	--

to-modify-an-abatement-date)

More information about the OSHA initiative and helpful resources can be found on the [OSHA website \(https://www.osha.gov/heat\)](https://www.osha.gov/heat).

Check out our [Consultation Program fact sheet \(/consultation-assistance-fact-sheet-p-206\)](#) to learn how to ask for free and confidential assistance.

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Employee Safety and Health (PESH) Bureau has adopted the OSHA Emergency Temporary Standard (ETS) for Healthcare on October 21, 2021 for public employers in New York State. The ETS will remain in effect for 90 days until January 18, 2022, at which time it may be extended if appropriate. The healthcare ETS establishes new requirements for settings where employees provide healthcare or healthcare support services, including skilled nursing homes and home healthcare, with some exemptions for healthcare providers who screen out patients who may have COVID-19. More information about the rule and ways to implement it can be found at the [COVID-19 Healthcare ETS website](https://www.osha.gov/coronavirus/ets) (<https://www.osha.gov/coronavirus/ets>).

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resources\)](#)

Effective 6/21/2021, OSHA has issued an Emergency Temporary Standard (ETS) to address the danger COVID-19 poses to public healthcare workers. Under the ETS, employers must follow requirements such as screening patients, cleaning and disinfecting surfaces, installing physical barriers, and more. The goal is to protect workers facing the highest COVID-19 hazards.

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For more information, visit the [COVID-19 Healthcare ETS website](https://www.osha.gov/coronavirus/ets) (<https://www.osha.gov/coronavirus/ets>).

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Appendix #17



FORD TO PRODUCE RESPIRATORS, MASKS FOR COVID-19 PROTECTION IN MICHIGAN

FORD IS EXPANDING ITS EFFORTS TO DESIGN AND PRODUCE URGENTLY NEEDED MEDICAL EQUIPMENT AND SUPPLIES.

- Ford, with design and testing consultation from 3M, has developed a new powered air-purifying respirator (PAPR). Production of this PAPR starts Tuesday, April 14 at Ford's Vreeland facility near Flat Rock, Mich., with paid UAW volunteers, with the ability to make 100,000 or more





- Ford, in collaboration with the UAW, is now producing face masks at Ford's Van Dyke Transmission Plant for internal use globally and pursuing certification for medical use
- To help further protect health care workers, Ford is leading efforts to manufacture reusable gowns from airbag materials with supplier Joyson Safety Systems
- Ford is lending its manufacturing support to help Thermo Fisher Scientific quickly expand production of COVID-19 collection kits for patient testing

DEARBORN, Mich., April 13, 2020 – Ford is expanding its efforts to design and produce urgently needed medical equipment and supplies for health care workers, first responders and patients fighting coronavirus.

In addition to the current production of more than 3 million face shields in Plymouth, Mich., Ford-designed powered air-purifying respirator production begins Tuesday, April 14. Ford also is now producing face masks and leading an effort to scale production of reusable gowns for health care workers. Lastly, Ford started providing manufacturing expertise to help scientific instrument provider Thermo Fisher Scientific quickly expand production of COVID-19 collection kits to test for the virus.

“We knew that to play our part helping combat coronavirus, we had to go like hell and join forces with experts like 3M to expand

production of urgently needed medical equipment and supplies, said Jim Baumbick, vice president, Ford Enterprise Product Line Management. "In just three weeks under Project Apollo, we've unleashed our world-class manufacturing, purchasing and design talent to get scrappy and start making personal protection equipment and help increase the availability and production of ventilators."

Ford and 3M Collaboration Leads to New PAPR

Since late March, Ford manufacturing, purchasing and supply chain experts have been embedded at 3M manufacturing facilities to help increase production of urgently needed products.

With this additional help, 3M and Ford were able to increase the output of PAPRs and N95 respirators at 3M's U.S.-based manufacturing facilities.

"3M is dedicated to helping to protect our heroic health care workers and first responders globally, including sharing our scientific expertise to increase supply of needed PPE," said Bernard Cicut, vice president, 3M Personal Safety Division. "We are proud to stand together with Ford in this effort, as they have helped us increase manufacturing of existing 3M PPE products and, together, we have rapidly designed a new PAPR to help protect these heroes."

Ford will start producing an all-new PAPR design to help protect health care professionals on the front lines fighting COVID-19. Rapidly designing components and prototyping in accordance with federal guidelines and with 3M expert support and guidance, Ford teams reduced PAPR development time to less than four weeks.

"By working collaboratively with 3M to quickly combine more than 100 years of Ford manufacturing and engineering expertise with personal protection equipment design and expertise, we're getting much-needed technology into the hands of frontline medical workers to help when they need it most," said Marcy Fisher, Ford director, Global Body Exterior and Interior Engineering.

Approximately 90 paid UAW volunteers will assemble PAPRs at Ford's Vreeland facility near Flat Rock, Mich., with the ability to make 100,000 or more.

The newly designed PAPR includes a hood and face shield to cover health care professionals' heads and shoulders, while a high-efficiency (HEPA) filter system provides a supply of filtered air for up to 8 hours. The air blower system – similar to the fan found in F-150's ventilated seats – is powered by a rechargeable, portable battery, helping keep the respirator in constant use by first-line defenders.

The development team expects the respirator design will meet the pending National Institute for Occupational Safety and Health (NIOSH) limited-use protocol to respond to the COVID-19 public health emergency, with approval anticipated by the end of April.

Pending approval, 3M will distribute the newly designed PAPRs through its U.S. network to help bring these technologies quickly and efficiently to health care workers who urgently need them. 3M and Ford will donate any profits they earn from the sale of the PAPER to COVID-19 related nonprofit organizations.

Face Mask Production

Meanwhile, Ford is now manufacturing face masks for internal use globally and pursuing certification for medical use at its Van Dyke Transmission Plant. Face masks can help slow the spread of the virus and help people who may have the virus and do not know it from transmitting it to others.

The CDC is now encouraging all U.S. residents to use masks to curb the spread of the virus.

Ford's global manufacturing and purchasing teams quickly sourced the necessary materials and equipment from its network of equipment manufacturers around the world. Production began earlier this week.

Approximately 30 UAW paid volunteers will start making masks in the plant's ISO Class 8 cleanroom, which is a controlled environment with extremely low levels of pollutants, enabling the safe production of face masks for medical use. Eventually, approximately 80 UAW paid volunteers will make masks as production increases.

"UAW Ford members continue to step up and volunteer to work during this difficult time as we expand at the facility across from Flat Rock to make respirators and at the Van Dyke Transmission Plant to make face masks for medical use," said Gerald Kariem, vice president, UAW Ford Department. "The UAW also continues to work with Ford to follow stringent CDC guidelines and go above and beyond protections for these members who are so proudly volunteering to serve their communities and their nation."

Gown Production

To help further protect health care workers, Ford is leading efforts to manufacture reusable gowns with airbag supplier Joyson Safety Systems. The go-fast project has created re-usable gowns manufactured from material used to make airbags in Ford vehicles.

Production of gowns will reach 75,000 gowns a week by Sunday and scale up to 100,000 gowns for the week of April 19 and beyond. By July 4, Ford-supplier Joyson Safety Systems will cut and sew 1.3 million gowns, which are self-tested to federal standards and are washable up to 50 times.

Ford worked with Beaumont Health in Metro Detroit to quickly design the gown pattern and test for sizing during fit and function trials. More than 5,000 gowns have already been delivered to the hospital.

"The need to protect our medical teams is heightened. Ford's

The need to protect our medical teams is heightened – Ford's gown production could not come at a better time during this crisis," said David Claeys, president of Beaumont Health hospitals in Dearborn and Farmington Hills. "Our front line health care workers are working around the clock to treat COVID-19 patients and we need the necessary supplies to support them."

Collection Kits for COVID-19 Tests

Ford is helping scale production of collection kits for COVID-19 tests at Thermo Fisher Scientific.

Thermo Fisher's engineering team at the company's site in Lenexa, Kansas, realized their expertise, combined with the manufacturing expertise of Ford's nearby Kansas City Assembly Plant engineering team, could help set up additional collection kit production machinery. The Ford team also helped Thermo Fisher adapt machinery that currently runs glass vials for other products to run plastic vials required in drive-through coronavirus test collection.

"Ford's engineers brought a fresh perspective to production expansion, and together, we'll more than triple the number of collection kits we can deliver each week starting April 20," said John Reuss, senior director, microbiology business for Thermo Fisher. "It's great to see different industries coming together to solve a common problem."

Additional Efforts

"We are doing all we can to expand production and availability of personal protective equipment to help keep the true heroes – medical personnel – and our communities safe in the fight against COVID-19," said Adrian Price, director, Global Core Engineering for Vehicle Manufacturing.

Ford also is continuing to manufacture transparent full-face shields for medical workers. As of April 13, Ford had produced more than 3 million face shields for medical personnel and first responders. Besides the U.S., face shield production also has started globally at Ford facilities in Canada and Thailand and with Ford joint venture partner Mahindra & Mahindra in India.

Work at Rawsonville (Mich.) Components Plant is underway to transform a portion of the plant to manufacture a third-party ventilator, in collaboration with GE Healthcare, with production expected to start the week of April 20. Built by paid UAW volunteers, the goal is to produce 50,000 Model A-E ventilators by July 4 to help COVID-19 patients.

Ventilator pre-production activities are also underway in the U.K., where Ford and an industry consortium are preparing to make ventilators from Penlon. Ford is providing manufacturing engineering capability, project leadership, purchasing support and assembly of the ventilators at its Dagenham engine plant. This production will help meet demand for 15,000 ventilators ordered by the U.K. government.

Additional companies and individuals who are interested in

Additional companies and individuals who are interested in contributing to this effort can submit their information here at www.fordnewideas.com.

About Ford Motor Company

Ford Motor Company is a global company based in Dearborn, Michigan. The company designs, manufactures, markets and services a full line of Ford cars, trucks, SUVs, electrified vehicles and Lincoln luxury vehicles, provides financial services through Ford Motor Credit Company and is pursuing leadership positions in electrification, autonomous vehicles and mobility solutions. Ford employs approximately 190,000 people worldwide. For more information regarding Ford, its products and Ford Motor Credit Company, please visit corporate.ford.com.

About 3M

At 3M, we apply science in collaborative ways to improve lives daily. With \$32 billion in sales, our 96,000 employees connect with customers all around the world. Learn more about 3M's creative solutions to the world's problems at www.3M.com or on Twitter @3M or @3MNews

About Thermo Fisher Scientific

Thermo Fisher Scientific Inc. is the world leader in serving science, with annual revenue exceeding \$25 billion. Our Mission is to enable our customers to make the world healthier, cleaner and safer. Whether our customers are accelerating life sciences research, solving complex analytical challenges, improving patient diagnostics and therapies or increasing productivity in their laboratories, we are here to support them. Our global team of more than 75,000 colleagues delivers an unrivaled combination of innovative technologies, purchasing convenience and pharmaceutical services through our industry-leading brands, including Thermo Scientific, Applied Biosystems, Invitrogen, Fisher Scientific, Unity Lab Services and Patheon. For more information, please visit www.thermofisher.com.

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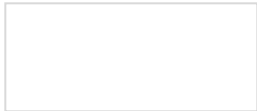
How committed do you feel Ford is to helping with the COVID-19 pandemic?

Very Uncommitted Uncommitted Neither Committed Nor Uncommitted Committed Very Committed

Appendix #18

Independent Budget Office of the City of New York

Providing city officials & the public with nonpartisan information on the NYC budget & economy



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Fiscal Brief

May 2020

How Much "CARE" for NYC? An Estimate of Federal Coronavirus Emergency Relief Act Funding to the City Budget

PDF version available [here](#).

The Independent Budget Office estimates that \$5.3 billion in aid from the federal government’s four coronavirus relief packages will flow to the city budget, largely in this fiscal year and next. These funds are in addition to federal aid granted to public agencies that provide essential city services but are outside the city budget, including \$3.8 billion for the Metropolitan Transportation Authority (MTA), at least \$818.6 million for NYC Health + Hospitals (H+H, the city’s public hospital system), and \$211.9 million for the city’s public housing authority. These projections represent IBO’s best estimates based on the data currently available. New data is being released on a near-daily basis, however, and details of

many of the local funding formulas have yet to be published. Costs reimbursed by the Federal Emergency Management Agency (FEMA) are not included in these estimates.

The majority of the \$5.3 billion in aid that IBO projects the city will receive must be used to cover direct costs incurred by the city due to the Covid-19 pandemic or to fund programs that provide aid to city residents impacted by the resulting downturn, such as increased funding for existing food and rental assistance programs. The more than \$700 million in federal education aid included in this total will replace state school aid cut by the Governor in the state’s recently enacted budget. Therefore, while this funding represents a considerable sum to help pay for the city’s Covid-19 response, it does little to address the \$9.5 billion shortfall in city tax revenue that IBO expects to result from the economic downturn caused by the pandemic over the 2020 and 2021 fiscal years.

IBO Estimates of Federal Relief Aid Funding to New York City Budget		
<i>Dollars in thousands</i>		
Program Area	City Agency	Total City Funding
Coronavirus Relief Fund	Various	\$1,454,710
Public Health		
Enhanced Federal Medicaid Assistance Program (eFMAP)	Health	\$1,000,000
Public Health and Services Emergency Fund: Testing	Health	845,000
Centers for Disease Control Preparedness Grants (Coronavirus Preparedness Act)	Health	25,100
Centers for Disease Control Preparedness Grants (CARES Act)	Health	18,800
Public Health and Social Services Emergency Fund: Hospital Preparedness	Health	11,700
Suicide Prevention	Health	2,400
Reauthorization of Healthy Start Program	Health	1,200
Public Health and Emergency Social Services Emergency Fund: Hospital Preparedness	Health	1,100
Ryan White HIV/AIDS Program	Health	1,000
Poison Control Centers	Health	131
Subtotal Public Health Programs		\$1,906,431
Community Development and Housing		
Community Development Block Grant	Various	\$472,689
Emergency Solutions Grant	Homeless Services and Housing	473,594
Housing Choice Vouchers	Housing	25,891
Subtotal Community Development and Housing		\$972,173
Education and Child Care		
Education Stabilization Fund: Elementary and Secondary School Emergency Relief Fund & Governor’s Emergency Education Relief Fund	Education	\$716,903
Education Stabilization Fund: Higher Education Emergency Relief Fund	CUNY Community Colleges	79,000
Child Care and Development Block Grant	Children’s Services & Education	88,300
Child Nutrition Programs	Education	33,034
Head Start	Education	9,719
Subtotal Education and Childcare Programs		\$926,956
Social Services and Criminal Justice Programs		
Community Services Block Grant	Various	\$32,000
Senior Meals	Aging	18,300
Low Income Housing Energy Assistance Program	Social Services	7,377
Housing Opportunities for Persons with AIDS	Social Services	6,351
Child Welfare Funding	Children’s Services	1,020
Local Law Enforcement	Various	12,800
Election Security Grants	Board of Elections	6,000
Subtotal Social Services and Criminal Justice Programs		\$83,848
Total		\$5,344,119
<small>SOURCE: IBO analysis of the Federal Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020; the Families First Coronavirus Response Act, 2020; Paycheck Protection Program and Health Care Enhancement Act, 2020; and the Coronavirus Aid, Relief and Economic Security Act, 2020 NOTES: These figures represent IBO’s best projections based on available data and IBO’s estimates of local funding allocations, as the details of many of the legislations’ funding formulas have yet to be released. IBO did not include costs reimbursed by the Federal Emergency Management Agency in this estimate. IBO did not calculate or include estimates of local awards of federal competitive grants as the likelihood of awards and amount of such funding is unknown. New York City Independent Budget Office</small>		

Federal Relief Bills. The federal government has enacted four emergency relief bills thus far to address the impact of the Covid-19 pandemic. The first package, the Coronavirus Preparedness and Response Supplemental Appropriations Act, was signed into law March 6, 2020 and authorized \$8.3 billion in emergency spending, largely for public health programs.

The Families First Coronavirus Response Act followed on March 18, 2020 with provisions for paid sick leave, food programs, a mandate that Covid-19 tests be administered at no cost to individuals, and expanded unemployment benefits and coverage.

On March 27, 2020, President Trump signed the third bill, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), which provides more than \$2 trillion dollars in direct support to households, businesses, states, some local governments, and the health care industry. The majority of the funds flowing to the city budget come from the CARES Act.

A fourth bill, the Paycheck Protection Program and Health Enhancement Act, was signed on April 24, 2020. It largely increased the funding made available to small businesses and health care institutions in the CARES Act.

Coronavirus Relief Fund. Just over a quarter of the \$5.3 billion in aid that IBO estimates the city will receive comes from the \$150 billion Coronavirus Relief Fund included in the CARES Act. IBO estimates that the city will receive nearly \$1.5 billion in direct aid from this fund. While the majority of the Coronavirus Relief Fund flows directly to state governments, local governments with populations of 500,000 or more can elect to receive a portion of their state's funds directly. New York State received an allocation of \$7.5 billion, including the \$1.5 billion that will flow directly to the city.

The CARES Act requires the city to use these funds to pay for "necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019." In order to be eligible for reimbursement, the spending must not have been included in the city's budget before the CARES

Act was enacted and must occur from March 1, 2020 through Dec. 30, 2020.

Public Health. IBO estimates that public health provisions included in the four federal emergency aid bills will net city programs \$1.9 billion in funding for expenses incurred to fight the pandemic, with millions more flowing to the city's public hospital system (see sidebar, page 4). Of these provisions, the largest impact on the city budget comes from changes to Medicaid funding. The Families First Coronavirus Act increased the share of Medicaid paid by the federal government by 6.2 percentage points (called the enhanced Federal Medical Assistance Percentage, or eFMAP.) In New York the federal, state, and city governments share Medicaid costs, so if the state allows the savings from the eFMAP to flow through to localities across the state—as it has done in the past—there would be savings for the city. We expect the city will save \$1.0 billion in Medicaid payments due to eFMAP—funds it can redirect for other uses.

The most recent aid package provided up to \$11.0 billion for states and local governments to expand testing for Covid-19. While the formula for local awards has yet to be released, based on language in the legislation, IBO estimates that the New York City's health department will receive about \$845.0 million of this funding.

The city's health department will also receive funds through the Center for Disease Control (CDC) Preparedness Program. The CDC has already allocated \$25.1 million authorized by the Coronavirus Preparedness Act to the city and \$18.8 million through the CARES Act, with the possibility of more. These funds can be used for monitoring the spread of the coronavirus, laboratory testing, contact tracing, the purchase of personal protective equipment, and related public health activities.

IBO estimates that another \$17.5 million in CARES Act funding will be available to the city for a variety of programs, including hospital preparedness, the city's Ryan White HIV/AIDS program, suicide prevention, and poison control.

Community Development and Housing. IBO projects that

aid from federal community development and housing programs will total about \$972.2 million. Included in this funding is \$472.7 million in new Community Development Block Grant (CDBG) awards. Authorized by the CARES Act, the additional CDBG funding is relatively flexible. Eligible uses include construction of public facilities (such as clinics and expanded hospital capacity), economic development programs to create or preserve jobs, training programs to increase the number of health care workers, and meal delivery to quarantined individuals. The Department of Housing and Urban Development (HUD) has already allocated \$102.1 million in emergency CDBG funds to the city based on its annual CDBG formula grant. Additional funds will be awarded based on a formula that takes into account the impact of Covid-19 on specific localities. IBO estimates these additional CDBG funds could total \$370.6 million for New York City.

In addition to the CDBG funds, IBO estimates the city will receive \$473.6 million for homeless and housing programs through an increase to HUD's Emergency Solutions Grant included in the CARES Act. These funds can be used to build and operate emergency homeless shelters, create new rental assistance programs, and provide services to homeless populations. Like the CDBG funds, a portion has already been allocated to the city based on its annual formula grant and additional funds are expected.

The CARES Act also provides increases to existing federal rental-assistance programs, including the Housing Choice Voucher program (or Section 8). Tenants in this program generally pay 30 percent of their income in rent to private property owners and the federal subsidy pays the balance. As tenants' incomes decline during the economic downturn, additional subsidy is needed to make up the difference. IBO estimates the city could receive \$25.9 million for this program, funds that would eventually flow to landlords. (The majority of the city Housing Choice Program is administered by the New York City Housing Authority, or NYCHA, which also will receive funding. See sidebar).

At Least \$4.9 Billion Expected for Public Agencies Not Part of the City's Budget

In addition to the funds flowing through the city budget, numerous other public entities and agencies operating in New York City are expected to receive funds through the federal government's various relief bills. IBO has estimated the affect of the federal emergency assistance bills on several of the larger non-city agencies.

IBO Estimates of Federal Relief Aid Funding to Related Agencies Outside the City Budget	
<i>Dollars in thousands</i>	
Agency	Funding
Metropolitan Transportation Authority	
Transit Infrastructure Grants	\$3,790,513
Subtotal Metropolitan Transportation Authority	\$3,790,513
NYC Health + Hospitals	
Public Health and Social Services Emergency Fund-Reimbursement to Hospitals & Health Care Providers	At least \$449,000
Delay in Cuts to Medicaid DSH Program	327,450
Temporary Suspension of Medicare Sequester	22,500
Medicare DRG Add-On Payment For COVID-19 Patients	At Least 13,900
Community Health Care Centers	4,400
Covid-19 Telehealth Program	1,000
Ryan White HIV/AIDS Program	353
Subtotal NYC Health + Hospitals	At least \$818,603
New York City Public Housing	
Public Housing Operating Fund	\$149,860
Section 8 Tenant Based Vouchers	62,000
Subtotal New York Public Housing	\$211,860
CUNY-Senior, Graduate, Honors, And Professional Colleges	
Education Stabilization Fund: Higher Education Emergency Relief Fund	\$158,000
Subtotal CUNY-Senior, Graduate, Honors, and Professional Colleges	\$158,000
Total Related Agencies	\$4,978,976
SOURCE: IBO analysis of the Federal Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020; the Families First Coronavirus Response Act, 2020; Paycheck Protection Program and Health Care Enhancement Act, 2020; and the Coronavirus Aid, Relief and Economic Security Act, 2020	
NOTES: These figures represent IBO's best projections based on available data and IBO's estimates of local funding allocations, as the details of many of the legislations' funding formulas have yet to be released. IBO did not include costs reimbursed by the Federal Emergency Management Agency in this estimate. Figures for NYC Health+Hospitals represent IBO estimates based on the low-end of possible federal funding. For additional details, please see text.	

New York City Independent Budget Office

Metropolitan Transportation Authority. The MTA has been awarded \$3.8 billion in federal aid authorized by the CARES Act. This funding is intended to help bolster MTA revenues, which have plummeted in response to decreases in ridership during the coronavirus public health crisis. The funds can also be used to purchase personal protective equipment, and to pay the salaries of staff who are furloughed due to reductions in service or quarantine measures.

NYC Health + Hospitals. IBO estimates that New York City's Health + Hospitals will receive at least \$818.6 million through a variety of provisions in the federal relief bills. This estimate represents the low-end of potential awards, as funding allocations for many provisions remain unknown.

A little over 40 percent of the funds IBO estimates H+H will receive come from delaying federal funding cuts to the Medicaid and Medicare programs, both previously set for May but now postponed until December 2020. This includes delaying the cuts to the Medicaid Disproportionate Share Program and a temporary suspension of the Medicare reductions mandated under federal budget sequestration legislation, which first went into effect in 2013. IBO expects these delays will increase H+H funding over this fiscal year and next by \$327.5 million and \$22.5 million, respectively. Another \$4.4 million from the CARES Act has already been disbursed to H+H through funding for community health centers. IBO also expects H+H to receive \$1.0 million for telehealth services through the CARES Act.

Two provisions in the CARES Act could result in millions more for H+H, but because there is a great deal of uncertainty over how the funds will be distributed, IBO has chosen to estimate conservatively. The first provision involves a \$175.0 billion Public Health and Social Services Emergency Fund to reimburse health care providers affected by Covid-19; the CARES Act authorized \$100.0 billion for the reimbursement fund and the Paycheck Protection Program and Health Enhancement Act increased it by another \$75.0 billion.

N

The language in the CARES Act provided few details on how to allocate these funds, but the Department of Health and Human Services has since announced guidance on awarding the first \$72.4 billion. This includes a \$50 billion "general allocation," \$10 billion allocation for "high-impact areas," a \$2.0 billion allocation for treatment of the uninsured, \$10.0 billion for rural health centers and \$400.0 million for Indian Health Services.

IBO estimates that H+H will receive at least \$449.0 million from the general and high-impact area allocations. Medicare providers effected by Covid-19 are awarded funds from the general allocation based on their net patient revenue in 2018. We expect this will result in \$60 million for H+H. The high-impact area allocation is distributed based on the number of intensive care beds and Covid-19 patient admissions. IBO estimates H+H will receive \$389.0 million from this allocation. H+H will also likely receive funds for treatment of the uninsured, however, it is unclear how much. (H+H is ineligible for the rural and Indian Health allocations). There is little information on how the remaining \$102.6 billion authorized will be allocated.

The second major provision in the CARES Act affecting H+H is a 20 percent increase in the weighting factor of the assigned Medicare Diagnosis-Related Group (DRG) for patients with Covid-19. The DRG determines how much the federal government pays for Medicare fee-for-service-eligible patients. How much federal funding this brings to H+H depends on how many New Yorkers are infected during the public health emergency, and of those, the share that are hospitalized, Medicare fee-for-service eligible, and treated in the city's public hospitals.

If 20 percent of city residents are infected, and of those 15 percent are hospitalized, and 15 percent of those hospitalized require intensive care, IBO estimates the effect of the increase to the DRG payment for H+H, based on H+H's current share of the city's Medicare-eligible patients, will be \$13.9 million. If the infected share of the population were 60 percent (again with 15 percent hospitalized and 15 percent of the hospitalized patients requiring intensive care) then the increase in DRG rates would result in \$41.6 million of

additional H+H revenue

Other provisions of aid bills are likely to provide additional funding for H+H, but are difficult to estimate, including free coronavirus testing for the uninsured through Medicaid, and funding for H+H's community health centers and for health centers that provide graduate medical education. H+H is also eligible to receive FEMA reimbursements for emergency costs. These are not included in this estimate.

New York City Housing Authority. IBO estimates the New York City Housing Authority will receive \$211.9 million through two provisions of the CARES Act. The first provides additional operating support to public housing agencies to compensate for decreases in rental payments resulting from reductions in tenants' incomes. (NYCHA residents pay a fixed share of their income in rent, so when tenants' incomes decline, the rents NYCHA collects decline as well.) HUD has announced the authority will receive \$149.9 million through this provision. NYCHA also administers most of the city's Housing Choice Vouchers (Section 8) and it expects to receive around \$62.0 million under the CARES Act to help cover increased subsidy costs resulting from reductions in tenants' income.

CUNY. IBO estimates CUNY's senior colleges, graduate institutions, and professional schools will receive \$158.0 million from the Higher Education Emergency Relief Fund established as part of the Education Stabilization Fund in the CARES Act. This is in addition to the \$79.0 million for CUNY community colleges that IBO expects to flow through the city budget.

Education and Child Care. IBO identified about \$927.0 million in aid for city education and child care programs authorized in the CARES Act.

The largest source of education funding is a nearly \$30.8 billion national Education Stabilization Fund, which includes three components: the Governor's Emergency Education Relief Fund, the Elementary and Secondary School Emergency Relief Fund, and the Higher Education Emergency

Relief Fund.

Both of the relief funds are allocated to states based on formulas outlined in legislation; states, in turn, pass funding along to localities. According to the U.S. Department of Education, New York State's allocation totals \$164.3 million for the Governor's fund and just over \$1.037 billion for the Elementary and Secondary School Fund.

Shortly after the CARES Act was signed, New York State enacted its fiscal year 2021 budget. Nearly all of the state's allocation of both the Governor's Relief Fund and the Elementary and Secondary School Fund were budgeted to offset a "Pandemic Adjustment" reduction in school aid statewide. New York City is slated to receive \$716.9 million in school aid from the CARES Act, just equal to the \$716.9 million Pandemic Adjustment reduction included in the state's budget for fiscal year 2021.

Awards from the Higher Education Emergency Relief Fund are distributed directly to colleges and universities using a formula based on the shares of full-time students who are Pell Grant recipients. According to the U.S. Department of Education, the city university's (CUNY) community colleges will receive \$79.0 million, a third of the \$237.0 million allocated to all CUNY schools (CUNY senior colleges, graduate institutions, and professional schools are not included in the city's budget. See side bar above)

The CARES Act also provides supplemental funding for the city's Child Nutrition Programs, which include the National School Lunch Program, the School Breakfast Program, and the Child and Adult Care Food Program. This funding is intended to provide grants to districts for planning and coordination of food service during the pandemic. With schools now scheduled to remain closed through the rest of the school year, IBO projects that the city's Department of Education could receive about \$33.0 million in reimbursements under the program. An additional \$9.7 million will go the city's Head Start program under the CARES Act.

The CARES Act increases the city's Child Care and

Development Block Grant by \$88.3 million; \$22.7 million of the aid will flow to the Department of Education and \$65.6 million to the Administration for Children's Services, according to IBO estimates.

IBO Social Services and Criminal Justice Programs. IBO projects that federal coronavirus relief aid for a variety of city social service and criminal justice programs will total \$83.8 million. The largest share of these funds (\$32.0 million) is expected through a CARES Act increase to the Community Services Block Grant, which funds a variety of programs largely through the city's Department of Youth and Community Development.

IBO estimates that city programs providing meals to seniors impacted by Covid-19 will receive a total of \$18.3 million through funding included in both the Families First Coronavirus Response Act and the CARES Act. (The CARES Act also increased funds available for the Supplemental Nutrition Assistance Program, also known as food stamps. These funds are paid directly to recipients, so they do not flow through the city budget. Based on the assumption that city residents will benefit from the same share of the increase as they received under the national program last year, IBO expects that New Yorkers could receive \$620 million.)

Other social services programs expected to receive increased aid under the CARES Act include: the Low Income Housing Energy Assistance Program (\$7.4 million); services for populations living with HIV/AIDS through the Housing Opportunities for Persons with AIDS program (\$6.3 million); and about \$1.0 million in increased child welfare funding.

Lastly, IBO estimates the city could receive an approximately \$12.8 million increase in Justice Assistance Grant funding through the CARES Act to help cover costs incurred by the police department, Department of Correction, and the Mayor's Office of Criminal Justice, as well as \$6.0 million in Election Security Grant funding to help cover coronavirus-related costs during the 2020 election cycle.

Report prepared by Elizabeth Brown with IBO Staff

Appendix #19

No. 20-1158

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

**IN RE: AMERICAN FEDERATION OF LABOR AND
CONGRESS OF INDUSTRIAL ORGANIZATIONS,**

Petitioner

On Emergency Petition for a Writ of Mandamus

**DEPARTMENT OF LABOR'S RESPONSE TO THE
EMERGENCY PETITION FOR A WRIT OF MANDAMUS**

KATE S. O'SCANNLAIN
Solicitor of Labor

TIMOTHY J. TAYLOR
Deputy Solicitor of Labor

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fairly traceable cause of any injury, nor a substantial likelihood that its imposition would remedy such injury or threatened injury. Petitioner fails to demonstrate that any employer has or would forgo compliance with any of the potential standards to which Petitioner alludes, simply because they are not set forth in an ETS. Nor could Petitioner do so, because the standards Petitioner seeks are largely already mandatory and enforceable either through existing OSHA requirements or the veritable gamut of non-OSHA public safety requirements enacted by federal, state, and local officials in response to the pandemic.

Second, OSHA's determination that an ETS is not "necessary" and therefore cannot and should not issue, 29 U.S.C. § 655(c)(1), is "committed to the agency's expertise in the first instance," *In re Int'l Union, United Mine Workers of Am. (UMWA)*, 231 F.3d 51, 54 (D.C. Cir. 2000), and should not be disturbed. COVID-19 is a community-wide hazard that is not unique to the workplace.⁹ Based on substantial evidence, OSHA determined that an ETS is not necessary both because there are existing OSHA and non-OSHA standards that address COVID-19 and because an ETS would actually be counterproductive. The risk of COVID-19 is

⁹ For example, a recent CDC report studying meat and poultry facilities concluded that "many workers live in crowded, multigenerational settings and sometimes share transportation to and from work, contributing to increased risk for transmission of COVID-19 outside the facility itself." CDC, *Morbidity and Mortality Weekly Report: COVID-19 Among Workers in Meat and Poultry Processing Facilities – 19 States, April 2020*, [tinyurl.com/yd2aehgo](https://www.cdc.gov/mmwr/mmwr-reports/2020/s41/e0411a.htm).

extreme step is unnecessary. *See Asbestos Info. Ass'n*, 727 F.2d at 426 (ETS unnecessary where redundant with current regulations). OSHA has trained its inspectors regarding these standards and their applicability to COVID-19. Sweatt Decl., Addendum Tab 1, ¶ 32. Where appropriate, OSHA has and will take enforcement action for violations.

2. OSHA's General Duty Clause Requires Employers To Take Precautions Against COVID-19

The OSH Act's general duty clause imposes additional mandatory obligations. The clause requires every employer to “furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees.” 29 U.S.C. § 654(a)(1). To establish a violation of the general duty clause, the Secretary must show that: (1) an activity or condition in the employer's workplace presented a hazard to an employee; (2) either the employer or the industry recognized the condition or activity as a hazard; (3) the hazard was likely to or actually did cause death or serious physical harm; and (4) a feasible means to eliminate or materially reduce the hazard existed. *BHC Nw. Psychiatric Hosp., LLC v. Sec'y of Labor*, 951 F.3d 558, 563 (D.C. Cir. 2020) (citation omitted). Tellingly,

standards were designed to protect against a variety of hazards and have been applied to infectious disease and are effective in doing so. That guarding against infectious disease broadly or COVID-19 specifically is not their sole aim is a red herring.

Appendix #20

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. OSHA–2020–0004]

RIN 1218–AD36

Occupational Exposure to COVID–19; Emergency Temporary Standard

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Interim final rule; request for comments.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is issuing an emergency temporary standard (ETS) to protect healthcare and healthcare support service workers from occupational exposure to COVID–19 in settings where people with COVID–19 are reasonably expected to be present. During the period of the emergency standard, covered healthcare employers must develop and implement a COVID–19 plan to identify and control COVID–19 hazards in the workplace. Covered employers must also implement other requirements to reduce transmission of COVID–19 in their workplaces, related to the following: Patient screening and management; Standard and Transmission-Based Precautions; personal protective equipment (PPE), including facemasks or respirators; controls for aerosol-generating procedures; physical distancing of at least six feet, when feasible; physical barriers; cleaning and disinfection; ventilation; health screening and medical management; training; anti-retaliation; recordkeeping; and reporting. The standard encourages vaccination by requiring employers to provide reasonable time and paid leave for employee vaccinations and any side effects. It also encourages use of respirators, where respirators are used in lieu of required facemasks, by including a mini respiratory protection program that applies to such use. Finally, the standard exempts from coverage certain workplaces where all employees are fully vaccinated and individuals with possible COVID–19 are prohibited from entry; and it exempts from some of the requirements of the standard fully vaccinated employees in well-defined areas where there is no reasonable expectation that individuals with COVID–19 will be present.

DATES:

Effective dates: The rule is effective June 21, 2021. The incorporation by

reference of certain publications listed in the rule is approved by the Director of the Federal Register as of June 21, 2021.

Compliance dates: Compliance dates for specific provisions are in 29 CFR 1910.502(s). Employers must comply with all requirements of this section, except for requirements in paragraphs (i), (k), and (n) by July 6, 2021.

Employers must comply with the requirements in paragraphs (i), (k), and (n) by July 21, 2021.

Comments due: Written comments, including comments on any aspect of this ETS and whether this ETS should become a final rule, must be submitted by July 21, 2021 in Docket No. OSHA–2020–0004. Comments on the information collection determination described in Section VII.K of the preamble (OMB Review under the Paperwork Reduction Act of 1995) may be submitted by August 20, 2021 in Docket Number OSHA–2021–003.

ADDRESSES: In accordance with 28 U.S.C. 2112(a), the agency designates Edmund C. Baird, Associate Solicitor of Labor for Occupational Safety and Health, Office of the Solicitor, U.S. Department of Labor, to receive petitions for review of the ETS. Service can be accomplished by email to zzSOL-Covid19-ETS@dol.gov.

Written comments: You may submit comments and attachments, identified by Docket No. OSHA–2020–0004, electronically at www.regulations.gov, which is the Federal e-Rulemaking Portal. Follow the online instructions for making electronic submissions.

Instructions: All submissions must include the agency’s name and the docket number for this rulemaking (Docket No. OSHA–2020–0004). All comments, including any personal information you provide, are placed in the public docket without change and may be made available online at www.regulations.gov. Therefore, OSHA cautions commenters about submitting information they do not want made available to the public or submitting materials that contain personal information (either about themselves or others), such as Social Security Numbers and birthdates.

Docket: To read or download comments or other material in the docket, go to Docket No. OSHA–2020–0004 at www.regulations.gov. All comments and submissions are listed in the www.regulations.gov index; however, some information (e.g., copyrighted material) is not publicly available to read or download through that website. All comments and submissions, including copyrighted

material, are available for inspection through the OSHA Docket Office. Documents submitted to the docket by OSHA or stakeholders are assigned document identification numbers (Document ID) for easy identification and retrieval. The full Document ID is the docket number plus a unique four-digit code. OSHA is identifying supporting information in this ETS by author name and publication year, when appropriate. This information can be used to search for a supporting document in the docket at <http://www.regulations.gov>. Contact the OSHA Docket Office at 202–693–2350 (TTY number: 877–889–5627) for assistance in locating docket submissions.

FOR FURTHER INFORMATION CONTACT:

General information and press inquiries: Contact Frank Meilinger, Director, Office of Communications, U.S. Department of Labor; telephone (202) 693–1999; email meilinger.francis2@dol.gov.

For technical inquiries: Contact Andrew Levinson, Directorate of Standards and Guidance, U.S. Department of Labor; telephone (202) 693–1950.

SUPPLEMENTARY INFORMATION: The preamble to the ETS on occupational exposure to COVID–19 follows this outline:

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- I. Executive Summary
- II. History of COVID–19
- III. Pertinent Legal Authority
- IV. Rationale for the ETS
 - A. Grave Danger
 - B. Need for the ETS
- V. Need for Specific Provisions of the ETS
- VI. Feasibility
 - A. Technological Feasibility
 - B. Economic Feasibility
- VII. Additional Requirements
- VIII. Summary and Explanation of the ETS Authority and Signature

I. Executive Summary

This ETS is based on the requirements of the Occupational Safety and Health Act (OSH Act or Act) and legal precedent arising under the Act. Under section 6(c)(1) of the OSH Act, 29 U.S.C. 655(c)(1), OSHA shall issue an ETS if the agency determines that employees are exposed to grave danger from exposure to substances or agents determined to be toxic or physically harmful or from new hazards, and an ETS is necessary to protect employees from such danger. These legal requirements are more fully discussed in *Pertinent Legal Authority* (Section III of this preamble).

For the first time in its 50-year history, OSHA faces a new hazard so grave that it has killed nearly 600,000

Appendix #21

The Truth About COVID-19 Vaccines



You cannot get COVID-19 from the vaccines.

The vaccines used in the U.S. do not contain the virus that causes COVID-19. This means that a COVID-19 vaccine cannot make you sick with COVID-19.

The COVID-19 vaccines do not change your DNA.

The COVID-19 vaccines used in the U.S. contain genetic material that instructs the body's cells to start building protection against the virus. However, the material never interacts with your DNA. This means the genetic material in the vaccines cannot affect your DNA in any way.

It is safe to get vaccinated even if you have allergies or another health condition.

People with health conditions, such as diabetes, asthma or heart disease, can get vaccinated. Many people with health conditions have a higher risk of severe illness from COVID-19, so it is important to get vaccinated.

The only reason someone may not be able to get a COVID-19 vaccine is if they have an allergy to an ingredient in the vaccine or had a severe allergy to another vaccine or injectable medicine. They still may be able to get vaccinated but should talk to their health care provider before doing so.

You should get vaccinated even if you had COVID-19 and have antibodies.

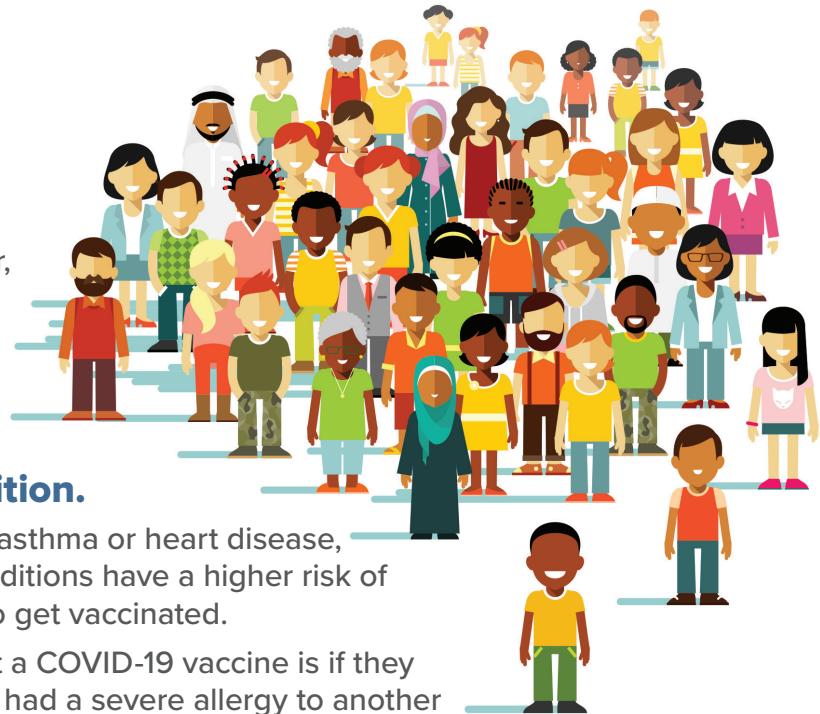
The Centers for Disease Control and Prevention and other experts recommend getting vaccinated even if you already had COVID-19 since you can get COVID-19 again. Getting vaccinated is a safe way to help strengthen your immune system to lower your chance of getting COVID-19 again. The vaccines may also give you better protection against new, more contagious variants of the virus, like the delta variant.

You should get vaccinated even if you are young and healthy.

Young and otherwise healthy people have gotten very sick and died from COVID-19. More contagious variants of COVID-19 are causing more young people to get COVID-19 and be hospitalized. COVID-19 can also cause long-lasting health issues, such as difficulty breathing, muscle and joint pain, headaches, and tiredness. Further, getting vaccinated helps protect your family and friends since people who are vaccinated are less likely to get and spread the virus.

We have not achieved herd immunity.

Herd immunity is when enough people have protection against a disease that the disease is unlikely to spread. There is still COVID-19 transmission in New York City and elsewhere. Experts agree that we have not achieved herd immunity. Every eligible person should get vaccinated to protect themselves and others.



It is safe to get vaccinated if you want to have a baby someday.

Claims linking the COVID-19 vaccines to fertility problems have no scientific evidence supporting them. The CDC and other experts say it is safe for people who may want to have a child to get a COVID-19 vaccine. People who are trying to become pregnant now or who plan to in the future should get vaccinated.



There is no evidence that vitamins or natural remedies protect against COVID-19.

Vaccines are the best way to reduce the risk of getting COVID-19 and prevent severe illness and death if you do get it. The only other proven protections are face coverings, physical distancing, hand hygiene and environmental precautions, such as improved air circulation.



Scientists were able to develop the vaccine so quickly because of significant resources, effort and collaboration.

Billions of dollars were spent and hundreds of scientists from around the world worked nonstop to develop the vaccines. This allowed testing and production of the vaccines to happen at the same time instead of in separate phases. Scientists were also able to build on many years of research from other vaccines, including research on vaccines for other coronaviruses.

We are fortunate that COVID-19 can be stopped with vaccines. Vaccine development has proven to be more challenging for other medical conditions, such as HIV and most cancers. Each infection is different, so vaccine development timelines cannot be compared.



The Food and Drug Administration (FDA) determined the vaccines to be safe.

COVID-19 vaccines were developed following the same steps as other vaccines. They were created in a laboratory and then went through studies, called clinical trials. The clinical trials were closely monitored and evaluated by the FDA, other government organizations, and independent experts. Each COVID-19 vaccine was tested on tens of thousands of volunteers of different genders, ages, races and ethnicities. Initially the FDA granted emergency use authorization (EUA) for the vaccines after determining that the evidence strongly suggested the benefits of getting vaccinated outweighed any risks. In August 2021, the FDA fully approved (licensed) the Pfizer-BioNTech vaccine.



Serious side effects to the vaccines are very rare.

Hundreds of millions of doses of vaccine have safely been given, and serious side effects have been very rare. Medical providers and the general public can report health events that occur after vaccination to the Vaccine Adverse Event Reporting System (VAERS). VAERS detects patterns of health events, also known as safety signals. If VAERS finds a safety signal, experts can investigate to see if there is a connection between the health events and a vaccine. VAERS contains all reports submitted, no matter how likely it is that the events are related to the vaccine. For this reason, VAERS reports alone are not used to judge the safety of a vaccine.



To learn more about COVID-19 vaccines, talk to your health care provider, call **311** or visit nyc.gov/covidvaccine.

Appendix # 22

831

Memorandum of Agreement
Between Uniformed Sanitationmen's Association, Local 831, International Brotherhood of
Tensters (the "Union") and the City of New York (the "City")

WHEREAS; The Commissioner of the Department of Health and Mental Hygiene has issued an order (the "Order") mandating that all city employees be vaccinated against COVID-19 no later than 5pm on October 29, 2021 which was ratified by the Board of Health on November 1, 2021; and

WHEREAS; the parties desire to satisfy their bargaining obligations with regard to the processes and rules surrounding the implementation of the Order and desire to reach agreement regarding a process for requests for exemptions to this mandate and the leave status of those who do not comply with the mandate;

NOW THEREFORE, the parties agree as follows:

I. Exemption and Accommodation Requests & Appeal Process

Employees who are seeking an exemption from the vaccine mandate based on religious and/or medical reasons shall follow their normal agency procedure for requesting a reasonable accommodation. The Department of Sanitation ("DSNY") shall make a determination based upon applicable law. An employee who is unvaccinated and who is denied an exemption may appeal within three (3) business days of receipt of the DSNY determination by selecting one of the two options listed below:

- A. Employees may choose to appeal to a central City panel consisting of DCAS, Law and either DOHMH for medical exemptions or the City Commission on Human Rights (CCHR) for religious exemptions, subject to the terms set forth below:
1. The City panel will make appeal decisions on medical and religious requests as required by law;
 2. The City panel shall decide the appeals based on the documentation submitted to DSNY and there shall be no live hearing;
 3. If the appeal is granted, the Panel will determine the nature of the reasonable accommodation to be provided, based on the nature of the employee's request and input from DSNY;
 4. Employees who submitted their initial reasonable accommodation request to DSNY by end of day¹ on November 2nd, will remain working and on payroll, subject to weekly COVID testing, pending the initial determination of DSNY and/or the determination of the employee's appeal by the City panel². Employees who submit

¹ For purposes of this agreement, "end of day" shall mean 11:59pm.

² To the extent such employees filed after October 27th and were placed on leave without pay on November 1st, they will be returned to payroll effective the day after execution of this agreement and will remain working and on payroll, subject to weekly COVID testing, pending the initial determination of DSNY and/or the determination of the employee's appeal by the City panel.

- their request after November 2nd but by end of day on November 5th will remain working and on payroll, subject to weekly COVID testing, after the request has been submitted and pending the initial determination of DSNY, but may be placed on Leave without Pay pending appeal. Employees who submit their request after November 5th will be placed on Leave without Pay starting November 1st and will remain on such leave pending the determination of the employee's request.
5. For those employees who have been placed on leave without pay status, if their appeal is granted by the City panel, the employee shall be granted excused leave with pay retroactive to the date they were placed on leave without pay.
- B. As an alternative to the above Option 1 appeal process, an employee seeking a medical or religious exemption to the vaccine mandate may choose to appeal to Scheinman Arbitration and Mediation Services (SAMS), subject to the terms set forth below:
1. As a condition of filing an appeal to arbitration, employees shall be required to affirmatively waive their individual right to seek an accommodation through any other legal means or process or to bring a legal challenge to the process or the denial of an accommodation request, except the employee may bring an Article 75 appeal.
 2. Employees who submitted their initial reasonable accommodation request to DSNY by end of day on November 2nd, will remain working and on payroll, subject to weekly COVID testing, pending the initial determination of DSNY and/or the determination of the employee's appeal by SAMS. Employees who submit their request after November 2nd but end of day on November 5th will remain working and on payroll, subject to weekly COVID testing, after the request has been submitted and pending the initial determination of DSNY, but may be placed on Leave without Pay pending appeal. Employees who submit their request after November 5th will be placed on Leave without Pay starting November 1st and will remain on such leave pending the determination of the employee's request.
 3. If an employee's appeal is granted by SAMS, the employee shall be granted excused leave with pay retroactive to the date they were placed on leave without pay.
 4. Appeal decisions issued by SAMS will be final and binding and subject only to an Article 75 appeal.
 5. SAMS will make appeal decisions on medical requests based on the following medical reasons:
 - a. Full Medical Exemptions to the vaccine mandate shall only be considered where an individual has a documented contraindication such that an individual cannot receive any of the 3 authorized vaccines (Pfizer, Moderna, J&J)—with contraindications delineated in CDC clinical considerations for COVID-19 vaccination. Note that a prior immediate allergic reaction to one type of vaccine will be a precaution for the other type of vaccine, and may require consultation with an allergist.
 - b. Temporary Medical Exemptions to the vaccine mandate shall only be based on the following valid reasons to defer or delay COVID-19 vaccination for some period:
 - i. Within the isolation period after a COVID-19 infection;
 - ii. Within 90 days of monoclonal antibody treatment of COVID-19;

- iii. Treatments for conditions as delineated in CDC clinical considerations, with understanding that CDC guidance can be updated to include new considerations over time, and/or determined by a treating physician with a valid medical license responsible for the immunosuppressive therapy, including full and appropriate documentation that may warrant temporary medical exemption for some period of time because of active therapy or treatment (e.g., stem cell transplant, CAR T-cell therapy) that would temporarily interfere with the patient's ability to respond adequately to vaccination;
- iv. Pericarditis or myocarditis not associated with COVID-19 vaccination or pericarditis or myocarditis associated with COVID-19 vaccination.

Length of temporary medical exemptions for these conditions may vary, and staff member must get vaccinated after that period unless satisfying the criteria for a Full Medical Exemption described above.

- 6. SAMS will only grant appeals based on religious exemptions if it is in writing by a religious official (e.g., clergy). Requests shall be denied where the leader of the religious organization has spoken publicly in favor of the vaccine, where the documentation is readily available (e.g., from an online source), or where the objection is personal, political, or philosophical in nature. Exemption requests shall be considered for recognized and established religious organizations (e.g., Christian Scientists).
- 7. A panel of arbitrators identified by SAMS shall hear these appeals and may request that the employee or DSNY submit additional documentation. The assigned arbitrator may also request information from City doctors as part of the review of the appeal documentation. The assigned arbitrator, at his/her discretion, will either issue a decision on the appeal based on the documents submitted or hold an expedited (virtual) factual hearing. If the panel requests a factual hearing, the employee may elect to have a union representative present but neither party shall be required to be represented by an attorney at the hearing. The City will be represented at the hearing by attorneys from the Office of Labor Relations (OLR) and/or the NYC Law Department. The expedited hearing shall consist of brief opening statements, questions from the arbitrator, and brief closing statements. Cross examination shall not be permitted. Any documentation submitted at the Arbitrator's request must be provided to DSNY at least one business day before the hearing or the issuance of the written decision without hearing.
- 8. Appeal decisions shall be expedited without full Opinion.
- 9. The City shall cover all arbitration costs from SAMS under this process. To the extent that the arbitrator requests additional medical documentation or information from DSNY, or consultation with City doctors, arranging and paying for such documentation and/or consultation shall be the responsibility of the City.

10. An employee who is granted a medical or religious exemption or medical accommodation by SAMS shall be allowed to continue working and remain on payroll, subject to a weekly COVID testing requirement. No other exemption or reasonable accommodation alternatives shall be permitted.

II. Leave

- A. Any unvaccinated employee who has not requested an exemption pursuant to Section I, or who has requested an exemption which has been denied, may be placed by DSNY on leave without pay effective November 1, 2021 through November 30, 2021 except as provided under the terms of Section I above. Such leave may be unilaterally imposed by DSNY and may be extended at the request of the employee consistent with Section III(B), below. Placement on leave without pay for these reasons shall not be considered a disciplinary action for any purpose.
- B. Except as otherwise noted herein, this leave shall be treated consistent with other unpaid leaves within the City for all purposes.
- C. During such leave without pay, employees shall continue to be eligible for health benefits. As with other City leaves without pay, employees are prohibited from engaging in gainful employment during the leave period.
- D. Employees who become vaccinated while on such leave without pay and provide appropriate documentation to DSNY prior to November 30, 2021 shall have a right of return to the same work location as soon as is practicable but in no case more than one week following notice and submission of documentation to DSNY. With regard to employees who become vaccinated while on such leave without pay and provide appropriate documentation to DSNY of a first dose between November 1, 2021 and November 5, 2021, the parties will meet and confer under the jurisdiction of Mediator Martin F. Scheinman to address how to deal with the leave of absence for the period of November 1 through the employee's vaccination date.
- E. Pregnancy/Parental Leave
- i. Any soon-to-be birth mother who starts the third trimester of pregnancy on or before October 29, 2021 (e.g. has a due date no later than January 29, 2022), may utilize sick leave, annual leave, and/or compensatory time prior to the child's birth date, but not before October 29, 2021. Upon giving birth, they shall be eligible for paid family leave ("PFL") or FMLA in accordance with existing law and rules.
 - ii. No documentation shall be necessary for this use of accrued leave, other than a doctor's written assertion that the employee is in her third trimester as of October 29, 2021.
 - iii. In the event that an eligible employee exhausts accrued leave prior to giving birth and has not submitted proof of vaccination, that employee shall be placed on a leave without pay, but with medical benefits at least until the birth of the child.
 - iv. If not otherwise covered by existing FMLA or leave eligibility, an employee who exhausts their leave before the birth of the child will be eligible to be in an unpaid leave with medical benefits for the duration of the maternity recovery period (i.e., six weeks after birth or eight weeks after a birth via C-Section).

- v. All other eligibility and use rules regarding use of sick leave, annual leave, compensatory time, paid family leave, and FMLA remain in effect.
- F. The parties agree that if an employee has a pre-scheduled use of annual leave scheduled after November 1st and the employee is on leave without pay due to the vaccine mandate through that period, that the annual leave will be restored for future use if the employee becomes vaccinated and returns to work. For example, if an employee is on leave without pay from November 1 through November 20 prior to being vaccinated, and had pre-scheduled vacation for the week of November 8, the five days of annual leave will be restored to the employee's bank. If an employee has a leave request which was approved prior to October 20th and covers November 1st and any consecutive days thereafter, the employee may continue on leave until they return to the office but must ensure vaccination information is submitted before their first day back at work in order to avoid being placed on Leave without Pay.

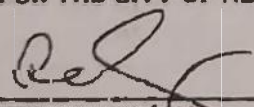
III. Separation

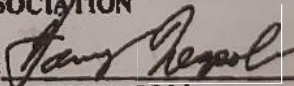
- A. During the period of November 2, 2021 through November 16, 2021 any employee who is on leave without pay due to vaccination status may opt to separate from DSNY. In order to separate under this Section and receive the commensurate benefits, an employee must file a form created by DSNY which includes a waiver of the employee's rights to challenge the employee's involuntary resignation, including, but not limited to, through a contractual or statutory disciplinary process. If an employee opts to separate consistent with this Section, they shall be eligible for the option of a terminal leave payment equivalent to 4 calendar days pay, based on the employee's regular base salary, for each year of city service, up to 100 days, to be paid following the employee's separation with documentation including the general waiver and release. Employees who elect this option shall be deemed to have resigned involuntarily effective on the date contained in the general waiver as determined by DSNY, for non-disciplinary reasons. An employee who separates under this Section shall continue to be eligible for health benefits through June 30, 2022, unless they have health insurance available from another source (e.g., a spouse's coverage or another job).
- B. During the period of November 17, 2021 through November 30, 2021, any employee who is on leave without pay due to vaccination status may alternately opt to extend the leave through June 30, 2022. In order to extend this leave pursuant to this Section and continue to receive the commensurate benefits, an employee must file a form created by DSNY which includes a waiver of the employee's rights to challenge the employee's voluntary resignation, including, but not limited to, through a contractual or statutory disciplinary process. Employees who select this option shall continue to be eligible for health benefits through June 30, 2022. Employees who comply with the health order and who seek to return from this leave, and so inform DSNY before June 30, 2022, shall have a right to return to the same work location as soon as is practicable but in no case more than two weeks following notice to DSNY. Existing rules regarding notice of leave intention and rights to apply for other leaves still apply. Employees who have not returned by June 30, 2022 will be deemed to have voluntarily resigned.

- C. If an employee submits a reasonable accommodation and an appeal under Section I(A) or I(B) above is pending on or after November 10th, the applicable "opt-in" period under Section III(A) and (B) shall be one week after conclusion of the appeal, i.e. the employee must "opt-in" by end of day on the 5th business day after the appeal decision is issued.
 - D. Beginning December 1, 2021, DSNY will seek to unilaterally separate employees who have not opted into separation under Sections III(A) and III(B). Except for the express provisions contained herein, all parties retain all legal rights at all times relevant herein.
 - E. Employees may not use accrued time to cover periods of leave without pay due to the vaccination mandate. However, if an employee files an application for retirement with the applicable retirement system, and signs a waiver established by the City to reflect that the employee is irrevocably resigning from employment, then the employee shall be permitted to exhaust applicable leave balances prior to retirement in accordance with ordinary DSNY practices.
- IV. The parties recognize that the above terms and conditions satisfy any bargaining obligation related to the impact and/or procedures related to implementation of the vaccination mandate. The undersigned Union agrees to withdraw from participation in Case No. BCB-4457-21 (INJ) and BCB-4458-21. The City acknowledges its obligation to bargain the impact and/or procedures related to implementation of the vaccination mandate, which have been addressed by the terms of this Agreement.

FOR THE CITY OF NEW YORK

FOR THE UNIFORMED SANITATIONMEN'S ASSOCIATION

BY: 
 RENEE CAMPION
 Commissioner of Labor Relations

BY: 
 HARRY NESPOLI
 President

Dated: 11 / 4 / 2021

MEMORANDUM OF AGREEMENT

Whereas, SEIU Local 32BJ (“Union”) and the Realty Advisory Board on Labor Relations, Inc. (“RAB”), on behalf of its members (“Employers”) are parties to the 2020 RAB Commercial Building Agreement, the 2020 RAB Contractors Agreement, the 2018 Apartment Building Agreement, the 2018 Resident Managers and Superintendents Agreement, the 2018 Long Island Apartment Building Agreement, the 2021 Security Officers Agreement, and the 2021 RAB Window Cleaners Agreement (collectively, the “Agreements”);

Whereas, the COVID-19 pandemic has impacted building operations and building service workers throughout the City of New York and its surrounding counties;

Whereas, the parties desire to maintain the stable labor relations that have served them well during the COVID-19 pandemic, and ensure an effective and consistent response across the Industry;

Whereas the parties, both individually and collectively, fully and unequivocally encourage and support all individuals (including without limitation: employees, managers, tenants, etc.) to become vaccinated against COVID-19 vaccine;

Whereas on July 12, 2021, the parties entered into a Memorandum of Agreement regarding Employers’ collection of vaccination status information, COVID-19 testing and a committee process for negotiations with respect to mandate requests that were arising at some individual locations;

Whereas recent data indicates that a significant majority of 32BJ members have already been vaccinated, and a significant percentage who are not yet vaccinated are willing to be vaccinated. Moreover, the parties recognize that there are some locations covered by an Agreement where some or all of the location is covered by a government-issued vaccination mandate due to the nature of its tenancy and/or use, and as a result of the Delta variant, there is a growing trend in New York City regarding tenants and institutions requiring vaccination of all employees, visitors and vendors;

Whereas, due to the spread of the Delta variant of COVID-19, some commercial office tenants are postponing their return to their offices, commercial office occupancy remains significantly lower than pre-pandemic levels, and as a result, further recalls of laid off commercial Employees may be delayed;

Whereas, The Related Companies, L.P., instituted a mandatory vaccination policy for 32BJ employees on or about August 2, 2021. The Union challenged the implementation of such policy and demanded that the dispute be arbitrated;

Whereas, the arbitrator ruled that based on the extraordinary facts involving the COVID-19 pandemic, the Related employers could implement a mandatory vaccination program provided that they have fulfilled their bargaining obligations;

While the arbitrator's award is non-precedential, the parties seek to provide consistent, effective, and stable guidance to employers and employees in the Industry with respect to vaccination policies;

Now, therefor, the RAB, on behalf of its members, and the Union agree as follows:

1. Vaccination. The parties both individually and collectively, fully and unequivocally affirm their support for vaccination (which shall be defined as receiving full vaccination of either both shots of two shot vaccination, or one shot for one shot vaccination as well as any recommended booster shot(s)) and encourage and support all individuals be vaccinated against COVID-19. They further agree to use best efforts to encourage and assist all Employees in becoming fully vaccinated against COVID-19.

2. Education. The RAB, the Employers and the Union shall continue to cooperate in joint education efforts along with the 32BJ Health Fund, to share information from accredited health care institutions, agencies or practitioners explaining the COVID-19 vaccine, why vaccination is useful and to answer concerns or questions concerning vaccination.

3. In the event that an Employer is considering a vaccination requirement or seeks to implement a vaccination of all Employees, the Employer shall:

- a. Collection of Vaccination Status Information: An Employer shall inform Employees in writing that it is considering a vaccination mandate and shall request, if they have not already done so, that Employees provide the following information regarding their vaccination status within one week. All employees must comply within one week with these information requests.
 - i. Whether the Employee has been vaccinated and, if so, to provide proof of vaccination. The Employer shall maintain a copy of such proof separate from any other employee information.
 - ii. If the Employee has an appointment to receive either a first or second vaccination shot -- to provide a copy of the appointment notification.
 - iii. If the Employee is seeking a vaccination appointment -- to provide documentation of that request for an appointment or to request assistance in accessing a vaccination appointment.
 - iv. If the Employee is unwilling to be vaccinated -- to provide their reason for refusing vaccination, including whether they are not seeking a vaccination due to a religious belief or health condition protected respectively by Title VII of the Civil Rights Act, the Americans with Disabilities Act and/or other applicable law. For Employees who may be seeking an

accommodation due to a religious belief or health condition, the Employer shall advise Employees of the process and requirements for seeking such an accommodation.

- b. Upon collection of Employees' vaccination status information, and no sooner than two weeks after the Employer has requested that Employees provide their vaccination status, if the Employer intends to implement a vaccination requirement for all Employees (subject to accommodations provided for in Paragraph 3(a)(iv) above), the Employer shall provide written notice to the Union and to all Employees of its vaccination policy, and the requirement to obtain the first dose of a two-shot vaccine, or the single dose vaccine, shall be no sooner than four weeks from the date of the written notice to the Union and Employees. The requirement to obtain the second dose of a 2-shot vaccine shall be no less than eight weeks from the date of the written notice.
- c. The parties strongly encourage all vaccinated individuals to obtain booster shots as they are approved by the F.D.A. and/or recommended by the C.D.C. and public health authorities. Any Employee who receives a booster shot shall be entitled to the paid time off in connection with the shot and any side effects in accordance with the parties' April 29, 2021 Memorandum of Agreement and this Agreement. As additional F.D.A. approvals for booster shots and public health recommendations regarding booster shots issue, the parties shall meet and confer regarding whether, and under what circumstances, booster shots may be required for previously vaccinated Employees.
- d. In accordance with Paragraph 5 below, upon Request of the Union, the Employer shall promptly provide the Union with information regarding Employees' vaccination status for representational purposes, and if requested by the Union shall provide periodic updates.
- e. An employee who is not vaccinated by the required dates set in accordance with Paragraph 3(b) and (c) above (and who is not eligible for an accommodation in accordance with Paragraph 3(a)(iv) above) may elect one of the following:
 - i. An unpaid leave of absence ("LOA") of up to four months and return to the employee's position within that time frame upon becoming fully vaccinated (i.e. two weeks after the second dose of a two-shot vaccine or two weeks after the one dose vaccine) or;
 - ii. Placement on a recall list through March 1, 2022 or six (6) months from the Employee's last day of work, whichever is later, for recall

into the same or similar position at their building or worksite to the extent positions become available *and* either the Employee has become fully vaccinated or the vaccination requirement has been lifted at that building or location; an Employee who elects eligibility for recall rights under this subparagraph and who seeks recall to the building or worksite while the mandate remains in effect because they have become fully vaccinated shall be required to notify the Employer that they have become fully vaccinated and provide proof of vaccination before being eligible for recall to positions at the building or worksite, provided that:

- iii. If an unvaccinated employee does not elect either an LOA or placement on a recall list in accordance with (i) and (ii) above, the employee shall be separated from employment with a non-disciplinary termination. Such separation from employment shall not be deemed a voluntary quit nor a termination for misconduct.
- f. In the event that a resident manager or resident superintendent seeks a leave of absence or furlough in accordance with subparagraphs 3(i) or (ii) above and the Employer asserts that such a leave of absence is not feasible due to the coverage needs at the building, the Union and the Employer shall promptly meet to resolve the dispute, and if they are unable to do so, the dispute regarding the leave of absence request shall be submitted to arbitration before Arbitrators David Reilly or Gary Kendellen on an expedited basis. This means that the arbitration hearing shall be held within two (2) weeks after the parties have been unable to agree to a resolution.
- g. Prior to implementation of a vaccination mandate or, in lieu of a vaccination mandate, the Employer may, upon one week written notice to the Union and to impacted Employees, require that all unvaccinated employees, other than those who are approved for accommodations in accordance with Paragraph 3(a) (iv) above, undergo PCR testing on non-work time up to two times per week and submit the test results to the Employer.

4. The extended recall rights provided for Paragraph 2 of the January 25, 2021 Memorandum of Agreement between the Union and the RAB, shall be extended from October 1, 2021 through March 1, 2022. With respect to those Employers who were subject to an additional extended recall obligations through December 31, 2021 in accordance with Paragraph 1(i) of the January 25, 2021 Memorandum of Agreement, such recall rights and obligations to the extent not already satisfied, shall be further extended through June 1, 2022. The rebid provided for in Paragraph 3 of the January 25, 2021 Memorandum of Agreement shall take place on April 1, 2022 and the restoration of

the productivity standard provided for in Paragraph 4 of the January 25, 2021 Memorandum of Agreement shall take place effective March 1, 2022. In the event that an Employee asserts that they have not been offered recall in accordance with this Agreement and/or the underlying collective bargaining agreement, the Employer shall promptly investigate after being notified of the possible error and shall have thirty (30) days from such notice to correct any error in the recall process, before incurring back wage or benefits liability.

5. Proof of vaccination shall include a copy (e.g. photograph, pdf, or photocopy) of an individual's CDC "COVID-19 Vaccination Record Card," an employee's Excelsior Pass Plus, or letter from an employee's doctor or other medical professional that an individual has received the vaccine. The Employer shall keep these records separate from the rest of the employees' personnel files and shall request that no other medical information be disclosed along with proof of the vaccine. The Employer shall not disclose to any third party whether any individual is vaccinated, but may disclose such information if it is de-identified and in the aggregate (i.e. 95% of its employees have been vaccinated), except that, upon the Union's request, the information shall be disclosed to the Union. Further, the Employer may advise third parties of its procedures with respect to vaccination and/or testing as set forth above. To the extent that an Employer is requiring that proof of vaccination be transmitted or uploaded electronically, the Employer shall provide assistance to Employees who may not have access to the necessary technology or who otherwise require technical assistance.

6. Employers shall continue to provide Employees with paid time off for the purposes of being vaccinated in accordance with the April 29, 2021 Memorandum of Agreement, and applicable law whichever is greater. In the event the employee experiences side effects from a vaccination shot or booster, the Employee shall receive an additional paid day off to recover from such side effects, provided that the Employee may be required to provide a medical note regarding such side effects.

7. Vaccination logistics and incentives for employers seeking to implement a vaccination or a requirement that unvaccinated employees be tested up to two times per week:
- a. The Employer, the Union and the Health Fund will provide employees with information, with updates, about where they can obtain a COVID-19 vaccine that is near the worksite. If vaccination is available only through registration via a website, the Employer agrees to provide employees with access to a computer to register upon an employee request.
 - b. The Union and the Employer agree to provide information about how covered Employees may contact the 32BJ Health Fund for assistance registering for vaccination, and how all Employees (including those who may not be covered by the Health Fund) may access vaccination appointments at no cost.

- c. The parties will cooperate in having vaccination vans or sites in and around work locations, to the extent such services are available.
- d. Employers may also implement regular COVID-19 testing requirements, beyond the testing provided for in Paragraph 3(f) above, at no cost to the employee and on work time.
- e. Employers may also implement other applicable safety requirements (e.g., masking, social distancing, etc.)
- f. No fully vaccinated employees shall be prohibited from wearing a mask or other appropriate personal protective equipment ("PPE").

8. In order to ensure the health and safety of all workers at the work place, the Employer shall provide the following so long as there is a Public Health Emergency as declared by the Secretary of Health and Human Services under Section 3917 of the Public Health Service Act, or state of emergency pursuant to the continuation of Presidential Proclamation 9994, where the President declared a national emergency due to the coronavirus disease (COVID-19) pandemic or any state of emergency related to COVID-19 as determined by New York City or New York State:

- a. Masking. The Employer shall provide appropriate masks, with nose wire, each workday to each employee. In the alternative, the Employer may provide daily disposable surgical masks to its employees, along with instructions on how to make them tight fitting. Employees are allowed to wear their own masks as long as they conform to the above. No employee will be prohibited from wearing a mask.
- b. Hand Sanitation. The Employer shall provide employees with hand sanitizer and shall ensure that employees have the opportunity to wash their hands.
- c. Employee Facilities. The Employer shall provide employees a private area for changing and taking breaks that provides sufficient space to allow employees to remain at least 6 feet apart.

9. The parties further agree that any dispute arising out of or relating to this Memorandum of Agreement, shall be resolved through the applicable grievance and arbitration processes of each of the applicable Agreements as the sole and exclusive process for resolution of such disputes. Any claim covered by their applicable collective bargaining agreement brought by or on behalf any affected employee shall be processed through the applicable Agreement's dispute resolution procedures.

10. In the event that the Union, Employer, and the RAB have a specific agreement for a site(s) covering vaccinations then the specific agreement shall control.

11. Due to the ongoing impacts of the COVID-19 pandemic, the parties agree to extend the following agreements through March 1, 2022:


- a. The parties' Memorandum of Agreement dated March 22, 2020 regarding twelve (12) hour shifts;
- b. The parties' Memorandum of Agreement dated April 2, 2020 with respect to better terms and conditions;
- c. The parties' Memorandum of Agreement dated April 11, 2020 regarding the work of absentees and the payment of AB time;
- d. The parties' Memorandum of Agreement dated April 11, 2020 regarding participation in the N.Y.S. Shared Work Program, as modified on April 29, 2021 with respect to notice to the Union if/when an Employer will cease participation in the Shared Work Program;
- e. Paragraph 7 of the parties' Memorandum of Agreement dated April 29, 2021 regarding notice of a reduction at buildings covered by the Commercial Building Agreement or Contractors Agreement in the event that there is a diminution in work due to either a tenant move out or termination of a lease that occurs on less than one month notice;
- f. Paragraph 8 of the parties' Memorandum of Agreement dated April 29, 2021 regarding offers of temporary reassignments or redeployments to displaced employees.
- g. Paragraph 9 of the parties' Memorandum of Agreement dated April 29, 2021 regarding the use of temporary relief employees in the event of an unforeseen staffing shortage due to a COVID-19 quarantine or other COVID-19 related emergency that arises at buildings that are bound by an assent to the Apartment Building Agreement.

SEIU LOCAL 32BJ

REALTY ADVISORY BOARD ON LABOR RELATIONS, INC.

By: 

 Manny Pastreich, Secretary-Treasurer

By: 

 Howard Rothschild, President

Date: 9/30/2021

Date: September 30, 2021

Appendix #23

Subjects of Bargaining

There are three categories of subjects that are established under the National Labor Relations Act. They are: mandatory; permissive or voluntary; and, illegal subjects.

MANDATORY SUBJECTS

Mandatory subjects are those that directly impact – *wages, hours or working conditions* (or terms and conditions of employment). These are subjects over which the parties must bargain if a proposal is made by either party. This does not mean that the parties have to reach agreement on such proposals, but rather that they have to engage in the process of bargaining in good faith over the subject. Mandatory subjects may be bargained to impasse. It is also legal to strike (or to lock-out) to obtain a mandatory subject of bargaining.

Examples of mandatory subjects are:

Wages	Jury duty pay
Shift premiums	Bereavement pay
Overtime	On-call pay
Premium pay	Severance pay
Longevity	Pensions
Pay for training	Health insurance
Holidays	Leave of absence
Sick days	Tuition reimbursement
Hours of work	Seniority
Work schedules	Job duties
Grievance procedure	Probationary period
Workloads	Testing of employees
Vacancies	Rest and lunch periods
Promotions	Bargaining unit work
Transfers	Subcontracting
Layoff and recall	No strike clause
Discipline and discharge	Non-discrimination
Waiver/zipper clause	Dues check off
Mandatory meetings	Mileage and stipends
In-service trainings	Evaluation procedures
Parking	Health and safety
Bonuses	Clothing and tool allowance
Incentive pay	Management rights clauses
Equity pay adjustments	Dental and vision plans
Legal services	Work rules
Bulletin boards	Meals provided by the employer

PERMISSIVE OR VOLUNTARY SUBJECTS

Permissive, voluntary or non-mandatory subjects of bargaining are subjects not directly related to the work. That is, these subjects fall outside of wages, hours and working conditions and generally are matters that relate to the nature and direction of the business/industry or relate to the internal union affairs. The list can be infinitely long. The parties may agree to bargain over these but are not required to by law and can refuse to discuss them without fear of an unfair labor practice charge. They also cannot be bargained to impasse. Furthermore, it would also be a violation to strike over a permissive subject. Subjects that have a minimal impact on the employment relationship most likely are permissive, but it is not always clear. There could be considerable grey areas in determining whether a proposal is mandatory or permissive and these might have to be litigated for resolution.

Examples of permissive/voluntary subjects are:

Negotiation ground rules	Recognition clause defining the bargaining unit
Supervisor's conditions of employment	Either party's bargaining team make-up
Interest arbitration	Make-up of the employer's board of directors or trustees
Settlement of a ULP charge	Demanding that a Union settle arbitrable grievances filed under the previous contract
Pensions for retire members	
Use of the Union label/flag	
Internal Union matters (how stewards and officers are elected, Union dues, officer structure, Union by-laws, etc.)	

ILLEGAL SUBJECTS

Illegal subjects are those that cannot be legally bargained over by either party. They are subjects that would violate a law and cannot be entered into legally into a collective bargaining agreement even if both parties agree to do so.

Examples of illegal subjects are:

Closed shop provisions	Hot cargo clauses (language that prohibits an employer from dealing with any other employer, usually involved in a labor dispute)
Discrimination against a group of employees based on race, sex, disability, age, veteran's status, religion, sexual orientation, marital status, etc.	

Appendix #24
9 Vaccine Orders
a. - i.

**ORDER OF THE COMMISSIONER
OF HEALTH AND MENTAL HYGIENE
TO REQUIRE COVID-19 VACCINATION FOR
DEPARTMENT OF EDUCATION
EMPLOYEES, CONTRACTORS, AND OTHERS**

WHEREAS, on March 12, 2020, Mayor Bill de Blasio issued Emergency Executive Order No. 98 declaring a state of emergency in the City to address the threat posed by COVID-19 to the health and welfare of City residents, and such order remains in effect; and

WHEREAS, on March 25, 2020, the New York City Commissioner of Health and Mental Hygiene declared the existence of a public health emergency within the City to address the continuing threat posed by COVID-19 to the health and welfare of City residents, and such declaration and public health emergency continue to be in effect; and

WHEREAS, pursuant to Section 3.01(d) of the New York City Health Code (“Health Code”), the existence of a public health emergency within the City as a result of COVID-19, for which certain orders and actions are necessary to protect the health and safety of the City of New York and its residents, was declared; and

WHEREAS, pursuant to Section 558 of the New York City Charter (the “Charter”), the Board of Health may embrace in the Health Code all matters and subjects to which the power and authority of the Department of Health and Mental Hygiene (the “Department”) extends; and

WHEREAS, pursuant to Section 556 of the Charter and Section 3.01(c) of the Health Code, the Department is authorized to supervise the control of communicable diseases and conditions hazardous to life and health and take such actions as may be necessary to assure the maintenance of the protection of public health; and

WHEREAS, the U.S. Centers for Disease Control (“CDC”) reports that new variants of COVID-19, identified as “variants of concern” have emerged in the United States, and some of these new variants which currently account for the majority of COVID-19 cases sequenced in New York City, are more transmissible than earlier variants; and

WHEREAS, the CDC has stated that vaccination is an effective tool to prevent the spread of COVID-19 and benefits both vaccine recipients and those they come into contact with, including persons who for reasons of age, health, or other conditions cannot themselves be vaccinated; and

WHEREAS New York State has announced that, as of September 27, 2021 all healthcare workers in New York State, including staff at hospitals and long-term care facilities, including nursing homes, adult care, and other congregate care settings, will be required to be vaccinated against COVID-19 by Monday, September 27; and

WHEREAS, section 17-104 of the Administrative Code of the City of New York directs the Department to adopt prompt and effective measures to prevent the communication of infection diseases such as COVID-19; and

WHEREAS, in accordance with section 17-109(b) of such Administrative Code, the Department may adopt vaccination measures in order to most effectively prevent the spread of communicable diseases; and

WHEREAS, pursuant to Section 3.07 of the Health Code, no person “shall do or assist in any act which is or may be detrimental to the public health or to the life or health of any individual” or “fail to do any reasonable act or take any necessary precaution to protect human life and health;” and

WHEREAS, the CDC has recommended that school teachers and staff be “vaccinated as soon as possible” because vaccination is “the most critical strategy to help schools safely resume] full operations... [and] is the leading public health prevention strategy to end the COVID-19 pandemic;” and

WHEREAS the New York City Department of Education (“DOE”) serves approximately 1 million students across the City, including students in the communities that have been disproportionately affected by the COVID-19 pandemic and students who are too young to be eligible to be vaccinated; and

WHEREAS, a system of vaccination for individuals working in school settings or other DOE buildings will potentially save lives, protect public health, and promote public safety; and

WHEREAS, pursuant to Section 3.01(d) of the Health Code, I am authorized to issue orders and take actions that I deem necessary for the health and safety of the City and its residents when urgent public health action is necessary to protect the public health against an existing threat and a public health emergency has been declared pursuant to such section; and

WHEREAS, on July 21, 2021, I issued an order requiring staff in public healthcare and clinical settings to demonstrate proof of COVID-19 vaccination or undergo weekly testing; and

WHEREAS, on August 10, 2021, I issued an order requiring staff providing City operated or contracted services in residential and congregate settings to demonstrate proof of COVID-19 vaccination or undergo weekly testing;

NOW THEREFORE I, Dave A. Chokshi, MD, MSc, Commissioner of Health and Mental Hygiene, finding that a public health emergency within New York City continues, and that it is necessary for the health and safety of the City and its residents, do hereby exercise the power of the Board of Health to prevent, mitigate, control and abate the current emergency, and hereby order that:

1. No later than September 27, 2021 or prior to beginning employment, all DOE staff must provide proof to the DOE that:
 - a. they have been fully vaccinated; or
 - b. they have received a single dose vaccine, even if two weeks have not passed since they received the vaccine; or
 - c. they have received the first dose of a two-dose vaccine, and they must additionally provide proof that they have received the second dose of that vaccine within 45 days after receipt of the first dose.
2. All City employees who work in-person in a DOE school setting or DOE building must provide proof to their employer no later than September 27, 2021 or prior to beginning such work that:
 - a. they have been fully vaccinated; or
 - b. they have received a single dose vaccine, even if two weeks have not passed since they received the vaccine; or

- c. they have received the first dose of a two-dose vaccine, and they must additionally provide proof that they have received the second dose of that vaccine within 45 days after receipt of the first dose.
- 3. All staff of contractors of DOE and the City who work in-person in a DOE school setting or DOE building, including individuals who provide services to DOE students, must provide proof to their employer no later than September 27, 2021 or prior to beginning such work that:
 - a. they have been fully vaccinated; or
 - b. they have received a single dose vaccine, even if two weeks have not passed since they received the vaccine; or
 - c. they have received the first dose of a two-dose vaccine, and they must additionally provide proof that they have received the second dose of that vaccine within 45 days after receipt of the first dose.

Self-employed independent contractors hired for such work must provide such proof to the DOE.

- 4. All employees of any school serving students up to grade 12 and any UPK-3 or UPK-4 program that is located in a DOE building who work in-person, and all contractors hired by such schools or programs to work in-person in a DOE building, must provide proof to their employer, or if self-employed to the contracting school or program, no later than September 27, 2021 or prior to beginning such work that:
 - a. they have been fully vaccinated; or
 - b. they have received a single dose vaccine, even if two weeks have not passed since they received the vaccine; or
 - c. they have received the first dose of a two-dose vaccine, and they must additionally provide proof that they have received the second dose of that vaccine within 45 days after receipt of the first dose.
- 5. For the purposes of this Order:
 - a. “DOE staff” means (i) full or part-time employees of the DOE, and (ii) DOE interns (including student teachers) and volunteers.
 - b. “Fully vaccinated” means at least two weeks have passed after a person received a single dose of a one-dose series, or the second dose of a two-dose series, of a COVID-19 vaccine approved or authorized for use by the Food and Drug Administration or World Health Organization.
 - c. “DOE school setting” includes any indoor location, including but not limited to DOE buildings, where instruction is provided to DOE students in public school kindergarten through grade 12, including residences of pupils receiving home instruction and places where care for children is provided through DOE’s LYFE program.

- d. “Staff of contractors of DOE and the City” means a full or part-time employee, intern or volunteer of a contractor of DOE or another City agency who works in-person in a DOE school setting or other DOE building, and includes individuals working as independent contractors.
 - e. “Works in-person” means an individual spends any portion of their work time physically present in a DOE school setting or other DOE building. It does not include individuals who enter a DOE school setting or other DOE location only to deliver or pickup items, unless the individual is otherwise subject to this Order. It also does not include individuals present in DOE school settings or DOE buildings to make repairs at times when students are not present in the building, unless the individual is otherwise subject to this Order.
6. This Order shall be effective immediately and remain in effect until rescinded, subject to the authority of the Board of Health to continue, rescind, alter or modify this Order pursuant to Section 3.01(d) of the Health Code.

Dated: August 24th, 2021



Dave A. Chokshi, M.D., MSc
Commissioner

Appendix b.

**ORDER OF THE COMMISSIONER
OF HEALTH AND MENTAL HYGIENE
REQUIRING COVID-19 VACCINATION FOR
INDIVIDUALS WORKING IN CERTAIN CHILD CARE PROGRAMS**

WHEREAS, on March 12, 2020, Mayor Bill de Blasio issued Emergency Executive Order No. 98 declaring a state of emergency in the City to address the threat posed by COVID-19 to the health and welfare of City residents, and such order remains in effect; and

WHEREAS, on March 25, 2020, the Commissioner of Health and Mental Hygiene declared the existence of a public health emergency within the City to address the continuing threat posed by COVID-19 to the health and welfare of City residents, and such declaration and public health emergency continue to be in effect; and

WHEREAS, pursuant to Section 558 of the New York City Charter (the “Charter”), the Board of Health may embrace in the Health Code all matters and subjects to which the power and authority of the Department of Health and Mental Hygiene (the “Department”) extends; and

WHEREAS, pursuant to Section 556 of the Charter and Section 3.01(c) of the Health Code, the Department is authorized to supervise the control of communicable diseases and conditions hazardous to life and health and take such actions as may be necessary to assure the maintenance of the protection of public health; and

WHEREAS, the U.S. Centers for Disease Control and Prevention (“CDC”) reports that new variants of COVID-19, identified as “variants of concern” have emerged in the United States, and some of these new variants which currently account for the majority of COVID-19 cases sequenced in New York City, are more transmissible than earlier variants; and

WHEREAS, the CDC has stated that vaccination is an effective tool to prevent the spread of COVID-19 and benefits both vaccine recipients and those they come into contact with, including persons who for reasons of age, health, or other conditions cannot themselves be vaccinated; and

WHEREAS, the CDC has recommended that school teachers and staff be “vaccinated as soon as possible” because vaccination is “the most critical strategy to help schools safely resume full operations [and] is the leading public health prevention strategy to end the COVID-19 pandemic;” and

WHEREAS, on September 9, 2021, President Joseph Biden announced that staff who work in Head Start programs and in schools run by the Bureau of Indian Affairs and Department of Defense will be required to be vaccinated in order to implement the CDC’s recommendations; and

WHEREAS, on August 26, 2021, New York State Department of Health adopted emergency regulations requiring staff of inpatient hospitals and nursing homes to receive the first dose of a vaccine by September 27, 2021, and staff of diagnostic and treatment centers, hospices, home care and adult care facilities to receive the first dose of a vaccine by October 7, 2021; and

WHEREAS, Section 17-104 of the Administrative Code of the City of New York directs the Department to adopt prompt and effective measures to prevent the communication of infectious diseases such as COVID-19, and in accordance with Section 17-109(b), the Department may adopt vaccination measures to effectively prevent the spread of communicable diseases; and

WHEREAS, the City is committed to safe, in-person learning in all schools, following strong public health science; and

WHEREAS, the CDC notes that early childhood programs such as child care centers, school-based child care, and home-based child care, as well as afterschool programs and other child care programs, serve children under the age of 12 who are not eligible for vaccination at this time, making implementation of layered prevention strategies in such programs critical to protecting children; and

WHEREAS, child care programs serve hundreds of thousands of children and families across the City, including those in communities that have been disproportionately affected by the COVID-19 pandemic; and

WHEREAS, the City Department of Education (“DOE”) and Department of Youth and Community Development (“DYCD”) contract with community-based providers for early care and education programs, Universal Pre-Kindergarten, Early Learn, Head Start, family and group family day care, pre-school special education services, and afterschool, Beacon, and Cornerstone programs; and

WHEREAS, a system of vaccination for individuals working in child care centers, school-based child care, and home-based child care, as well as afterschool programs and other child care programs, will potentially save lives, protect public health, and promote public safety; and

WHEREAS, pursuant to Section 3.01(d) of the Health Code, I am authorized to issue orders and take actions that I deem necessary for the health and safety of the City and its residents when urgent public health action is necessary to protect the public health against an existing threat and a public health emergency has been declared pursuant to such section; and

WHEREAS, on August 24, 2021 I issued, and on September 11, 2021 I updated, an Order requiring COVID-19 vaccination for DOE employees, contractors, visitors, and others who work in-person at or visit a DOE school setting or DOE building;

NOW THEREFORE I, Dave A. Chokshi, MD, MSc, Commissioner of Health and Mental Hygiene, finding that a public health emergency within New York City continues, and that it is necessary for the health and safety of the City and its residents, do hereby exercise the power of the Board of Health to prevent, mitigate, control and abate the current emergency, and hereby order that:

1. No later than September 27, 2021, every covered child care program must exclude from the premises any staff person who has not provided proof of vaccination against COVID-19, as defined in this Order.

2. All staff persons newly hired on or after the effective date of this order by a covered child care program must provide proof of vaccination against COVID-19 to their employer on or before their start date.
3. Each covered child care program must securely maintain records of staff persons' proof of vaccination against COVID-19. Records may be kept electronically or on paper and must be made available to the Department immediately upon request. Records must include the following information:
 - a. Each staff person's name and start date at the covered child care program.
 - b. The type of proof of vaccination submitted; the date such proof was collected by the covered child care program; the brand of vaccine administered; and whether the person is fully vaccinated, as defined in this Order.
 - c. For any staff person who submits proof of the first dose of a two-dose vaccine, the date by which proof of the second dose must be provided, which must be no later than 45 days after the first dose.
4. For the purposes of this Order:

“Covered child care program” means early childhood programs or services provided under contract with DOE for Birth-to-5 and Head Start services for infants, toddlers, and preschoolers including 3-k and pre-k services as well as early education programs serving young children with disabilities, Early Learn, pre-school special education pursuant to section 4410 of the Education Law, or by family home-based family child care providers contracted through family child care networks, or programs under contract with DYCD for after school, Beacon, and Cornerstone.

“Fully vaccinated” means at least two weeks have passed after an individual received a single-dose of a vaccine that requires only one dose or the second dose in a two-dose series of a COVID-19 vaccine authorized or approved for use by the U.S. Food and Drug Administration or authorized for emergency use by the World Health Organization.

“Premises” means locations where children are regularly present at covered child care programs.

“Proof of vaccination against COVID-19” means one of the following documents demonstrating that an individual has either (a) been fully vaccinated against COVID-19; (b) received one dose of a single-dose COVID-19 vaccine; or (c) received the first dose of a two-dose COVID-19 vaccine, provided that a staff person providing proof of only such first dose provides proof of receiving the second dose of that vaccine within 45 days after receiving the first dose:

- i. A CDC COVID-19 Vaccination Record Card or other official immunization record from the jurisdiction, city, state, or country where the vaccine was administered that provides the person's name, vaccine brand, and date

administered. Such card or record may be shown in original paper copy or by digital or physical photo of such a card or record, including a photo shown on the New York City COVID Safe Pass; or

- ii. A New York State Excelsior Pass populated as required with valid identification and vaccination proof.

“Staff person of a child care program” means an employee, contractor, volunteer or intern of the covered child care program who works in-person on the premises; a graduate, undergraduate or high school student placed by their educational institution at the covered child care program as part of an academic program and who works in-person on the premises; a specialist providing support services, therapy, special education or other services at the covered child care program to an individual child pursuant to a mandate for the child and who works in-person on the premises; or a person employed by a contractor of the covered child care program, including independent contractors, who works in-person on the premises. “Staff person” does not include a person who is onsite briefly for a limited purpose, such as to make a delivery or pick-up or perform a repair.

5. This Order shall be effective immediately and remain in effect until rescinded, subject to the authority of the Board of Health to continue, rescind, alter, or modify this Order pursuant to Section 3.01(d) of the Health Code.

Dated: September 12, 2021



Dave A. Chokshi, M.D., MSc
Commissioner

Appendix c.

**ORDER OF THE COMMISSIONER
OF HEALTH AND MENTAL HYGIENE
TO REQUIRE COVID-19 VACCINATION FOR
DEPARTMENT OF EDUCATION
EMPLOYEES, CONTRACTORS, VISITORS, AND OTHERS**

WHEREAS, on March 12, 2020, Mayor Bill de Blasio issued Emergency Executive Order No. 98 declaring a state of emergency in the City to address the threat posed by COVID-19 to the health and welfare of City residents, and such order remains in effect; and

WHEREAS, on March 25, 2020, the New York City Commissioner of Health and Mental Hygiene declared the existence of a public health emergency within the City to address the continuing threat posed by COVID-19 to the health and welfare of City residents, and such declaration and public health emergency continue to be in effect; and

WHEREAS, pursuant to Section 558 of the New York City Charter (the “Charter”), the Board of Health may embrace in the Health Code all matters and subjects to which the power and authority of the Department of Health and Mental Hygiene (the “Department”) extends; and

WHEREAS, pursuant to Section 556 of the Charter and Section 3.01(c) of the Health Code, the Department is authorized to supervise the control of communicable diseases and conditions hazardous to life and health and take such actions as may be necessary to assure the maintenance of the protection of public health; and

WHEREAS, the U.S. Centers for Disease Control and Prevention (“CDC”) reports that new variants of COVID-19, identified as “variants of concern” have emerged in the United States, and some of these new variants which currently account for the majority of COVID-19 cases sequenced in New York City, are more transmissible than earlier variants; and

WHEREAS, the CDC has stated that vaccination is an effective tool to prevent the spread of COVID-19 and benefits both vaccine recipients and those they come into contact with, including persons who for reasons of age, health, or other conditions cannot themselves be vaccinated; and

WHEREAS, the CDC has recommended that school teachers and staff be “vaccinated as soon as possible” because vaccination is “the most critical strategy to help schools safely resume full operations [and] is the leading public health prevention strategy to end the COVID-19 pandemic;” and

WHEREAS, on September 9, 2021, President Joseph Biden announced that staff who work in Head Start programs and in schools run by the Bureau of Indian Affairs and Department of Defense will be required to be vaccinated in order to implement the CDC’s recommendations; and

WHEREAS, on August 26, 2021, New York State Department of Health adopted emergency regulations requiring staff of inpatient hospitals and nursing homes to receive the first dose of a vaccine by September 27, 2021, and staff of diagnostic and treatment centers, hospices, home care and adult care facilities to receive the first dose of a vaccine by October 7, 2021; and

WHEREAS, Section 17-104 of the Administrative Code of the City of New York directs the Department to adopt prompt and effective measures to prevent the communication of infectious diseases such as COVID-19, and in accordance with Section 17-109(b), the Department may adopt

vaccination measures to effectively prevent the spread of communicable diseases; and

WHEREAS, the City is committed to safe, in-person learning in all pre-school to grade 12 schools, following public health science; and

WHEREAS the New York City Department of Education (“DOE”) serves approximately 1 million students across the City, including students in the communities that have been disproportionately affected by the COVID-19 pandemic and students who are too young to be eligible to be vaccinated; and

WHEREAS, a system of vaccination for individuals working in school settings, including DOE buildings and charter school buildings, will potentially save lives, protect public health, and promote public safety; and

WHEREAS, pursuant to Section 3.01(d) of the Health Code, I am authorized to issue orders and take actions that I deem necessary for the health and safety of the City and its residents when urgent public health action is necessary to protect the public health against an existing threat and a public health emergency has been declared pursuant to such section; and

WHEREAS, on August 24, 2021, I issued an order requiring COVID-19 vaccination for DOE employees, contractors, and others who work in-person in a DOE school setting or DOE building, which was amended on September 12, 2021; and

WHEREAS, unvaccinated visitors to public school settings could spread COVID-19 to students and such individuals are often present in public school settings and DOE buildings;

NOW THEREFORE I, Dave A. Chokshi, MD, MSc, Commissioner of Health and Mental Hygiene, finding that a public health emergency within New York City continues, and that it is necessary for the health and safety of the City and its residents, do hereby exercise the power of the Board of Health to prevent, mitigate, control and abate the current emergency, to

RESCIND and RESTATE my September 12, 2021 Order relating to COVID-19 vaccination for DOE employees, contractors, visitors, and others; and

I hereby order that:

1. No later than September 27, 2021, or prior to beginning employment, the following individuals must provide proof of vaccination as described below:
 - a. DOE staff must provide proof of vaccination to the DOE.
 - b. City employees who work in-person in a DOE school setting, DOE building, or charter school setting must provide proof of vaccination to their employer.
 - c. Staff of contractors of DOE or the City, as defined below, must provide proof of vaccination to their employer, or if self-employed, to the DOE.
 - d. Staff of any charter school serving students up to grade 12, and staff of contractors hired by charter schools co-located in a DOE school setting to work in person in a DOE school setting or DOE building, must provide proof of vaccination to their employer, or if self-employed, to the contracting charter school.

2. An employer to whom staff must submit proof of vaccination status, must securely maintain a record of such submission, either electronically or on paper, and must demonstrate proof of compliance with this Order, including making such records immediately available to the Department upon request.
3. Beginning September 13, 2021, all visitors to a DOE school building must show prior to entering the building that they have:
 - a. Been fully vaccinated; or
 - b. Received a single dose vaccine, or the second dose of a two-dose vaccine, even if two weeks have not passed since they received the dose; or
 - c. Received the first dose of a two-dose vaccine.
4. Public meetings and hearings held in a DOE school building must offer individuals the opportunity to participate remotely in accordance with Part E of Chapter 417 of the Laws of 2021.
5. For the purposes of this Order:

“Charter school setting” means a building or portion of building where a charter school provides instruction to students in pre-kindergarten through grade 12 that is not collocated in a DOE building.

“DOE school setting” includes any indoor location where instruction is provided to DOE students in public school pre-kindergarten through grade 12, including but not limited to locations in DOE buildings, and including residences of students receiving home instruction and places where care for children is provided through DOE’s LYFE program. DOE school settings include buildings where DOE and charter schools are co-located.

“DOE staff” means (i) full or part-time employees of the DOE, and (ii) DOE interns (including student teachers) and volunteers.

“Fully vaccinated” means at least two weeks have passed after an individual received a single dose of a COVID-19 vaccine that only requires one dose, or the second dose of a two-dose series of a COVID-19 vaccine approved or authorized for use by the Food and Drug Administration or World Health Organization.

“Proof of vaccination” means proof that an individual:

- a. Has been fully vaccinated;
- b. Has received a single dose vaccine, or the second dose of a two-dose vaccine, even if two weeks have not passed since they received the dose; or
- c. Has received the first dose of a two-dose vaccine, in which case they must additionally provide proof that they have received the second dose of that vaccine within 45 days after receipt of the first dose.

“Staff of contractors of DOE or the City” means a full or part-time employee, intern or volunteer of a contractor of DOE or another City agency who works in-person in a DOE school

setting, a DOE building, or a charter school, and includes individuals working as independent contractors.


“Visitor” means an individual, not otherwise covered by Paragraph 1 of this Order, who will be present in a DOE school building, except that “visitor” does not include:

- a. Students attending school or school-related activities in a DOE school setting;
- b. Parents or guardians of students who are conducting student registration or for other purposes identified by DOE as essential to student education and unable to be completed remotely;
- c. Individuals entering a DOE school building for the limited purpose to deliver or pick up items;
- d. Individuals present in a DOE school building to make repairs at times when students are not present in the building;
- e. Individuals responding to an emergency, including police, fire, emergency medical services personnel, and others who need to enter the building to respond to or pick up a student experiencing an emergency;
- f. Individuals entering for the purpose of COVID-19 vaccination;
- g. Individuals who are not eligible to receive a COVID-19 vaccine because of their age; or
- h. Individuals entering for the purposes of voting or, pursuant to law, assisting or accompanying a voter or observing the election.

“Works in-person” means an individual spends any portion of their work time physically present in a DOE school setting, DOE building, or charter school setting. It does not include individuals who enter such locations for the limited purpose to deliver or pick up items unless the individual is otherwise subject to this Order. It also does not include individuals present such locations to make repairs at times when students are not present in the building unless the individual is otherwise subject to this Order.

6. Nothing in this Order shall be construed to prohibit any reasonable accommodations otherwise required by law.
7. This Order shall be effective immediately and remain in effect until rescinded, subject to the authority of the Board of Health to continue, rescind, alter or modify this Order pursuant to Section 3.01(d) of the Health Code.

Dated: September 15, 2021



Dave A. Chokshi, M.D., MSc
Commissioner

Appendix d.

**ORDER OF THE COMMISSIONER OF HEALTH AND MENTAL HYGIENE
REVISING THE EFFECTIVE DATE FOR REQUIRED COVID-19
VACCINATION OF DEPARTMENT OF EDUCATION
EMPLOYEES, CONTRACTORS, VISITORS AND OTHERS**

WHEREAS, on March 25, 2020, the New York City Commissioner of Health and Mental Hygiene declared the existence of a public health emergency within the City to address the continuing threat posed by COVID-19 to the health and welfare of City residents, and such declaration and public health emergency continue to be in effect; and

WHEREAS, pursuant to Section 3.01(d) of the Health Code, I am authorized to issue orders and take actions that I deem necessary for the health and safety of the City and its residents when urgent public health action is necessary to protect the public health against an existing threat and a public health emergency has been declared pursuant to such section; and

WHEREAS, on September 15, 2021, I issued, and on September 17, 2021, the Board of Health ratified, an Order requiring proof of COVID-19 vaccination for New York City Department of Education (“DOE”) employees, contractors, visitors, and others; and

WHEREAS, under such Order, DOE staff, charter school staff, and individuals who work in-person in a DOE school setting or DOE building were required to provide proof of vaccination no later than September 27, 2021; and


WHEREAS, on September 24, 2021, the United States Court of Appeals for the Second Circuit entered a temporary injunction of said Order, and then on September 27, 2021, the same Court dissolved such injunction;

NOW THEREFORE I, Dave A. Chokshi, MD, MSc, Commissioner of Health and Mental Hygiene, finding that a public health emergency within New York City continues, and that it is necessary for the health and safety of the City and its residents, do hereby exercise the power of the Board of Health to prevent, mitigate, control and abate the current emergency, to

AMEND my September 15, 2021 Order requiring COVID-19 vaccination for DOE employees, contractors, visitors and others, as ratified by the Board of Health on September 17, 2021, to:

1. Require that any proof of vaccination previously required to be provided by September 27, 2021, or before beginning employment, now be provided no later than Friday, October 1, 2021, or before beginning employment; and
2. Require that beginning Monday, October 4, 2021, any visitor to a DOE school building show proof of receipt of at least one dose of a COVID-19 vaccine, as described in such Order.

Dated: September 28, 2021


Dave A. Chokshi, M.D., MSc
Commissioner

Appendix e.

**ORDER OF THE COMMISSIONER
OF HEALTH AND MENTAL HYGIENE
TO REQUIRE COVID-19 VACCINATION FOR
CITY EMPLOYEES AND CERTAIN CITY CONTRACTORS**

WHEREAS, on March 12, 2020, Mayor Bill de Blasio issued Emergency Executive Order No. 98 declaring a state of emergency in the City to address the threat posed by COVID-19 to the health and welfare of City residents, and such order remains in effect; and

WHEREAS, on March 25, 2020, the New York City Commissioner of Health and Mental Hygiene declared the existence of a public health emergency within the City to address the continuing threat posed by COVID-19 to the health and welfare of City residents, and such declaration and public health emergency continue to be in effect; and

WHEREAS, pursuant to Section 558 of the New York City Charter (the “Charter”), the Board of Health may embrace in the Health Code all matters and subjects to which the power and authority of the Department of Health and Mental Hygiene (the “Department”) extends; and

WHEREAS, pursuant to Section 556 of the Charter and Section 3.01(c) of the Health Code, the Department is authorized to supervise the control of communicable diseases and conditions hazardous to life and health and take such actions as may be necessary to assure the maintenance of the protection of public health; and

WHEREAS, the U.S. Centers for Disease Control and Prevention (“CDC”) reports that new variants of COVID-19, identified as “variants of concern” have emerged in the United States, and some of these new variants which currently account for the majority of COVID-19 cases sequenced in New York City, are more transmissible than earlier variants; and

WHEREAS, the CDC has stated that vaccination is an effective tool to prevent the spread of COVID-19 and the development of new variants, and benefits both vaccine recipients and those they come into contact with, including persons who for reasons of age, health, or other conditions cannot themselves be vaccinated; and

WHEREAS, the Department reports that between January 17 and August 7, 2021, people who were unvaccinated or not fully vaccinated accounted for 96.1% of COVID-19 cases, 96.9% of COVID-19 hospitalizations, and 97.3% of COVID-19 deaths in New York City; and

WHEREAS, a study by Yale University demonstrated that the Department’s vaccination campaign was estimated to have prevented about 250,000 COVID-19 cases, 44,000 hospitalizations, and 8,300 deaths from COVID-19 infection since the start of vaccination through July 1, 2021, and by information and belief, the number of prevented cases, hospitalizations, and death has risen since then; and

WHEREAS, on August 16, 2021, Mayor de Blasio issued Emergency Executive Order No. 225, the “Key to NYC,” requiring that patrons and employees of establishments providing indoor entertainment, dining, and gyms and fitness centers must show proof that they have received at least one dose of an approved COVID-19 vaccine, and such Order, as amended, is still in effect; and

WHEREAS, on August 24, 2021, I issued an Order requiring that Department of Education employees, contractors, and visitors provide proof of COVID-19 vaccination before entering a DOE building or school setting, and such Order was re-issued on September 12 and

15, 2021, and subsequently amended on September 28, 2021, and such Orders and amendment were ratified by the New York City Board of Health on September 17, 2021 and October 18, 2021; and

WHEREAS, on August 26, 2021, the New York State Department of Health adopted emergency regulations requiring staff of inpatient hospitals and nursing homes to receive the first dose of a COVID-19 vaccine by September 27, 2021, and staff of diagnostic and treatment centers, hospices, home care and adult care facilities to receive the first dose of a COVID-19 vaccine by October 7, 2021; and

WHEREAS, on August 31, 2021, Mayor de Blasio issued Executive Order No. 78, requiring that, beginning September 13, 2021, City employees and covered employees of City contractors be vaccinated against COVID-19 or submit on a weekly basis proof of a negative COVID-19 PCR diagnostic test; and

WHEREAS, on September 9, 2021 President Biden issued an Executive Order stating that “It is essential that Federal employees take all available steps to protect themselves and avoid spreading COVID-19 to their co-workers and members of the public,” and ordering each federal agency to “implement, to the extent consistent with applicable law, a program to require COVID-19 vaccination for all of its Federal employees, with exceptions only as required by law”; and

WHEREAS, on September 12, 2021, I issued an Order requiring that staff of early childhood programs or services provided under contract with the Department of Education or the Department of Youth and Community Development provide proof of COVID-19 vaccination; and

WHEREAS, Section 17-104 of the Administrative Code of the City of New York directs the Department to adopt prompt and effective measures to prevent the communication of infectious diseases such as COVID-19, and in accordance with Section 17-109(b), the Department may adopt vaccination measures to effectively prevent the spread of communicable diseases; and

WHEREAS, City employees and City contractors provide services to all New Yorkers that are critical to the health, safety, and well-being of City residents, and the City should take reasonable measures to reduce the transmission of COVID-19 when providing such services; and

WHEREAS, a system of vaccination for individuals providing City services and working in City offices will potentially save lives, protect public health, and promote public safety; and

WHEREAS, there is a staff shortage at Department of Corrections (“DOC”) facilities, and in consideration of potential effects on the health and safety of inmates in such facilities, and of the benefit to public health and employee health of a fully vaccinated correctional staff, it is necessary that the requirements of this Order for DOC uniformed personnel not assigned to posts in healthcare settings be delayed; and

WHEREAS, pursuant to Section 3.01(d) of the Health Code, I am authorized to issue orders and take actions that I deem necessary for the health and safety of the City and its residents when urgent public health action is necessary to protect the public health against an existing threat and a public health emergency has been declared pursuant to such Section;

NOW THEREFORE I, Dave A. Chokshi, MD, MSc, Commissioner of Health and Mental Hygiene, finding that a public health emergency within New York City continues, and that it is

necessary for the health and safety of the City and its residents, do hereby exercise the power of the Board of Health to prevent, mitigate, control and abate the current emergency, and order that:

1. My Order of August 10, 2021, relating to a vaccination or testing requirement for staff in City operated or contracted residential and congregate settings, shall be **RESCINDED** as of November 1, 2021. Such staff are subject to the requirements of this Order.
2. No later than 5pm on October 29, 2021, all City employees, except those employees described in Paragraph 5, must provide proof to the agency or office where they work that:
 - a. they have been fully vaccinated against COVID-19; or
 - b. they have received a single-dose COVID-19 vaccine, even if two weeks have not passed since they received the vaccine; or
 - c. they have received the first dose of a two-dose COVID-19 vaccine

Any employee who received only the first dose of a two-dose vaccine at the time they provided the proof described in this Paragraph shall, within 45 days after receipt of the first dose, provide proof that they have received the second dose of vaccine.

3. Any City employee who has not provided the proof described in Paragraph 2 must be excluded from the premises at which they work beginning on November 1, 2021.
4. No later than 5pm on October 29, 2021, City agencies that contract for human services contracts must take all necessary actions to require that those human services contractors require their covered employees to provide proof that:
 - a. they have been fully vaccinated against COVID-19; or
 - b. they have received a single-dose COVID-19 vaccine, even if two weeks have not passed since they received the vaccine; or
 - c. they have received the first dose of a two-dose COVID-19 vaccine.

Any covered employee of a human service contractor who received only the first dose of a two-dose vaccine at the time they provided the proof described in this Paragraph shall, within 45 days after receipt of the first dose, provide proof that they have received the second dose of vaccine.

All such contractors shall submit a certification to their contracting agency confirming that they are requiring their covered employees to provide such proof. If contractors are non-compliant, the contracting City agencies may exercise any rights they may have under their contract.

5. Notwithstanding Paragraphs 3 and 4 of this Order, until November 30, 2021, the provisions of this Order shall not apply to uniformed Department of Corrections (“DOC”) employees, including staff serving in Warden and Chief titles, unless such uniformed employee is assigned for any time to any of the following locations: Bellevue Hospital; Elmhurst Hospital; the DOC

infirmary in North Infirmary Command; the DOC West Facility; or any clinic staffed by Correctional Health Services.

Uniformed employees not assigned to such locations, to whom this Order does not apply until November 30, 2021, must, until such date, either:

- a. Provide DOC with proof that:
 - i. they have been fully vaccinated against COVID-19; or
 - ii. they have received a single-dose COVID-19 vaccine, even if two weeks have not passed since they received the vaccine; or
 - iii. they have received the first dose of a two-dose COVID-19 vaccine, provided that they must additionally provide proof that they have received the second dose of vaccine within 45 days after receipt of the first dose; or
- b. On a weekly basis until the employee submits the proof described in this Paragraph, provide DOC with proof of a negative COVID-19 PCR diagnostic test (not an antibody test).

6. For the purposes of this Order:

“City employee” means a full- or part-time employee, intern, or volunteer of a New York City agency.

“Contract” means a contract awarded by the City, and any subcontract under such a contract, for work: (i) to be performed within the City of New York; and (ii) where employees can be expected to physically interact with City employees or members of the public in the course of performing work under the contract.

“Contractor” means a person or entity that has a City contract, including a subcontract as described in the definition of “contract.”

“Covered employee” means a person: (i) employed by a contractor or subcontractor holding a contract; (ii) whose salary is paid in whole or in part from funds provided under a City contract; and (iii) who performs any part of the work under the contract within the City of New York. However, a person whose work under the contract does not include physical interaction with City employees or members of the public shall not be deemed to be a covered employee.

“Fully vaccinated” means at least two weeks have passed after an individual received a single dose of a COVID-19 vaccine that only requires one dose, or the second dose of a two-dose series of a COVID-19 vaccine as approved or authorized for use by the Food and Drug Administration or World Health Organization.

“Human services contract” means social services contracted by an agency on behalf of third-party clients including but not limited to day care, foster care, home care, health or medical services, housing and shelter assistance, preventive services, youth services, the operation of

senior centers, employment training and assistance, vocational and educational programs, legal services and recreation programs.

7. Each City agency shall send each of its human services contractors notice that covered employees of such contractors must comply with the requirement of Paragraph 4 of this Order and request a response from each such contractor, as soon as possible, with regard to the contractor's intent to follow this Order.
8. Nothing in this Order shall be construed to prohibit any reasonable accommodation otherwise required by law.
9. This Order shall not apply to individuals who already are subject to another Order of the Commissioner of Health and Mental Hygiene, Board of Health, the Mayor, or a State or federal entity that requires them to provide proof of full vaccination and have been granted a reasonable accommodation to such requirement.
10. This Order shall not apply to per diem poll workers hired by the New York City Board of Elections to conduct the election scheduled for November 2, 2021.
11. Subject to the authority of the Board of Health to continue, rescind, alter or modify this Order pursuant to Section 3.01(d) of the Health Code, this Order shall be effective immediately and remain in effect until rescinded, except that Paragraph 5 of this Order will be deemed repealed on December 1, 2021.



Dated: October 20, 2021

Dave A. Chokshi, M.D., MSc
Commissioner

Appendix f.

**SUPPLEMENTAL ORDER
OF THE COMMISSIONER OF HEALTH AND MENTAL HYGIENE
TO REQUIRE COVID-19 VACCINATION FOR CITY EMPLOYEES AND
EMPLOYEES OF CERTAIN CITY CONTRACTORS**

WHEREAS, on October 20, 2021, I issued an Order requiring city employees and human services contractors of city agencies provide proof of COVID-19 vaccination no later than October 29, 2021; and

WHEREAS, it is necessary that the requirements of that Order be extended to include all contractors working at locations where human services are provided and all employees of contractors who regularly work alongside City employees at locations controlled by the City of New York; and

WHEREAS, to ensure an orderly election, the requirements of that Order for employees of the Board of Elections must be delayed; and

WHEREAS, pursuant to Section 3.01(d) of the Health Code, I am authorized to issue orders and take actions that I deem necessary for the health and safety of the City and its residents when urgent public health action is necessary to protect the public health against an existing threat and a public health emergency has been declared pursuant to such Section;

NOW THEREFORE I, Dave A. Chokshi, MD, MSc, Commissioner of Health and Mental Hygiene, finding that a public health emergency within New York City continues, and that it is necessary for the health and safety of the City and its residents, do hereby exercise the power of the Board of Health to prevent, mitigate, control and abate the current emergency, and order that:

1. The requirements of my Order of October 20, 2021, relating to a vaccination requirement for City employees and human services contractors of City agencies, are continued and incorporated herein.
2. City agencies must take all necessary actions to require that their contractors (not covered by my Order of October 20, 2021) ensure their covered employees who provide services in locations where human services are provided and covered employees of any other contractors whose work responsibilities require them to regularly work alongside City employees at a location controlled by the City of New York, provide proof no later than 5pm on November 8, 2021, that:
 - a. they have been fully vaccinated against COVID-19; or
 - b. they have received a single-dose COVID-19 vaccine, even if two weeks have not passed since they received the vaccine; or
 - c. they have received the first dose of a two-dose COVID-19 vaccine.

Any covered employee of such a contractor who received only the first dose of a two-dose vaccine at the time they provided the proof described in this Paragraph shall, within 45 days after receipt of the first dose, provide proof that they have received the second dose of vaccine.

All such contractors shall submit a certification to their contracting agency confirming that they are requiring their covered employees to provide such proof. If contractors are non-compliant, the contracting City agencies may exercise any rights they may have under their contract.

3. Notwithstanding Paragraph 2 of this Order and Paragraph 3 of my Order of October 20, 2021, the vaccination requirements of such Orders shall not apply to any Board of Elections (“BOE”) employee or any contractor of the BOE until 5pm on November 30, 2021.

Until November 30, 2021, BOE employees must provide to BOE, and BOE must take any necessary action to require its contractors to require that their covered employees provide to their employer, either:

- a. Proof that:
 - i. they have been fully vaccinated against COVID-19; or
 - ii. they have received a single-dose COVID-19 vaccine, even if two weeks have not passed since they received the vaccine; or
 - iii. they have received the first dose of a two-dose COVID-19 vaccine, provided that they must additionally provide proof that they have received the second dose of vaccine within 45 days after receipt of the first dose; or
- b. On a weekly basis until the employee submits the proof described in this Paragraph, proof of a negative COVID-19 PCR diagnostic test (not an antibody test).

4. For the purposes of this Order:

“City employee” means a full- or part-time employee, intern, or volunteer of a New York City agency.

“Contract” means a contract awarded by the City, and any subcontract under such a contract, for work: (i) to be performed within the City of New York; and (ii) where employees can be expected to physically interact with City employees or members of the public in the course of performing work under the contract. “Contractor” means a person or entity that has a City contract, including a subcontract as described in the definition of “contract.”

“Covered employee” means a person: (i) employed by a contractor or subcontractor holding a contract or subcontract; (ii) whose salary is paid in whole or in part from funds provided under a City contract; and (iii) who performs any part of the work under the contract within the City of New York. However, a person whose work under the contract does not include physical interaction with City employees or members of the public shall not be deemed to be a covered employee.

“Fully vaccinated” means at least two weeks have passed after an individual received a single dose of a COVID-19 vaccine that only requires one dose, or the second dose of a

two-dose series of a COVID-19 vaccine as approved or authorized for use by the Food and Drug Administration or World Health Organization.

“Human services contract” means social services contracted by an agency on behalf of third-party clients including but not limited to day care, foster care, home care, health or medical services, housing and shelter assistance, preventive services, youth services, the operation of senior centers, employment training and assistance, vocational and educational programs, legal services and recreation programs.

5. Each City agency shall send each of its contractors to whom Paragraph 2 of this Order applies, notice that such covered employees must comply with the requirement of Paragraph 2 of this Order and request a response from each such contractor, as soon as possible, with regard to the contractor’s intent to follow this Order.
6. Nothing in this Order shall be construed to prohibit any reasonable accommodation otherwise required by law.
7. Subject to the authority of the Board of Health to continue, rescind, alter or modify this Order pursuant to Section 3.01(d) of the Health Code, this Order shall be effective immediately and remain in effect until rescinded.

Dated: October 31, 2021



Dave A. Chokshi, M.D., MSc
Commissioner

Appendix g.

**ORDER OF THE COMMISSIONER
OF HEALTH AND MENTAL HYGIENE
REQUIRING COVID-19 VACCINATION AND FACE COVERINGS
IN CHILD CARE AND EARLY INTERVENTION PROGRAMS**

WHEREAS, on March 12, 2020, Mayor Bill de Blasio issued Emergency Executive Order No. 98 declaring a state of emergency in New York City to address the threat posed by COVID-19 to the health and welfare of City residents, and such order remains in effect; and

WHEREAS, on March 25, 2020, the Commissioner of Health and Mental Hygiene declared the existence of a public health emergency within the City to address the continuing threat posed by COVID-19 to the health and welfare of City residents, and such declaration and public health emergency continue to be in effect; and

WHEREAS, pursuant to Section 556 of the Charter, and Section 3.01(c) of the Health Code (“Health Code”), the Department of Health and Mental Hygiene (“Department”) is authorized to supervise the control of communicable diseases and conditions hazardous to life and health and take such actions as may be necessary to assure the maintenance of and the protection of public health; and

WHEREAS, the US Centers for Disease Control and Prevention (“CDC”) reports that variants of COVID-19, identified as “variants of concern,” have emerged in the United States, and such variants currently account for the majority of COVID-19 cases sequenced in New York City and are more transmissible than earlier variants; and

WHEREAS, the CDC has stated that vaccination is an effective tool to prevent the spread of COVID-19 and benefits both vaccine recipients and those they come into contact with, including persons who for reasons of age, health, or other conditions cannot themselves be vaccinated; and

WHEREAS, child care programs are essential services needed and utilized by hundreds of thousands of children and families across the City, including those in communities that have been disproportionately affected by the COVID-19 pandemic; and

WHEREAS, pursuant to Article 25 of the State Public Health Law, the New York City Early Intervention Program (“Early Intervention”) annually provides essential services to over 30,000 eligible infants and toddlers under the age of 3 with, or at risk of experiencing, developmental delays or disabilities; said services being provided in the family home or at other locations; and

WHEREAS, on September 16, 2021, emergency regulations of the State Office of Children and Family Services requiring all persons age 2 and older who are able to medically tolerate a face covering to wear a face covering indoors at State-licensed child care programs went into effect (N.Y.S. Reg. Oct. 6, 2021, at 4-6); and

WHEREAS, emergency regulations of the State Department of Health require that, by September 27, 2021, staff at hospitals and nursing homes, and by October 7, 2021, staff at other facilities, such as adult care facilities, must be vaccinated against COVID-19 (10 N.Y.C.R.R §2.61); and

WHEREAS, requiring vaccination of staff in child care and Early Intervention programs, and use of face coverings by both staff and children in such programs, are among the most effective COVID-19 mitigation responses and will potentially save lives, protect public health, and promote public safety; and

WHEREAS, on August 24, 2021, I issued an Order requiring that Department of Education employees, contractors, and visitors provide proof of COVID-19 vaccination before entering a DOE building or school setting, and such Order was re-issued on September 12 and 15, 2021, and subsequently amended on September 28, 2021, and such Orders and amendment were ratified by the New York City Board of Health on September 17, 2021 and October 18, 2021; and

WHEREAS, on September 12, 2021, I issued an Order requiring that staff of early childhood programs or services provided under contract with the Department of Education or the Department of Youth and Community Development provide proof of COVID-19 vaccination; and

WHEREAS, pursuant to Section 17-109(b) of the Administrative Code, the Department may adopt vaccination measures to effectively prevent the spread of communicable diseases; and

WHEREAS, pursuant to Section 3.01(d) of the Health Code, I am authorized to issue orders and take actions that I deem necessary for the health and safety of the City and its residents when urgent action is needed to protect the public health against an existing threat and a public health emergency has been declared pursuant to such section; and

NOW THEREFORE, I, Dave A. Chokshi, MD, MSc, Commissioner of Health and Mental Hygiene, finding that a public health emergency within New York City continues, and that it is necessary for the health and safety of the City and its residents, do hereby exercise the power of the Board of Health to prevent, mitigate, control and abate the current emergency, and hereby order that:

1. No later than December 20, 2021, every child care program and Early Intervention provider agency must exclude from the premises any staff member who has not provided proof of vaccination against COVID-19, except as provided in paragraph 6 of this Order.
2. All staff members hired on or after the effective date of this Order at any child care program or Early Intervention provider agency must provide proof of vaccination against COVID-19 to their employer on or before their start date, except as provided in paragraph 6 of this Order.
3. All staff members and individuals 2 years of age and older who can medically tolerate a face covering must wear a face covering while at a child care program, during provision of Early Intervention services, and during off-site trips and excursions, provided that a child care program or Early Intervention provider may modify this requirement where it determines it appropriate based on the developmental needs of the child. This face covering requirement applies to family members who participate in the provision of services or who are present with the child and the staff member while services are being provided. A face covering is not required when an individual is sleeping, or actively eating or drinking. A face covering is also not required for an individual who is not participating in Early Intervention services, such as a household member, when such services are provided in a private home.
4. Each child care program and Early Intervention provider must securely maintain staff member records of proof of vaccination against COVID-19. These records may be kept electronically or on paper. These records must include the following:
 - a) each staff member's name and start date.
 - b) the type of proof of vaccination submitted; the date such proof was collected; and whether the person is fully vaccinated, as defined in this Order.
 - c) for any staff member who submits proof of the first dose of a two-dose vaccine, the date by which proof of the second dose must be provided, which must be no later than 45 days after the first dose.

- d) for any staff member who did not submit proof of COVID-19 vaccination because of a reasonable accommodation, the record must indicate that such accommodation was provided, and the child care program or Early Intervention provider agency must separately maintain records stating the basis for such accommodation and the supporting documentation provided by such staff in accordance with applicable laws, including the Americans with Disabilities Act.

5. For the purposes of this Order:

“Child care” or “Child care program” means any person or entity that is regulated under Article 43 or 47 of the Health Code, is required to be licensed or registered by the State Office of Children and Family Services, or is an enrolled legally exempt group child care program pursuant to the Social Services Law.

“Early Intervention provider” or “Early Intervention provider agency” means any person or entity holding a provider agreement for the provision of Early Intervention services in New York City, including service coordination, evaluation, therapeutic and educational services, pursuant to Article 25 of the Public Health Law.

“Fully vaccinated” means at least two weeks have passed after an individual has received either: (a) the second dose in a two-dose series of a COVID-19 vaccine, or (b) a single-dose of a COVID-19 vaccine that requires only one dose of a COVID-19 vaccine approved or authorized for use by the Food and Drug Administration or World Health Organization.

“Premises” means locations where children are regularly present at child care programs, or any setting or location where Early Intervention services are provided as authorized by the New York City Early Intervention Official or such official’s designee.

“Proof of vaccination” against COVID-19 means one of the following demonstrating that an individual has either: (a) been fully vaccinated against COVID-19, or (b) received the first dose of a two-dose COVID-19 vaccine, provided that staff providing proof of only a first dose must also provide proof of receiving the second dose of that vaccine within 45 days after receiving the first dose. Such proof of vaccination includes, but may not be limited to, the following:

- 1) CDC Vaccination Card. A digital photo or photocopy of this card is also acceptable.
- 2) NYC Vaccination Record or other official immunization record, including from a health care provider. A digital photo or photocopy of this is also acceptable.
- 3) NYC COVID Safe App showing a vaccination record.
- 4) CLEAR Health Pass.
- 5) NYS Excelsior Pass/Excelsior Pass Plus.

“Staff member” means an employee, contractor, volunteer or intern of a child care program or Early Intervention provider, who works in-person on the premises or provides Early Intervention in-person therapeutic, developmental or education services, or conducts assessments for the purpose of determining children’s eligibility for such services; a graduate, undergraduate or high school student placed by their educational institution at a child care program or with an Early Intervention provider as part of an academic program and who works in-person on the premises; a specialist providing support services, therapy, special education or other services at a child care program or with an Early Intervention provider to an individual child and who works in-person on the premises; or a person employed by a contractor of a child care program or an Early Intervention provider, including an independent contractor, who works in-person on the premises. “Staff member” does not include a person who is onsite briefly for a limited purpose, such as for a delivery or pick-up or to perform a repair.

6. Nothing in this Order shall be construed to prohibit any reasonable accommodations otherwise required by law, however a reasonable accommodation may not allow an unvaccinated staff member to work with children in person.
7. This Order shall be effective immediately and remain in effect until rescinded, subject to the authority of the Board of Health to continue, rescind, alter, or modify this Order pursuant to Section 3.01(d) of the Health Code.



Dated: November 17, 2021

Dave A. Chokshi, M.D., MSc
Commissioner

Appendix h.

**ORDER OF THE COMMISSIONER
OF HEALTH AND MENTAL HYGIENE
TO REQUIRE COVID-19 VACCINATION FOR
NONPUBLIC SCHOOL STAFF**

WHEREAS, on March 12, 2020, Mayor Bill de Blasio issued Emergency Executive Order No. 98 declaring a state of emergency in the City to address the threat posed by COVID-19 to the health and welfare of City residents, and such order remains in effect; and

WHEREAS, on March 25, 2020, the New York City Commissioner of Health and Mental Hygiene declared the existence of a public health emergency within the City to address the continuing threat posed by COVID-19 to the health and welfare of City residents, and such declaration and public health emergency continue to be in effect; and

WHEREAS, on November 26, 2021, New York State Governor Kathy Hochul, pursuant to Section 28 of Article 2-B of the Executive Law, found that New York is experiencing COVID-19 transmission at rates the State has not seen since April 2020 and that the rate of new COVID-19 hospital admissions has been increasing over the past month to over 300 new admissions a day due to the Delta variant, and therefore declared a State disaster emergency for the entire State of New York through January 15, 2022; and

WHEREAS, on November 26, 2021, the World Health Organization (“WHO”) declared the new COVID B.1.1.529 variant, named Omicron, a variant of concern because it has a large number of mutations and preliminary evidence suggests an increased risk of reinfection and spread across the world, including to the United States; and

WHEREAS, pursuant to Section 558 of the New York City Charter (the “Charter”), the Board of Health may embrace in the Health Code all matters and subjects to which the power and authority of the Department of Health and Mental Hygiene (“the Department”) extends; and

WHEREAS, pursuant to Section 556 of the Charter and Section 3.01(c) of the Health Code, the Department is authorized to supervise the control of communicable diseases and conditions hazardous to life and health and take such actions as may be necessary to assure the maintenance of the protection of public health; and

WHEREAS, the WHO and the U.S. Centers for Disease Control and Prevention (“CDC”) have advised all individuals to take measures to reduce their risk of COVID-19, especially the Delta and Omicron variants, including vaccination, which is an effective tool to prevent the spread of COVID-19 and benefits both vaccine recipients and those they come into contact with, including persons who for reasons of age, health, or other conditions cannot themselves be vaccinated; and

WHEREAS, the CDC has recommended that school teachers and staff be “vaccinated as soon as possible” because vaccination is “the most critical strategy to help schools safely resume full operations [and] is the leading public health prevention strategy to end the COVID-19 pandemic;” and

WHEREAS, on November 30, 2021, the federal Administration for Children and Families issued an interim final rule requiring that all Head Start staff and volunteers working in classrooms or directly with children be vaccinated for COVID-19 by January 31, 2022; and

WHEREAS, Section 17-104 of the Administrative Code of the City of New York directs the Department to adopt prompt and effective measures to prevent the communication of infectious diseases such as COVID-19, and in accordance with Section 17-109(b), the Department may adopt vaccination measures to effectively prevent the spread of communicable diseases; and

WHEREAS, the City is committed to safe, in-person learning in all preschool to grade 12 schools, following public health science; and

WHEREAS, more than 240,000 students across the City attend nonpublic schools, including students in the communities that have been disproportionately affected by the COVID-19 pandemic and students who are too young to be eligible to be vaccinated; and

WHEREAS, a system of vaccination for individuals working in nonpublic schools will potentially save lives, protect public health, and promote public safety; and

WHEREAS, pursuant to Section 3.01(d) of the Health Code, I am authorized to issue orders and take actions that I deem necessary for the health and safety of the City and its residents when urgent public health action is necessary to protect the public health against an existing threat and a public health emergency has been declared pursuant to such section; and

WHEREAS, on September 12, 2021, I issued an Order requiring COVID-19 vaccinations for individuals working in certain covered child care programs, as defined therein; and

WHEREAS, on September 15, 2021, I issued and on September 28, 2021, I amended, an Order requiring COVID-19 vaccination for DOE employees, contractors, and others who work in-person in New York City Department of Education (“DOE”) school settings or DOE buildings and for staff of NYC charter schools; and

WHEREAS, on November 17, 2021, I issued an Order requiring COVID-19 vaccinations for staff of child care programs, as defined therein, and in early intervention programs; and

NOW THEREFORE I, Dave A. Chokshi, MD, MSc, Commissioner of Health and Mental Hygiene, finding that a public health emergency within New York City continues, and that it is necessary for the health and safety of the City and its residents, do hereby exercise the power of the Board of Health to prevent, mitigate, control and abate the current emergency, do hereby order that:

1. No later than December 20, 2021, every nonpublic school must exclude any staff member who has not provided proof of vaccination against COVID-19, except as provided in paragraph 6 of this Order.
2. All staff members at any nonpublic school hired on or after the effective date of this Order must provide proof of vaccination against COVID-19 to their employer on or before their start date, except as provided in paragraph 6 of this Order.

3. Nonpublic schools to whom staff must submit proof of vaccination status, must securely maintain a record of such submission, either electronically or on paper, and must make such records immediately available to the Department, or its designee, upon request. These records must include the following:
 - (a) Each staff member's name and start date.
 - (b) The type of proof of vaccination submitted; the date such proof was collected; and whether the person is fully vaccinated, as defined in this Order.
 - (c) For any staff member who submits proof of the first dose of a two-dose vaccine, the date by which proof of the second dose must be provided, which must be no later than 45 days after the proof of first dose was submitted.
 - (d) For any staff member who does not submit proof of COVID-19 vaccination because of a reasonable accommodation, the record must indicate that such accommodation was provided, and the employer must separately maintain records stating the basis for such accommodation and the supporting documentation provided by such staff in accordance with applicable laws, including the Americans with Disabilities Act.
4. No later than December 28, 2021, nonpublic schools must electronically submit an initial affirmation of compliance with the requirements of paragraph 3 of this Order in the form prescribed by the Department, and such nonpublic schools must also submit follow up affirmations in the form prescribed by the Department by February 17, 2022, to demonstrate that all staff are fully vaccinated.
5. For the purposes of this Order:

“Fully vaccinated” means at least two weeks have passed after an individual received a single dose of a COVID-19 vaccine that only requires one dose, or the second dose of a two-dose series of a COVID-19 vaccine approved or authorized for use by the Food and Drug Administration or World Health Organization, or any other circumstance defined by the Department in its guidance associated with this Order.

“Nonpublic school” means any location other than a DOE or charter school setting, as defined in my Order of September 15, 2021, where instruction and related services are provided to students from preschool through grade 12, or any portion thereof, such as only elementary or only secondary school, and includes:

- (a) locations providing such instruction and related services:
 - (i) to students between the ages typically served from preschool through grade 12, including schools that do not separate students into “grades” or similar groupings; and
 - (ii) pursuant to New York State Education Law section 3204; and
- (b) residences of students receiving home instruction from a school other than a DOE or charter school.


“Nonpublic school” does not include “covered child care programs,” “child care programs,” or “early intervention provider” as defined in my Orders of September 12, 2021, and November 17, 2021.

“Nonpublic school staff” means staff serving students in nonpublic schools and includes (i) full or part-time employees and (ii) all unpaid adults serving in nonpublic school settings including, but not limited to, student teachers and volunteers supporting school functions.

“Proof of vaccination” means proof that an individual:

- (a) Has been fully vaccinated;
 - (b) Has received a single dose vaccine, or the second dose of a two-dose vaccine, even if two weeks have not passed since they received the dose; or
 - (c) Has received the first dose of a two-dose vaccine, in which case they must additionally provide proof that they have received the second dose of that vaccine within 45 days after providing proof of the first dose.
6. Nothing in this Order shall be construed to prohibit any reasonable accommodations otherwise required by law.
7. This Order shall be effective immediately and remain in effect until rescinded, subject to the authority of the Board of Health to continue, rescind, alter, or modify this Order pursuant to Section 3.01(d) of the Health Code.

Dated: December 2, 2021



Dave A. Chokshi, M.D., MSc
Commissioner

Appendix i

**ORDER OF THE COMMISSIONER
OF HEALTH AND MENTAL HYGIENE
TO REQUIRE COVID-19 VACCINATION IN THE WORKPLACE**

WHEREAS, on March 12, 2020, Mayor Bill de Blasio issued Emergency Executive Order No. 98 declaring a state of emergency in the City to address the threat posed by COVID-19 to the health and welfare of City residents, and such Order remains in effect; and

WHEREAS, on March 25, 2020, the New York City Commissioner of Health and Mental Hygiene declared the existence of a public health emergency within the City to address the continuing threat posed by COVID-19 to the health and welfare of City residents, and such declaration and public health emergency continue to be in effect; and

WHEREAS, the COVID-19 virus continues to spread and mutate, and on November 26, 2021, the World Health Organization (“WHO”) declared a new variant of COVID-19, named Omicron, a variant of concern and preliminary evidence suggests an increased risk of reinfection and spread across the world, including to the United States; and

WHEREAS, on November 26, 2021, New York State Governor Kathy Hochul issued Executive Order No. 11 to address new emerging threats across the State posed by COVID-19, finding that New York is experiencing COVID-19 transmission at rates the State has not seen since April 2020 and that the rate of new COVID-19 hospital admissions has been increasing over the past month to over 300 new admissions a day; and

WHEREAS, COVID-19 spreads when an infected person exhales the virus and these are breathed in by other people or land on their eyes, noses, or mouth, with people closer than 6 feet from the infected person most likely to get infected, making the risk of COVID-19 transmission greater in workplace settings because of close proximity to others and the sharing of office space and facilities such as restrooms, elevators, lobbies, meeting and break rooms, and other common areas; and

WHEREAS, the WHO and the U.S. Centers for Disease Control and Prevention (“CDC”) have advised all individuals to take measures to reduce their risk of COVID-19, especially the Delta and Omicron variants, including vaccination, which is an effective tool to prevent the spread of COVID-19 and benefits both vaccine recipients and those they come into contact with, including persons who for reasons of age, health, or other conditions cannot themselves be vaccinated; and

WHEREAS, a study by Yale University demonstrated that the City’s vaccination campaign was estimated to have prevented about 250,000 COVID-19 cases, 44,000 hospitalizations and 8,300 deaths from COVID-19 infection since the start of vaccination through July 1, 2021, and the City believes the number of prevented cases, hospitalizations and death has risen since then; and that between January 1, 2021, and June 15, 2021, over 98% of hospitalizations and deaths from COVID-19 infection involved those who were not fully vaccinated;

WHEREAS, a system of vaccination that requires employers to implement vaccination policies for their employees will potentially save lives, protect public health, and promote public safety; and

WHEREAS, on September 9, 2021, President Biden issued an Executive Order stating that “It is essential that Federal employees take all available steps to protect themselves and avoid spreading COVID-19 to their co-workers and members of the public,” and ordering each federal agency to “implement, to the extent consistent with applicable law, a program to require COVID-19 vaccination for all of its Federal employees, with exceptions only as required by law”; and

WHEREAS, on August 16, 2021, Mayor Bill de Blasio signed Emergency Executive Order No. 225, the “Key to NYC,” which requires the employees, as well as patrons, of establishments providing indoor entertainment, dining, and fitness to show proof of at least one dose of an approved COVID-19 vaccine, and such Order, as reissued in Emergency Executive Order No. 316 on December 13, 2021, is still in effect; and

WHEREAS, on August 24, 2021, I issued an Order requiring that Department of Education employees, contractors, and visitors provide proof of COVID-19 vaccination before entering a DOE building or school setting, and such Order was re-issued on September 12 and 15, 2021, and subsequently amended on September 28, 2021, and such Orders and amendment were ratified by the Board of Health on September 17, 2021 and October 18, 2021; and

WHEREAS, on September 12, 2021, I issued an Order requiring that staff of early childhood programs or services provided under contract with the Department of Education or the Department of Youth and Community Development provide proof of COVID-19 vaccination, and that Order was ratified by the Board of Health on September 17, 2021; and

WHEREAS, on October 20, 2021, I issued an Order requiring that City employees provide proof of vaccination to their agencies or offices by October 29, 2021 or be excluded from their workplace, and on October 31, 2021, I issued a supplemental Order, and both Orders were ratified by the Board of Health on November 1, 2021; and

WHEREAS, on November 17, 2021, I issued an Order requiring COVID-19 vaccinations for staff of child care programs, as defined therein, and in early intervention programs, and such Order was ratified by the Board of Health on November 19, 2021; and

WHEREAS, on December 2, 2021, I issued an Order requiring COVID-19 vaccinations for all nonpublic school staff and volunteers; and

WHEREAS, pursuant to Section 558 of the New York City Charter (the “Charter”), the Board of Health may embrace in the Health Code all matters and subjects to which the power and authority of the Department of Health and Mental Hygiene (“the Department”) extends; and

WHEREAS, pursuant to Section 556 of the Charter and Section 3.01(c) of the Health Code, the Department is authorized to supervise the control of communicable diseases and

conditions hazardous to life and health and take such actions as may be necessary to assure the maintenance and protection of public health; and

WHEREAS, Section 17-104 of the New York City Administrative Code (“Administrative Code”) directs the Department to adopt prompt and effective measures to prevent the communication of infectious diseases such as COVID-19, and in accordance with Section 17-109(b) of Administrative Code, the Department may adopt vaccination measures to effectively prevent the spread of communicable diseases; and

WHEREAS, pursuant to Section 3.01(d) of the Health Code, I am authorized to issue orders and take actions that I deem necessary for the health and safety of the City and its residents when urgent public health action is needed to protect the public health against an existing threat and a public health emergency has been declared pursuant to such section; and

NOW THEREFORE, I, Dave A. Chokshi, MD, MSc, Commissioner of the Department of Health and Mental Hygiene, finding that a public health emergency within New York City continues, and that it is necessary for the health and safety of the City and its residents, do hereby exercise the power of the Board of Health to prevent, mitigate, control and abate the current emergency, and hereby order that:

1. Beginning December 27, 2021, workers must provide proof of vaccination against COVID-19 to a covered entity before entering the workplace, and a covered entity must exclude from the workplace any worker who has not provided such proof, except as provided in paragraph 5.
2. Covered entities shall verify workers’ proof of vaccination. Covered entities shall:
 - a. maintain a copy of each worker’s proof of vaccination and, if applicable, a record of reasonable accommodation(s) as described in (b)(iv); *OR*
 - b. maintain a record of such proof of vaccination, provided that such record shall include:
 - i. the worker’s name; and
 - ii. whether the person is fully vaccinated; and
 - iii. for a worker who submits proof of the first dose of a two-dose vaccine, the date by which proof of the second dose must be provided, which must be no later than 45 days after the proof of first dose was submitted; and
 - iv. for a worker who does not submit proof of COVID-19 vaccination because of a reasonable accommodation, the record must indicate that such accommodation was provided, and the covered entity must separately maintain records stating the basis for such accommodation and any supporting documentation provided by such worker; *OR*
 - c. check the proof of vaccination before allowing a worker to enter the workplace and maintain a record of the verification.

For a non-employee worker, such as a contractor, a covered entity may request that the worker's employer confirm the proof of vaccination in lieu of maintaining the above records. A covered entity shall maintain a record of such request and confirmation.

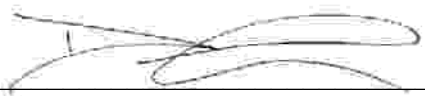
Records created or maintained pursuant to this section shall be treated as confidential.

A covered entity shall, upon request by a City agency, make available for inspection records required to be maintained by this section, consistent with applicable law.

3. No later than December 27, 2021, a covered entity shall affirm on a form provided by the Department compliance with the requirements of paragraph 2 of this Order and post the affirmation in a conspicuous location.
4. For purposes of this Order:
 - a. "Covered entity" means:
 - i. a non-governmental entity that employs more than one worker in New York City or maintains a workplace in New York City; or
 - ii. a self-employed individual or a sole practitioner who works at a workplace or interacts with workers or the public in the course of their business.
 - b. "Fully vaccinated" means at least two weeks have passed after an individual received a single dose of a COVID-19 vaccine that requires only one dose, or the second dose of a two-dose series of a COVID-19 vaccine approved or authorized for use by the Food and Drug Administration or World Health Organization, or any other circumstance defined by the Department in its guidance associated with this Order.
 - c. "Proof of vaccination" means one of the following documents demonstrating that an individual has (1) been fully vaccinated against COVID-19; (2) received one dose of a single-dose COVID-19 vaccine; or (3) received the first dose of a two-dose COVID-19 vaccine, provided that a worker providing proof of only such first dose provides proof of receiving the second dose of that vaccine within 45 days after receiving the first dose:
 - i. A CDC COVID-19 Vaccination Record Card or other official immunization record from the jurisdiction, city, state, or country where the vaccine was administered, or from a healthcare provider or other approved immunizer who administered the vaccine, that provides the person's name, vaccine brand, and date of administration. A digital photo or photocopy of such record is also acceptable.
 - ii. New York City COVID Safe App showing a vaccination record;
 - iii. A valid New York State Excelsior Pass/Excelsior Pass Plus;
 - iv. CLEAR Health Pass; or

- v. Any other method specified by the Commissioner as sufficient to demonstrate proof of vaccination.
- d. “Worker” means an individual who works in-person in New York City at a workplace. Worker includes a full- or part-time staff member, employer, employee, intern, volunteer or contractor of a covered entity, as well as a self-employed individual or a sole practitioner.
- Worker does not include:
- i. an individual who works from their own home and whose employment does not involve interacting in-person with co-workers or members of the public;
 - ii. an individual who enters the workplace for a quick and limited purpose; or
 - iii. non-City residents who are performing artists, college or professional athletes, or individuals accompanying such performing artists or college or professional athletes who do not have to display proof of vaccination pursuant to the Key to NYC program, Emergency Executive Order No. 316 and successor Orders.
- e. “Workplace” means any location, including a vehicle, where work is performed in the presence of another worker or member of the public.
5. Nothing in this Order shall be construed to prohibit reasonable accommodations for medical or religious reasons.
6. This Order shall not apply to covered entities or individuals who are already subject to another Order of the Commissioner of the Department, Board of Health, the Mayor, or a State or federal entity that is in effect and requires them to maintain or provide proof of full vaccination or to individuals who have been granted a reasonable accommodation pursuant to such requirement.
7. This Order shall take effect immediately, and remain in effect until rescinded, subject to the authority of the Board of Health to continue, rescind, alter, or modify this Order pursuant to Section 3.01(d) of the Health Code.

Dated: December 13, 2021



Dave A. Chokshi, MD, MSc
Commissioner

Appendix #25

10. In all my correspondences were with the DOE. I was never notified by the UFT how to construct a religious exemption. I was never offered any suggestions through the UFT about the Arbitration Agreement that they made with the DOE.
11. I was never given any direction or information by my supervisors, the DOE or UFT how to ask for a reasonable accommodation. The Arbitration Agreement of 9/10/21 was never properly explained to us. My Union Representative. never got involved.
12. I was never offered any safety equipment that would keep me safe from the airborne virus that causes Covid-19 and neither did any discuss what could be done to modify my job to make it safe for me and all the children that I taught.
13. In my entire 17 years as a teach for the DOE, I had never received any workplace safety training and neither was I instructed by the OSHA regulations on how to achieve and maintain a safe workplace during a communicable disease Pandemic.
14. All that I was told through the various communications was that it was "unsafe" to allow unvaccinated DOE employees into any of the DOE schools or buildings. However, I did not work in a DOE building, so it was my understanding that the vaccine requirements placed on DOE employees really did not apply to me.
15. Nevertheless, I submitted a request to be exempt from the vaccine requirement by submitting, as was instructed by DOC, a Religious Exemption on 9/20/21 through this online application called Solas. In my submission I explained that the basis for my refusal to submit to the DOE vaccine requirement was based on my Christian faith adheres to the Bible and its teaching which these vaccines violated. Mostly the fact that aborted stem cells were involved in the origination of the three Covid-19 shots makes their reception sinful to me. See **Exhibit E**
16. On 9/22, my request was denied through email by HR Connect online portal. See **Exhibit F**
17. No one ever called me or email me to ask any questions about how I thought I could continue to do my job and keep myself safe and the students that I teach safe during the Pandemic. There was no human dialog between myself and anyone at the DOE.

18. The denial letter, however, stated that my request for vaccine exemption was denied because my written submission failed to meet the criteria for a religious based accommodation. However, I was never provided any information regarding what the "criteria" was that would provide me with an accommodation.
19. The denial letter stated, in summary:

Per the Emergency Order by the New York City Commissioner of Health, unvaccinated employees cannot work in a Department of Education (DOE) building or other site with contact with DOE students, employees, or families without posing a direct threat to health and safety. We cannot offer another worksite as an accommodation as that would impose an undue hardship (i.e. more than a minimal burden) on the DOE and its operations. See **Exhibit G**
20. Although I was denied, I learned that other teachers were allowed to remain on the job unvaccinated and were allowed to teach students through the computer online remote education option.
21. I was only given one day to submit my appeal. Also, there was no directive why it was denied. Therefore on 9/23/21 I submitted my appeal with a note in the box that I would submit supporting documentation at my arbitration hearing. See **Exhibit H**
22. On 9/30/21 my appeal was denied with no reason why it was denied. I was never given a hearing. See **Exhibit I**
23. I retained a lawyer and on 10/8/21, my lawyer Joshua Pepper wrote Human Resources to inquire why I was never permitted a hearing to plead by case. See **Exhibit J**.
24. On 10/8/21, Karen King from the United Federation of Teachers responded back that not all individuals were granted a hearing. See **Exhibit K**
25. On 11/19, I received an email from the Division of Human Capital that I could re-appeal through a citywide panel. Directions were given how to resubmit it through Solas. See **Exhibit L**
26. I have been placed on Leave Without Pay since 10/4/21 See **Exhibit M**. On 12/2/21, I submitted a re appeal to the City-Wide Appeal Panel with additional information explaining that my teaching assignment was remote and that there would be no undue hardship to allow me to continue to work as I had previously done throughout the pandemic.

27. Despite the additional information about the remote state of my teaching, on 1/7/21, I received an email to provide additional information by 1/14/22.
See **Exhibit N**.
28. During the several month-long process, I received weekly notices from the DOC instructing to get vaccinated.
29. After the denial, I filed a complaint with the EEOC claiming wrongful termination, harassment based on my religious faith and based on my health status as an unvaccinated person under the ADA.
30. Then on March 7, 2022, I received the email stating that I would be subject to termination, but I have not received a “good cause” disciplinary action/charge from the DOE pursuant to New York City Education Law 3020a. to permanently terminate me.
31. On 11/15/21 and 11/28/21 the Court determined that the agreement between the DOE and the City only allowing religious exemptions for the church was unconstitutional.
32. Since 10/4/21, this experience has put a tremendous amount of emotional stress on my life in ways that I could never imagine. The choices given either go on leave without pay or take a severance which included medical or be terminated and lose everything has devastated me. I own a house, I am not receiving any financial assistance. I have a mortgage to pay. Worrying about food, expenses have been overwhelming. I have had to depend on my family and friends to get me through this terrible ordeal. I have been depressed and handicapped because I am not allowed to work to support myself.
33. Since this vaccine mandate has taken effect, I am having trouble seeking employment in education. There are no employment options due to the fact I am unemployable in the city. There are no other alternatives but to leave the city and seek employment in another state or region. I have invested my time and my livelihood here in the city and it has destroyed my opportunities to succeed in this field.
34. Allowing me to continue to work remote through online computer equipment does not place any undue hardship on the DOE.
35. Also, the DOE has granted other teachers religious exemptions from the vaccine and have allowed them to continue to work in the schools.

36. I have recently learned through my contacts with Union leadership that the DOE has a shortage of approximately 1,000 teachers needed for remote online teaching because there are many more students demanding online instruction, but yet they are hiring new teachers and granting them the remote work positions, yet the DOE denied me the ability to continue to work remote.

I declare under penalty of perjury under the laws of the State of New York that the foregoing is true and correct.

Dated this 15 day of April, 2022.

Remo Dello Ioio

R. DELLO IOIO

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

Subscribed and sworn to (or affirmed) before me on this 15 day of April 2022, 2021, by R. DELLO IOIO, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Witness my hand and official seal.

Signature of Notary Public

[Handwritten Signature]

KEVIN T. McCARTHY
Notary Public, State of New York
No. 02MC6320693
Qualified in Rockland County
Commission Expires March 18, 2023

COVID-19 Vaccination Mandate Related Exemption or Accommodation Application

Division of Human Capital <DHC@schools.nyc.gov>

Sat 9/18/2021 10:49 AM

To: Division of Human Capital <DHC@schools.nyc.gov>

Dear Colleagues,

We are writing to let you know that DOE staff members may now apply in SOLAS for a COVID-19 Vaccination Mandate Related Exemption or Accommodation.

This COVID-19 Vaccine Related Exemption and Accommodation application is for:

- Religious Exemption requests to the mandatory vaccination policy
- Medical Exemption requests to the mandatory vaccination policy
- Medical Accommodation requests where an employee is vaccinated but is unable to mount an immune response to COVID-19 due to preexisting immune conditions.

Applications should be made via the following process:

- Applications must be made using the [Self-Service Online Leave Application System \(SOLAS\)](#).
- In SOLAS, employees should select the initial option to "Request Accommodation" and then the option to apply for an Exemption and Accommodation for COVID Vaccine-Related Reasons, and then indicate the category for the application.
- All applications require supporting documentation which must be submitted at the time of application.

More information can be found on the [Coronavirus Staff Update InfoHub page](#).

Thank you,

NYCDOE Division of Human Capital

Your application for a COVID-19 Vaccine Related Exemption or Accommodation has been received.

solas_donotreply@schools.nyc.gov <solas_donotreply@schools.nyc.gov>

Mon 9/20/2021 8:32 AM

To: Delloloio Remo (09X505) <RDelloio@schools.nyc.gov>

09/20/2021

Case#:

File# 07

EMP ID:

Dear REMO DELLO IOIO,

Thank you for submitting your application online!

Type of Application: COVID-19 Vaccine Related Exemption or Accommodation

Application Communications:

During your application process, all communications will be sent to your DOE e-mail account. You must continue to check your DOE e-mail, even if you listed a different preferred email address.

Changes to Your Application:

Unfortunately, you cannot make changes to your submitted application. If you need to make changes, you must withdraw this application and re-submit your request. To withdraw the application please log back into SOLAS: <https://dhrnycaps.nycenet.edu/SOLAS>.

Questions:

For technical questions regarding the SOLAS system, please call HR Connect at 718-935-4000 and refer to the case number at the top of this notice. For more information, you may also visit the HR Connect Employee Portal by logging in with your DOE/Outlook User ID and password at <https://doehrconnect.custhelp.com>.

Sincerely,

HR Connect

Medical, Leaves, and Records Administration

Please do not reply to this message via e-mail. This email address is automated.

Ref Number : GX5897335 N3350 ADA Submission

Your COVID-19 Vaccine Religious Exemption Application - Determination

solas_donotreply@schools.nyc.gov <solas_donotreply@schools.nyc.gov>

Wed 9/22/2021 7:43 PM

To: DelloIoio Remo (09X505) <RDelloIoio@schools.nyc.gov>

09/22/2021

Case#

File#

EMP I

Dear REMO DELLO IOIO,

We have reviewed your application and supporting documentation for a religious exemption from the DOE COVID-19 vaccine mandate. Your application has failed to meet the criteria for a religious based accommodation. Per the Order of the Commissioner of Health, unvaccinated employees cannot work in a Department of Education (DOE) building or other site with contact with DOE students, employees, or families without posing a direct threat to health and safety. We cannot offer another worksite as an accommodation as that would impose an undue hardship (i.e. more than a minimal burden) on the DOE and its operations.

This application was reviewed in accordance with applicable law as well as the Arbitration Award in the matter of your union and the Board of Education regarding the vaccine mandate.

Under the terms of the Arbitration Award, you may appeal this denial to an independent arbitrator. If you wish to appeal, you must do so within one school day of this notice by logging into SOLAS <https://dhrnycaps.nycenet.edu/SOLAS> and using the option "I would like to APPEAL". As part of the appeal, you may submit additional documentation and also provide a reason for the appeal.

Sincerely,

HR Connect

Medical, Leaves, and Records Administration

Please do not reply to this message via e-mail. This email address is automated.

Ref Number : GX5918277 N3418 COVID-19_VAX_ReligiousExempt_GenDenial

Your Appeal

solas_donotreply@schools.nyc.gov <solas_donotreply@schools.nyc.gov>

Thu 9/23/2021 3:42 PM

To: Delloloio Remo (09X505) <RDelloio@schools.nyc.gov>

09/23/2021

Case# [REDACTED]
[REDACTED]
[REDACTED] 6

Dear REMO DELLO IOIO,

This notification confirms the receipt of your appeal of your denial of a COVID-19 vaccine mandate related exemption or accommodation. This appeal and your application materials and documentation are being forwarded to Scheinman Arbitration and Mediation Services ("SAMS") and independent arbitrators convened by SAMS who will consider your appeal.

Supplemental documentation may be submitted within 48 hours of your filing of the appeal to SAMS by emailing the applicable address below. Please include your name and union in the subject line and send from your DOE email.

UFT: AppealsUFT@ScheinmanNeutrals.com

CSA: AppealsCSA@ScheinmanNeutrals.com

Local 237: AppealsTeamstersLocal237@ScheinmanNeutrals.com

Local 891: AppealsLocal891IUOE@ScheinmanNeutrals.com

Sincerely,

HR Connect

Medical, Leaves, and Records Administration

Please do not reply to this message via e-mail. This email address is automated.

Ref Number : GX5925701 N3425 COVID-19_VAX_Exemption_Appeal

DOE Vaccination Portal

NYCDOE <noreply@schools.nyc.gov>

Fri 9/24/2021 10:18 AM

To: Delloio Remo (09X505) <RDelloio@schools.nyc.gov>



Dear Colleague,

You are receiving this email because our records indicate that you have not yet used the **DOE Vaccination Portal** to submit proof that you have received at least one dose of a COVID-19 vaccine, as required by the DOE's [COVID-19 Vaccine Mandate](#). **The deadline to upload this information is September 27.**

If you fail to meet this deadline, you will be removed from payroll and placed on Leave Without Pay status (LWOP) beginning Tuesday, September 28, unless you are on an approved vaccine exemption or leave.

While you are on Leave Without Pay (LWOP), you:

- Cannot enter your work or school site until you have taken corrective action to comply with the terms of the mandate
- Cannot work and will not receive compensation
- Cannot use annual leave, CAR or sick time

In order to avoid being placed on LWOP status, you must use the [DOE Vaccination Portal](#) to upload your proof of vaccination no later than September 27.

If you have an approved exemption or leave your status will be updated shortly. Employees who are on an annual or sick leave on 9/28 and have not uploaded proof of vaccination by 9/27 will also be placed on a LWOP. (Employees in certain titles including substitutes will be placed in another inactive status, not a leave without pay.)

For more information about where to get vaccinated, visit vaccinefinder.nyc.gov or call 877-VAX-4-NYC.

For the latest COVID-19 staffing updates, please [visit the Coronavirus Staff Update InfoHub page](#).

If you encounter technical issues using the Vaccination Portal, please contact the DOE Help Desk by [opening a ticket](#) online or calling 718-935-5100.

Sincerely,

DOE Vaccination Portal Team

SCHEINMAN ARBITRATION AND MEDIATION SERVICES

----- X

In the Matter of the Arbitration

X

between

X

NEW YORK CITY DEPARTMENT OF EDUCATION

Re: UFT.1726

X

and

X

REMO DELLO IOIO

X

----- X

Issue: Religious Exemption

Date of Hearing: _____

Award

APPLICATION FOR EXEMPTION: GRANTED [] DENIED [] OTHER []

Barry Peek

Arbitrator
Barry Peek

09/30/2021

Date

DOE Vaccination Portal

NYCDOE <noreply@schools.nyc.gov>

Thu 9/30/2021 10:27 AM

To: Delloloio Remo (09X505) <RDelloloio@schools.nyc.gov>



Dear Colleague,

You are receiving this email because our records indicate that you have not yet used the **DOE Vaccination Portal** to submit proof that you have received at least one dose of a COVID-19 vaccine, as required by the DOE's [COVID-19 Vaccine Mandate](#). **The deadline to upload this information is 11:59pm on Friday, October 1.**

If you fail to meet this deadline, you will be removed from payroll and placed on Leave Without Pay status (LWOP) beginning Monday, October 4, unless you are on an approved vaccine exemption or leave, you will not receive compensation. Additionally you may not use annual leave, CAR or sick time in lieu of Leave Without Pay.

In order to avoid being placed on LWOP status, you must use the DOE Vaccination Portal to upload your proof of vaccination no later than October 4.

If you have an approved vaccine exemption, or an approved leave your status will be updated shortly. Employees in certain titles including substitutes will be placed in another inactive status, not a leave without pay.

For more information about where to get vaccinated, visit vaccinefinder.nyc.gov or call 877-VAX-4-NYC.

For the latest COVID-19 staffing updates, please [visit the Coronavirus Staff Update InfoHub page](#).

If you encounter technical issues using the Vaccination Portal, please contact the DOE Help Desk by [opening a ticket](#) online or calling 718-935-5100.

Sincerely,

DOE Vaccination Portal Team

Notification of Leave Without Pay - PLEASE READ

solas_donotreply@schools.nyc.gov <solas_donotreply@schools.nyc.gov>

Tue 10/5/2021 8:42 PM

To: DelloIoio Remo (09X505) <RDelloIoio@schools.nyc.gov>

10/05/2021

Case#: A75876

Dear REMO DELLO IOIO,

As you are aware, the independent arbitrator has denied your appeal for a medical or religious exemption to the COVID-19 vaccine mandate. As a consequence, **you are being placed on a Leave Without Pay (LWOP) because you are not in compliance with the [COVID-19 Vaccine Mandate](#). Your LWOP status goes into effect beginning with the first work day after you received the notification from the arbitrator** (which may be a different date than this notice).

While you are on Leave Without Pay (LWOP), you:

- Cannot work and will not receive compensation (but your medical benefits will continue)
- Cannot use annual leave, CAR or sick time
- Cannot enter your work or school site or work off-site
- Cannot reach out to students or families

In order to return to work and be removed from LWOP status, you must complete two steps using the [DOE Vaccination Portal](#):

- Upload proof that you have received your first dose of a COVID-19 vaccine. **Proof of COVID-19 Vaccine can be an image of your vaccination card, NYS Excelsior Pass, or another government record** and
- E-sign the attestation stating that you are willing to return to your worksite within seven calendar days of submission.

Once you have completed these two steps, your HR Director and supervisor will also be notified and will work with you to plan your return date.

If you have already been vaccinated and you have uploaded this information, you may report to work as usual in person and you will be put back on active status. If you get vaccinated in the future, please follow the steps above and be in contact with your school about a return date.

Please be advised that if you do not intend to return to the DOE, you will need to return all DOE property, including computers, IDs, blackberries, and keys, immediately. Failure to return any DOE property that has been assigned to you will delay the processing of your final payment and any payout of leave time.

Employees represented by UFT or CSA who have been placed on LWOP due to vaccination status may select (in SOLAS) special separation or leave options per the arbitration award:

- **Separation with benefits** (available in SOLAS as of Monday, October 4): Employees choosing to separate under this option:
 - **Must share their intention to separate via SOLAS by October 29, 2021.**

- Will be required to waive their rights to challenge the involuntary resignation, including, but not limited to, through a contractual or statutory disciplinary process
 - Will be eligible to be reimbursed for unused CAR/sick leave on a one-for-one basis at the rate of 1/200th of the employee's salary at departure per day, up to 100 days, to be paid out following the employee's separation
 - Will be eligible to maintain health insurance through September 5, 2022, unless they have health insurance available from another source.
- **Extend the leave without pay due to vaccination status through September 5, 2022** (available in SOLAS as of Monday, November 1 through November 30, 2021):
 - Employees choosing this option will also be required to waive their rights to challenge their involuntary resignation, including, but not limited to, through a contractual or statutory discipline process
 - They will remain eligible for health insurance through September 5, 2022
 - Employees who have not returned by September 5, 2022 shall be deemed to have voluntarily resigned
 - Beginning December 1, 2021, the DOE will seek to unilaterally separate employees who have not selected one of the options above or otherwise separated service.

For more information about where to get vaccinated, visit vaccinefinder.nyc.gov or call 877-VAX-4-NYC. For the latest COVID-19 staffing updates, please [visit the Coronavirus Staff Update InfoHub page](#).

Sincerely,
NYCDOE Division of Human Capital

Ref Number : GX5971980 N3446 COVID_Vax_LWOP

Law Office of Joshua Pepper, PLLC

30 Wall Street, 8th floor
New York, NY 10005-2205
(212) 804-5768
jpepper@jpeppersq.com

October 8, 2021

Human Resources
NYC Department of Education
65 Court Street, Rm 102
Brooklyn, NY 11201

Re: Remo Dello Ioio, File No. 755802

To whom it may concern:

I write on behalf of my client Mr. Remo Dello Ioio. He has been employed with you for nineteen years. On September 20, 2021, soon after the Department of Education (“DOE”) implemented its vaccine mandate, Mr. Dello Ioio applied for a religious exemption from that mandate, pursuant to DOE policy. On September 22, he was informed that his request had been denied. The denial notice contained no information regarding the reason for the denial. As per the instructions he was given, Mr. Dello Ioio appealed the denial through the portal the next day. He did not submit additional documentation because, without explanation for the denial, Mr. Dello Ioio wanted to provide all supporting documentation at an arbitration hearing. His understanding was that all applicants would be given such hearings, and I have heard that the independent arbitrator is interviewing DOE employees who have requested religious exemptions.

On September 30, Mr. Dello Ioio received a notice that his appeal was denied with no explanation. The next day, he received another notice stating that his appeal was pending. This contradiction gave him reason to believe that he would receive an arbitration hearing as he had originally thought. But on October 5, he received notice that an independent arbitrator had denied his appeal.

Mr. Dello Ioio has found this process to be highly confusing. He has never been given an explanation why his appeal was denied. Although he did not submit supporting documentation through the portal, this was in reliance on his understanding that he would have the opportunity to do so at his hearing. On my client’s behalf, I formally request that he be given a hearing or interview so that he may present his argument in full as to his entitlement to a religious exemption from the DOE’s vaccine mandate.

Very truly yours,

Joshua Pepper

Joshua Pepper

cc: Michael Mulgrew (via email)
Mike Sill (via email)

Your Appeal to the Citywide Panel - Additional Information

Division of Human Resources <DHR@schools.nyc.gov>

Fri 1/7/2022 7:06 PM

Colleague,

Your appeal of your religious exemption to the COVID-19 vaccine mandate has been submitted to the Citywide Appeal Panel. To assist the Citywide Appeal Panel in reviewing your religious exemption request, please provide the following additional information by Friday, January 14, 2022 at 8:00 pm:

1. Whether you have previously taken any vaccinations.
2. If you have stated that you have a personal religious aversion to foreign or other impermissible substances entering your body, please describe this with more clarity, including describing any other commonly used medicines, food/drink and other substances you consider foreign/impermissible or that violate your religious belief.
3. If you have stated that you cannot take the vaccine because of an objection to using derivative fetal cells in the development of a vaccine, please provide more information about your stated objection and whether there are other medications or vaccinations that you do not take because of this objection.
4. Any additional occasions you have acted in accordance with the cited belief outside the context of a COVID-19 vaccination, to the extent not previously described in the documentation already submitted.

To submit this information, please follow the steps below:

- Written responses should be sent in as an attached document to PanelAppealUpdate@schools.nyc.gov (*Do not send, copy, or reply to this email.*)
- Written responses must be received by email by Friday, January 14, 2022 at 8:00 pm
- Only attach new information/document - do not resend documentation that was already provided.
- Include your Name and Employee ID number in the subject line of your email.

If additional information is not provided, the Panel will consider your appeal based on the materials/information you already submitted through SOLAS.

Thank you,

NYCDOE Division of Human Resources

Reasonable Accommodation Appeal Determination

noreply@salesforce.com <noreply@salesforce.com>

on behalf of

NYC Employee Vaccine Appeals <vaxappeal@dcas.nyc.gov>

Mon 3/7/2022 10:15 AM

To: DelloIoio Remo (09X505) <RDelloIoio@schools.nyc.gov>

The City of New York Reasonable Accommodation Appeals Panel has carefully reviewed your Agency's determination, all of the documentation submitted to the agency and the additional information you submitted in connection with the appeal. Based on this review, the Appeals Panel has decided to deny your appeal. This determination represents the final decision with respect to your reasonable accommodation request.

The decision classification for your appeal is as follows: The employee has failed to establish a sincerely held religious belief that precludes vaccination. DOE has demonstrated that it would be an undue hardship to grant accommodation to the employee given the need for a safe environment for in-person learning

For all employees other than DOE employees: Pursuant to the City of New York's policy concerning the vaccine mandate, you now have **three business days** from the date of this notice to submit proof of vaccination. If you do not do so, you will be placed on a leave without pay (LWOP).

For Department of Education (DOE) employees: Pursuant to New York City Department of Education policy, you have seven calendar days to extend your Leave Without Pay or return to work. If you do neither, you will be subject to termination. For further information and instructions, please see [DOE Denial of Appeal Information](#).

Appendix #26

**AFFIDAVIT
E. LOIACONO**

STATE OF NEW YORK)
) ss.
COUNTY OF BRONX)

E. LOIACONO, being first duly sworn on oath, deposes and declares as follows:

1. I am above the age of 18, and I am competent to make this affidavit.
2. I am on leave of absence without pay from the New York City Department of Education as a Special Education Teacher for Home Instruction Schools (District 75) The main office is located at 3450 E. Tremont Ave. Bronx, NY 10465.
3. This is a non-school, non-DOE owned building. It is privately owned office space which the DOE rents space within. Home Instruction Schools is a citywide program which provides academic instruction to students who are eligible for Medically Necessary Instruction (MNI) due to a medical/psychiatric condition which renders them unable to attend affiliated school.
4. I was placed on leave without pay starting October 6, 2021 for being unable to take the mandated COVID-19 vaccination as a job requirement due to my sincerely held religious beliefs. **Exhibit 1**
5. In my 20 years as a teacher with the DOE, I have not been required to get vaccinated.
6. My original hire date for the DOE as a Special Education was September 4, 2001.
7. I became tenured on September 4, 2004.
8. I hold a Bachelor of Science in Special Education K-12 from Long Island University and a Master of Science in Literacy from Mercy College. In addition I have achieved 30 Professional Development Graduate Credits from New York Center for Teacher Development (NYCTD).
9. I hold a New York State Permanent Certification in Special Education K-12.

10. I began working with Home Instruction Schools in the Spring of 2013. My job description is teaching students primarily ranging from grades 3 -12 who are unable to attend school due to orthopedic, non-orthopedic/medical or psychiatric reasons. I teach both students with disabilities (IEP) and students who don't have any disability (Non IEP). Some of my responsibilities are curriculum development, lesson planning, IEP development, and academic instruction.
11. Home Instruction is a unique program, and the only program, to my knowledge in the DOE, that has been providing medically necessary instruction primarily on an online platform since September 13, 2021. **Exhibit 2**
12. I fulfilled my job duties, responsibilities and job requirements remotely from home using Educational Technology through Distance Learning from March 17, 2020, to September 20, 2021 and remotely from a public location from September 21, 2021 to October 5, 2021 and continued to be rated highly effective and satisfactory.
13. On September 22, 2021, my religious exemption application to the DOE's Vaccine Mandate was denied. I appealed this denial on September 23, 2021, and my appeal of that denial was denied on October 5, 2021. My re-appeal to a citywide panel was submitted on December 2, 2021 and I haven't received any decision yet. As a result, I have been placed on a leave without pay since October 6, 2021 because I have not been provided with a reasonable accommodation as I'm entitled to by law.
14. On August 24, 2021, Dave A. Chokshi, Commissioner of the NY Health and Mental Hygiene and the DOE entered an Order mandating that all DOE staff, City employees, and contractors who "work in-person in a DOE school setting or DOE building" and all employees of any school located in a DOE building working in person shall provide proof of vaccination by September 27, 2021. I noticed that nothing in this Order acknowledges religious exemptions and accommodations.

Exhibit 3

15. On September 15, 2021, Dave A, Choski entered an Order mandating that all DOE staff, City employees, and contractors who “work in-person in a DOE school setting or DOE building” and all employees of any school located in a DOE building working in person shall provide proof of vaccination by September 27, 2021. Section 6 of this Order states that “Nothing in this Order shall be construed to prohibit any reasonable accommodations otherwise required by law.” **Exhibit 4**
16. On August 12, 2021 I received a DOE email from the Division of Human Resources stating that “Mayor de Blasio announced that as of September 13, 2021, all City employees, including DOE employees, are required to provide proof of COVID-19 vaccination or a negative COVID-19 test once every seven days.” **Exhibit 5**
17. On August 23, 2021 I received a DOE email from the NYC Public School Chancellor Meisha Porter stating that “Effective September 27, all DOE employees are required to provide proof that they have received at least one dose of the COVID-19 vaccine.” This was the first time I was notified of the vaccine mandate. However, since I was on summer vacation, I can’t recall when I opened this particular email. **Exhibit 6**
18. This notice I received on August 23, 2021 from Chancellor Meisha Porter did not inform me that I have a right to receive an accommodation due to my sincerely held religious beliefs. **Exhibit 6**
19. On September 1, 2021 I received a DOE email from Division of Human Resources stating “As we begin the new school year, and as office staff prepare for a return to working full time in DOE buildings, we want to remind you that all DOE employees are required to have received to have at least one dose of a COVID-19 vaccine by September 27.” **Exhibit 7**
20. Since I don’t work in a DOE building, at the time it was unclear how this vaccination mandate would be applicable to me with the teaching position I currently have.

21. On September 3, 2021 Home Instruction teachers were asked to fill out a google survey to pick a preference of providing instruction to our students. The three choices were: fully in home, fully remote or a combination of both. **Exhibit 8**
22. I completed the Google survey and selected the option of being fully remote. I expected to continue teaching two of the same students that I had been remotely teaching since March 2020. I was also their teacher in their home prior to going fully remote in March 2020.
23. One of these students, now in 12th grade, has been assigned to me since Fall of 2016. The other student is currently in 10th grade and has been assigned to me since the Spring of 2018. It was sad to no longer be able to teach them since being placed on a leave without pay. Two teachers have filled my position and provide individual remote instruction to both of these students.
24. On September 9, 2021 I received a DOE email from the DOE Vaccination Portal stating "You are receiving this e-mail because our records indicate that you have not yet submitted proof of COVID-19 vaccination (at least one dose) to the DOE Vaccination Portal. The deadline to upload this information is September 27th.
- Exhibit 9**
25. This email also stated "The information will be kept confidential in accordance with state and local law." This made me wonder how the administration at Home Instruction would know my vaccination status on September 27, 2021. **Exhibit 9**
26. On September 10, 2021 I received another DOE email from the DOE Vaccination Portal reminding me that I have not yet submitted proof of COVID-19 vaccination (at least one dose) to the vaccination portal. **Exhibit 10**
27. On September 10, 2021 at 6:50 pm I received a UFT email stating "In the arbitration proceeding, the city was also forced to back off its original plans to offer no exemptions for those unable to take the vaccine for medical or religious reasons."

Exhibit 11

28. I found this email from the UFT to be confusing in regards to being granted a religious exemption and then being provided with an accommodation. The email stated "The online application form for a medical accommodation or an exemption will go live on SOLAS on Monday, Sept. 13. UFT members will have until Monday, Sept. 20, to apply." **Exhibit 11**
29. I understood it as those with approved medical reasons for not taking the vaccination would be granted accommodation, however those with religious reasons would be considered either approved or denied without an accommodation.
30. This email goes further not providing clarity of accommodations that the DOE would offer to those with religious beliefs against the vaccination. Again it sounded to me you were either denied or approved a religious exemption without talk of an associated accommodation with it. "Appeals of religious exemption denials will be heard by the same independent arbitrators ruling on medical exemption appeals. During the appeal process, the member will be temporarily granted the exemption and kept on payroll." **Exhibit 11**
31. This email again goes further without clarity of accommodations that the DOE would offer those with religious beliefs. It states "Members who are not vaccinated by Sept. 27 but do not qualify for a medical accommodation or an exemption must be offered two options, both of which include one year's health coverage." Those options were unpaid leave or severance. **Exhibit 11**
32. This email from the UFT had a link to the arbitrator's order that had the Exemption and Accommodation Requests and Appeal Process. This agreement with the DOE and the UFT still did not mention anything in regards to an accommodation for a religious belief. **Exhibit 12**
33. Instead of this order explaining to me what accommodation could be offered to those with religious beliefs, it tried to discourage me from submitting a religious exemption by requiring my documents to be in writing by a religious official. **Exhibit 12**

34. The UFT did not offer any town hall meetings for its members regarding the details of this arbitration agreement before the application process began for a religious exemption and what reasonable accommodations could be offered.
35. On September 12, 2021 I received a DOE email from Division of Human Capital in regards to COVID Testing and Vaccination Updates. The email stated that “As you are aware, all DOE employees are required to have received to have at least one dose of a COVID-19 vaccine by September 27.” **See Exhibit 13**
36. On September 15, 2021 I received another DOE email from the DOE Vaccination Portal reminding me that I have not yet submitted proof of COVID-19 vaccination (at least one dose) to the vaccination portal. **See Exhibit 14**
37. On September 17, 2021 I received another DOE email from the DOE Vaccination Portal reminding me that I have not yet submitted proof of COVID-19 vaccination (at least one dose) to the DOE Vaccination Portal. **Exhibit 15**
38. On Saturday, September 18, 2021, I received a DOE email from the Division of Human Capital how to use SOLAS, the online portal used to upload documentation for an exemption request, five days after September 13, 2021 (first day of the application process) and two days before the September 20, 2021 deadline. **See Exhibit 16**
39. This email from the DOE still does not cover what accommodation can be provided to those who are submitting a religious exemption. This COVID-19 Vaccine Related Exemption and Accommodation application is for: **See Exhibit 16**
- Religious Exemption requests to the mandatory vaccination policy
 - Medical Exemption requests to the mandatory vaccination policy
 - Medical Accommodation requests where an employee is vaccinated but is unable to mount an immune response to COVID-19 due to pre-existing immune conditions.

40. On September 20, 2021 I received another DOE email from the DOE Vaccination Portal reminding me that I have not yet submitted proof of COVID-19 vaccination (at least one dose) to the vaccination portal. **See Exhibit 17**
41. On September 22, 2021 I received another DOE email from the DOE Vaccination Portal reminding me that I have not yet submitted proof of COVID-19 vaccination (at least one dose) to the vaccination portal. **See Exhibit 18**
42. In total this is 7 email reminders from the DOE between September 9, 2021 up to September 22, 2021. However, I received 0 emails from the DOE in regards to an accommodation that can be offered to me with a religious exemption.
43. I am a devout Christian who is a strong believer in the Bible, and therefore, I submitted my request for a religious exemption for an accommodation to the DOE. **See Exhibit 19**
44. I used the SOLAS portal as directed by the DOE to submit my religious exemption documentation on Monday, September 20, 2021. **See Exhibit 20** In SOLAS it asked if I worked in a DOE building. and I clicked No.
45. In addition I mailed a notarized copy of my religious exemption documents to the DOE certified receipt mail on September 20, 2021. **Exhibit 21**
46. I was notified via email on Wednesday, September 22, 2021 at 7:43 pm that my request for reasonable accommodation was denied. **See Exhibit 22**
47. The reason for my denial as stated in the email was that my application failed to meet the criteria for a religious based accommodation.
- “Per the Order of the Commissioner of Health, unvaccinated employees cannot work in a Department of Education (DOE) building or other site with contact with DOE students, employees, or families without posing a direct threat to health and safety. We cannot offer another worksite as an accommodation as that would impose an undue hardship (i.e. more than a minimal burden) on the DOE and its operations.” **Exhibit 22**

48. There wasn't anyone from the DOE or from my school that spoke with me before receiving the denial notice on September 22, 2021 about what accommodation I could be provided with for me to continue to work if I submitted a religious exemption.
49. The denial email on September 22, 2021 stated I may appeal the denial within one school day of receiving the notice by logging into SOLAS. **See Exhibit 22**
50. I didn't know what the DOE considered the "end of a school day", so I didn't know what time on September 23, 2021 I was to appeal by and that worried me.
51. The email stated "As part of the appeal, you may submit additional documentation and also provide a reason for the appeal." This caused me stress because I didn't know what kind of additional documentation they might want aside from what I had already submitted and to then have to explain why I was appealing. **See Exhibit 22**
52. I appealed the denial on September 23, 2021. **See Exhibit 23**
53. I submitted additional documentation to support my sincerely held religious beliefs and request for an accommodation. **See Exhibit 24**
54. Along with **Exhibit 24**, I also believe I submitted a document provided by Liberty Counsel, with information on how questioning sincerely held religious beliefs is unlawful. **See Exhibit 25**
55. On September 23, 2021, at 5:50 pm I received a DOE email from Division of Human Capital and in the subject line it was titled, '**Consequences for Mandate Non-Compliance**' This language the DOE is using is insensitive to me as I will need to choose my faith over my job. **See Exhibit 26**
56. On September 24, 2021 I received another DOE email from the DOE Vaccination Portal reminding me that I have not yet submitted proof of COVID-19 vaccination (at least one dose) to the vaccination portal. **See Exhibit 27**
57. On September 25, 2021 I received a DOE email from NYC Public School Chancellor Meisha Porter. The email states that "Yesterday evening, a federal judge placed a temporary injunction on the vaccine mandate for DOE staff. The City and DOE are

urging a speedy resolution by the Circuit Court this week. We are confident our vaccine mandate will continue to be upheld; our students, school communities and colleagues deserve no less. While this means that the current vaccine or weekly testing mandate remains in place for the week of September 27 for all staff, we should continue to prepare for the possibility that the vaccine mandate will go into effect later in the week.” **See Exhibit 28**

58. On September 26, 2021 I received another DOE email from NYC Public School Chancellor Meisha Porter. The email states that “All staff must report to work on Tuesday, September 28 and until further notice. This includes staff who are not yet vaccinated and those who applied for a vaccine exemption. For those who have not yet submitted their proof of vaccination, please do so as soon as possible.” **Exhibit 29**

59. On September 27, 2021 at 9:00 pm I received another DOE email from NYC Public School Chancellor Meisha Porter. The email states that “This evening, the Second Circuit dissolved the temporary injunction placed on the vaccine mandate. A hearing was originally scheduled for this Wednesday, but the court made the decision to rule on the mandate today. **Exhibit 30**

60. This means that the DOE staff vaccine mandate can now go into effect. The DOE will begin implementing the staff vaccine mandate on Monday, October 4.” **Exhibit 30**

In addition the email states “Here is what this means for active staff who have not yet submitted their vaccination proof: **See Exhibit 30**

- You must report to work this week, and upload a proof of negative COVID test result in the DOE Vaccination Portal.
- You must submit your proof of vaccination by 11:59pm on Friday, October 1 in the DOE Vaccination Portal (unless you have an approved exemption).
- You will be removed from payroll beginning Monday, October 4 if you are not vaccinated by end of day Friday, October 1.”

61. On September 28, 2021 I received another DOE email from the DOE Vaccination Portal reminding me that I have not yet submitted proof of COVID-19 vaccination (at

least one dose) to the vaccination portal. This feels like harassment and coercion to choose my job over my faith. **See Exhibit 31**

62. On Thursday September 29, 2021, I received the Memorandum of Agreement between the UFT and DOE for Teachers of the Homebound working for Home Instruction Schools. It states under D (2) "Employees with accommodations shall instruct remotely from a location consistent with their accommodation." **See Exhibit 32**

63. On September 30, 2021 I received another DOE email from the DOE Vaccination Portal reminding me that I have not yet submitted proof of COVID-19 vaccination (at least one dose) to the vaccination portal. **Exhibit 33**

64. I had a medical procedure scheduled for September 29, 2021 therefore I had an excused absence from work for September 29, 2021 and September 30, 2021.

65. On Thursday September 30, 2021 at 7:53 am I received a DOE email from Dan McCray, an arbitrator/mediator from Sheinman Arbitration and Mediation Services. This email informed me that I was scheduled for a hearing on my request for exemption to immunization, the next day, Friday, October 1, 2021 at 1:30pm, held virtually over Zoom. **Exhibit 34**

66. I was absent from work the day the arbitrator emailed me on September 30, 2021. I honestly can't even remember at what time during the day that I opened my DOE email to read his email. But, I know I checked it at some point that day despite recovering from a medical procedure from the day before.

67. I was anxious to know if my accommodation was approved since appealing on September 23, 2021. I was so worried to be put on a leave without pay on October 4, 2021. I'm not sure what would have happened had I been absent from work on September 30th and October 1st and didn't check my work email. I'm unsure what protocol was sent in place if I was unable to make this appeal hearing and if the DOE would have rescheduled my hearing.

68. On Thursday, September 30, 2021 at 4:00 pm I received a DOE email from Matthew Foglino, a UFT representative. The UFT only communicates with its members through our personal emails and not from the DOE email, so I was surprised to receive a UFT representative email me in my DOE inbox. **Exhibit 35**
69. He informed me that If I wish to have a union representative present at my hearing tomorrow, to let him know. I responded to his email at 5:11 pm requesting a UFT representative during my hearing.**Exhibit 35**
70. Mr. Foglino also stated that my principal was required to give me release time. This caused me to feel more overwhelmed that I needed to reach out to my principal and my assistant principal to inform them of this appeal hearing. Although my administration is supportive, the topic of vaccination is a sensitive matter in any workplace, and being unvaccinated makes me feel segregated.
71. I was able to use my lunch break on October 1, 2021 to attend the appeal hearing in order to avoid feeling uncomfortable calling or emailing my administration about this.
72. Having a little over 24 hour notice while recovering from a medical procedure on September 29, 2021 along with working full time on October 1,2021 it was extremely short notice for me to retain legal counsel to represent me during the hearing. I felt I needed not only legal support but emotional support. Public speaking makes me nervous and can cause me to feel anxiety. The thought of this appeal hearing made me feel worried.
73. I had no idea what to expect from this hearing, what was going to be discussed, my beliefs in God and the Bible, an accommodation to be offered, if there was additional information needed, was I supposed to clarify everything I wrote and submitted? I had so many questions and this was extremely stressful for me.
74. On October 1, 2021 during my lunch break at 1:30 pm I joined the Zoom invite link. I didn't exactly know aside from the arbitrator, the UFT representative, and my legal counsel, if anyone else would be in this Zoom hearing.

75. Upon the start of the hearing, the arbitrator introduced the parties in the hearing and that was when I was informed a representative for the DOE was participating.
76. The arbitrator requested that the DOE representative give a brief statement why my application should be denied.
77. The DOE representative stated that my application should be denied because -it is questionable if my clergy letter amounts to a document from a religious official, it's to her understanding that these forms can be purchased online.
78. There are issues brought up in my letter in regards to the COVID-19 vaccines containing fetal tissue or fetal cells and she refers to a letter from Dr. David Choski to explain why I was wrong with the documents I submitted.
79. During my zoom hearing the following exact questions were asked to me by the arbitrator:
- “So does your religion prohibit you from taking any medicines or vaccines, and I just note that in the letter from the pastor it says among the intrusions that are incompatible with your religious faith, are masks and covid testing? This is your view as well, that you're not able to use a mask or engage in any sort of covid testing, and my first question.....does this also extend that you don't take any medicines at all?”
 - “So you're not opposed to mask or covid testing?”
 - “So the vaccines and medicines you're opposed tothose connected to fetuses, not all medicines or vaccines.....otherwise you would?”
 - “So if I understand your position, from what I understand from your testimony and Ms. Jacobs (Attorney) (Try to consult with your attorney to correct it) If I got that correctly, She's not opposed to masks or covid testing, she's not opposed to medicines or vaccines, unless there is some connection with such medicines and vaccines, to aborted fetuses, to say it broadly, or to blood or animal blood or something of that sort, but other than that no.
81. The Zoom hearing didn't have the best connection and the arbitrator mentioned several times there was background noise. He wasn't even clear with question #3 above as to what he was trying to ask me. Throughout this, I was very nervous, and honestly felt intimidated by the whole hearing that I was subjected to. It made me feel like I was a criminal that did something wrong.
82. On October 1, 2021 at 9:51 I received a DOE email from Division of Human Resources stating that “While this appeal is pending, you are considered eligible to

be treated as exempt for the purposes of the vaccine mandate which will go into effect as of Monday, October 4. However, as that status will change, you should be regularly checking your DOE email (including this weekend) for notification from the Arbitrator and be aware of the following: **Exhibit 36**

“While your appeal is pending and you remain unvaccinated, you will not be put on a Leave Without Pay status. However, you will not be permitted to enter a school building. If your usual place of work is in a school, you will be expected during this time to temporarily work offsite and support your school to cover your work in your absence and perform related activities”.

83. The email also states that “If your appeal is granted (approved) and you remain unvaccinated, you will not be put on a Leave Without Pay status. If your usual place of work is in a school, you will receive a new assignment outside of a school building (e.g. administrative offices) to perform academic or administrative work determined by the DOE. A notification of this assignment may take a few days and in the interim you should temporarily work offsite to transition your work and support related activities. If your appeal is denied and you remain unvaccinated, you will be put on a Leave Without Pay, with benefits.” **See Exhibit 36**
84. On October 5, 2021 at 7:21 pm I received a DOE email from Vaccine Appeals from Sheinman Arbitration and Mediation Services stating that my request for an exemption from the COVID-19 vaccine was denied and attached was the award dated October 2, 2021. It was not stated in writing in the email or on the award as to why my religious exemption wasn't accepted and why an accommodation couldn't be given. **See Exhibit 37**
85. On October 5, 2021 at 9:31 pm I received a DOE email from SOLAS that states “As you are aware, the independent arbitrator has denied your appeal for a medical or religious exemption to the COVID-19 vaccine mandate. As a consequence, you are being placed on a Leave Without Pay (LWOP) because you are not in compliance with the COVID-19 Vaccine Mandate. Your LWOP status goes into effect beginning

with the first work day after you received the notification from the arbitrator (which may be a different date than this notice). **See Exhibit 38**

86. According to the arbitration Award, the options for me to elect were an involuntary separation (severance) by October 29, 2021, or elect to be placed on unpaid leave with health benefits until September 5, 2022 by November 30, 2021. **See Exhibit 12**
87. According to the arbitration award, both options include a waiver of the employees rights to challenge the employee's voluntary resignation, including but not limited to through a statutory disciplinary process. **See Exhibit 12**
88. A copy of the waiver mentioned in the order was not attached to the Arbitration Award or in the email the UFT sent us on September 10, 2021. **See Exhibit 12**
89. If I didn't select either option before November 30, 2021, the DOE would seek to unilaterally separate from me.
90. I emailed Michael Sill from the UFT on October 30, 2021 to ask him to clarify what unilaterally separate means. He said, "We cannot guarantee that the DOE will do anything until they do it. You should expect that the DOE will attempt to terminate you if you do not extend the unpaid leave of absence. "**See Exhibit 39**
91. On October 8, 2021, I emailed VaccineAppeals@scheinmanneutrals.com, the UFT, and all attached, requesting in writing, the reasons why my religious exemption was denied by the Arbitrator from Scheinman Arbitration and Mediation Services. I have yet to receive an answer to my inquiry. **Exhibit 40**
92. On October 13, 2021 I received an DOE email in regards to my paycheck during leave without pay. The email states that "You are receiving this message because you are on a Leave Without Pay (LWOP) due to noncompliance with the DOE's COVID-19 Vaccine Mandate. This means you have not been eligible to report to your school site since Monday, October 4. **Exhibit 41**
93. The email further states "We want you to be aware that this Friday, October 15, 2021, you will receive your paycheck for the pay period ending 10/15/2021. You will receive

this check because the implementation of the vaccination mandate on October 4, 2021, is after the beginning of this pay period for pedagogical and paraprofessional titles.

- Since the October 15th paycheck includes days when you were not authorized to work, we want you to make sure you are aware that this overpayment will ultimately be recouped in one of the following ways:
- If you do not intend to return to the DOE and are resigning, this paycheck will be deducted from your final entitlement if you have unused CAR/sick leave. In the event you do not have a sufficient balance to cover this overpayment, you will be required to repay any remaining amount.
- If you decide to become compliant and return to work, the overpayment will be deducted from your future paychecks.

94. I was on payroll until Tuesday October 5, 2021, while waiting for the appeal decision for my religious exemption, therefore I still should be paid for this day.

95. This email from October 13, 2021 also states “As a reminder, while you are on Leave Without Pay (LWOP), you:

- Cannot work and will not receive compensation, but you will continue your medical benefits **Exhibit 41**

96. On November 2, 2021 I received a DOE email that states “If you would like to extend your LWOP status, you may do so by logging into SOLAS and stating your intention between November 1 -November 30. **See Exhibit 42**

97. Employees choosing the option to extend their LWOP status:

- Will remain eligible for health insurance through September 6, 2022.
- Must waive their rights to challenge such resignation, including, but not limited to, through a contractual or statutory disciplinary process
- May also seek to return from this leave prior to September 6, 2022 by following the steps below on returning from LWOP status. Employees who have not returned by September 6, 2022 shall be deemed to have voluntarily resigned
- If you do not share your intention to extend or return from LWOP by November 30, the DOE will seek to unilaterally separate you from service beginning December 1, 2021.

98. This email states “Must waive their rights to challenge such resignation, including, but not limited to, through a contractual or statutory disciplinary process.” The arbitration

award refers to a waiver, however the DOE and the UFT did not email me a waiver.

Exhibit 42

99. On Friday, November 19, 2021 at 5:36 pm, I received a DOE email from Division of Human Resources with a new appeal option for religious exemptions to the COVID-19 Vaccine Mandate with a central Citywide Panel since my appeal was not granted by the third-party arbitrator. **Exhibit 43**

Please note the following about this new appeal option:

- Your request will be considered by a central Citywide Panel comprised of representatives of the Commission on Human Rights, the Department of Citywide Administrative Services, and the Office of the Corporation Counsel. The determination will be made by the panel according to the standards imposed by Title VII of the Civil Rights Act of 1964, the New York State Human Rights Law, and the New York City Human Rights Law.
- To submit this appeal, you will use SOLAS, as you have before. Specific login instructions are below. There is no need to re-submit any materials you already included in your original application or in SOLAS as part of your appeal to the arbitrator, however, you may submit new documentation when you submit this appeal in SOLAS. Note that documentation from a religious official is not required but you are free to submit it.
- To be considered by the Citywide Appeal, you must submit the appeal via SOLAS by no later than 11:59 pm on Friday, December 3, 2021.
- While your new appeal is pending you will remain on Leave Without Pay status. However, the deadline to apply for the extension of your Leave Without Pay will be extended until seven calendar days after your new appeal is resolved.

100. On December 2, 2021, through SOLAS, I submitted additional documentation to the Citywide Panel and explained the circumstances specific to my religious exemption request and reasonable accommodation. **Exhibit 44**

101. I don't understand why I haven't been placed back on payroll while my new appeal is being resolved for my religious exemption and accommodation.

102. On Friday, January 7, 2021 at 7:06 pm, (there is a pattern of DOE emailing me on Fridays after school hours). I received a DOE email from the Division of Human Resources stating that "Your appeal of your religious exemption to the COVID-19 vaccine mandate has been submitted to the Citywide Appeal Panel. To assist the

Citywide Appeal Panel in reviewing your religious exemption request, please provide the following additional information by Friday, January 14, 2022 at 8:00 pm: **Exhibit**

45

- Whether you have previously taken any vaccinations.
- If you have stated that you have a personal religious aversion to foreign or other impermissible substances entering your body, please describe this with more clarity, including describing any other commonly used medicines, food/drink and other substances you consider foreign/impermissible or that violate your religious belief.
- If you have stated that you cannot take the vaccine because of an objection to using derivative fetal cells in the development of a vaccine, please provide more information about your stated objection and whether there are other medications or vaccinations that you do not take because of this objection.
- Any additional occasions you have acted in accordance with the cited belief outside the context of a COVID-19 vaccination, to the extent not previously described in the documentation already submitted.

103. I have not been contacted by anyone from the DOE to speak with me about any reasonable accommodations that could be offered to me.

104. In January 2022 the DOE updated the protocols for testing students and staff for COVID.

“Schools can test up to 10% of DOE staff after student COVID-19 PCR surveillance testing is complete. DOE staff can be tested if they are in the DOE consent data sent to PCR testing providers.” **Exhibit 46**

105. The UFT has updated the protocols for testing students for COVID in January 2022.

Exhibit 47

106. All DOE students, employees, and visitors must complete a health screening before entering DOE facilities. This screening has been updated January 3, 2022.

“This health screening must be completed on each day of arrival. This health screening can also be completed online at: <https://healthscreening.schools.nyc/>. Upon entering the facility, if you have not completed the online health form you will be asked to provide responses to the questions below. As a reminder, all DOE employees must be vaccinated to enter our school buildings.” **Exhibit 48**

107 This screening does not ask an employee to check a box if they are vaccinated or unvaccinated. So, the DOE is going on an honor system. An employee can enter

unvaccinated, and someone can enter not fully vaccinated with just 1 dose of a 2 dose series. **Exhibit 48**

108. I noticed that the UFT stopped sending me emails despite being an active employee of the DOE. I emailed UFT Representative Michael Sill to inquire about this on January 14, 2021. I was told I am an inactive member and in order to re-activate my membership I have to pay \$25.00. The UFT has not ever sent me this information after being placed on leave without pay. **Exhibit 49**

109. The court determined that the agreement between the DOE and city only allowing religious exemptions for Church was unconstitutional.

110. I have been forced to prove and justify my religious beliefs since the weekend of September 20, 2021 up until January 14, 2022. This is unjustifiable and unacceptable. This has become harassment

111. Including the additional questions I'm being requested to answer by January 14, 2021, for the Citywide Appeal Panel, it would be a total of 5 times that I have been scrutinized by the DOE for my religious beliefs, and request for an accommodation.

112. As of September 2021, I could no longer afford paying for my needed medical care as his fees are too expensive for me because I am no longer receiving income due to the DOE unlawful decision. I have used other techniques such as free online resources to help with emotional distress, anxiety and depression.

113. Due to my pre-existing health issues, this loss of job has made me suffer more. There are days where I cry, struggle with motivation and getting out of bed is a chore. I continue to rely on my faith, and Bible Scriptures for peace and strength during such a traumatic time in my life to help me maintain mental stability since struggling with depression can be very difficult.

114. Since I am unable to be vaccinated due to my religious beliefs I will have to move out of NYC. The financial burden is causing me to seek other living arrangements out of

NYC or outside of NYS and this in itself is a large expense. If I don't have pay stubs to prove I have an income this will hinder landlords from renting to me.

116. I am now dealing with eviction issues regarding my apartment and financial hardship moving. I had to retain an attorney in October against my landlord due to negligence etc. and was given a Notice to Vacate my month to month lease within 30 days. I now pay a lawyer the monthly rent in an escrow account and I can't apply for New York State Emergency Rental Assistance Program (ERAP). I received a Notice to Quit on December 1, 2022.
117. Since March 2020 I have not been able to work per session (overtime) with my job during after school hours because of the pandemic. I have always worked per session for many years. This has always been a crucial way for me to supplement my income to cover monthly bills.
118. As of October 2021, per session was offered to me but since I am on leave without pay, I'm ineligible to work this over time.
119. I work during the summer for the Chapter 683 Program with Home Instruction to supplement my income. This past summer I provided remote instruction using Google Classroom. The application to apply will be available in the Spring and I'm worried I won't be able to apply and that I will lose my seniority and retention rights for this summer program.
120. I have applied for Unemployment Benefits on 2/17/22 but I'm not certain I'm eligible.
121. I have called one of my credit companies to claim a hardship to help me with my monthly minimum payments that I'm struggling to cover. They were only able to waive a payment for December 2021 and I will need to continue making the minimum payments in order to avoid claiming bankruptcy.
122. At the start of the school year, I began to purchase materials to supplement instruction and expected to be reimbursed by submitting receipts for Teachers Choice. However, I

was informed in October I was not eligible for reimbursement because I am on leave without pay.

123. My Teacher's Retirement Plan for my Qualified Pension Plan (QPP) and my Tax-Deferred Annuity (TDA) are affected by being on leave without pay for the last four months. Leave Without Pay created by the DOE as a consequence of non-compliance with Covid 19 vaccine mandate, comes with the stipulation that the time on leave is not pensionable. This time is not pensionable, therefore the service time required for me to receive full pension benefits will be pushed back. reduction in pension payout for the rest of my life at the point of retirement.
124. I'm going through loan money from my pension to cover all my bills. This will have to be paid back with interest and required payments will now be higher because of a shorter timeline I will have once the deadline of the paused payments has been lifted.
125. I will have to start using my personal credit cards with unfortunate high interest rates to keep up with bills and this affects my credit score due to debt to income ratio and can hinder my future goal of owning a home.
126. This was the 1st holiday my husband and I couldn't afford presents for each other, family and friends. We couldn't spend the extra money during the holiday to host dinner with family and friends.
127. My husband has been out of work since 12/27/21 because of his religious beliefs against vaccination, so we are now both unemployed. Together, we take care of my husband's disabled mother financially.

SOLAS Screen 10-11-21

It states, " I am authorizing DOE personnel to discuss information regarding my request with my supervisor(s) and other DOE employees for the purpose of assessing whether my request is reasonable and does not impose an undue hardship on the DOE or the City of New York."

discuss how I could receive some time of workplace safety equipment that would protect me from the hazards of Covid-19 in the air of the school as I just recently learned is required under the OSHA standards.

129. Neither has the DOE discussed with me pursuant to OSHA what other modifications to how I perform my job that I could continue to work. No one explained why it was necessary for me to receive a vaccine when I do not have student face to face contact, and I worked in a non-DOE building.

130. I have filed a complaint with the EEOC and I have received my right to sue letter.

I declare under penalty of perjury under the laws of the State of New York that the foregoing is true and correct.

Dated this 14 day of April 2022.

Elizabeth Loiacono
E. LOIACONO

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

April 14, 2022, by E. LOIACONO, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Witness my hand and official seal.

[Signature]
Signature of Notary Public

[Affix Notary Seal]



Appendix #27

- any special education students and I was NOT assigned to work in any DOE building.
6. See **Exhibit B**-Letter from my Assistant Principal-dated 10/18/21, confirming that I am a REMOTE teacher providing special education through virtual teaching technology and that I am not located in a DOE building or school setting.
 7. On 8/24/21, Dave A. Chokshi, Commissioner of the NY Health and Mental Hygiene and the DOE entered an Order mandating that all DOE staff, City employees, and contractors who "work in-person in a DOE school setting or DOE building" and all employees of any school located in a DOE building working in person shall provide proof of vaccination by 9/27/21 (See **Exhibit C**, the "Order").
 8. Despite my "REMOTE" work status, sometime around 9/9/21, I received an email from the DOE's Self-Service Online Leave Application System ("SOLAS"), informing me that I had to provide proof of vaccination by 9/27/21 or seek an exemption.
 9. Because I was aware that the NY Health and Mental Hygiene Order did NOT apply to me, I contacted an administrator at DOE asking if I still needed to comply with the ORDER since I was a REMOTE teacher with no "in-person"

teaching in a DOE building. I was told that I still needed to comply with the requirement to either show proof of vaccination or seek an exemption from SOLAS.

10. On September 12, 2021, I submitted my religious exemption application on the SOLAS online portal with a letter from my pastor in support of my religious exemption request. I also selected the option that asked "do you work in a DOE building" and I selected "No".
11. On 9/17/21, my request for a religious exemption and accommodation was denied via email from SOLAS stating as follows:

"Due to the configuration for the 2021-2022 school year, which includes no remote class work, we cannot offer another worksite as an accommodation, as that would impose an undue hardship on the DOE and its operations". (See Exemption Denial from SOLAS **Exhibit D**)
12. I was confused and shocked by the DOE's decision because I am a remote teacher working in an isolated, non-school building workspace, and I do not interact with students or staff as stated above. I was unable to reply to the email from DOE's SOLAS portal to inform them of their erroneous assumption that I provide in-person instruction in a school building.
13. On 9/20/21, I sent an email to United Federation of Teachers Union President Michael Mulgrew informing him of the wrongful denial because I was already a "Remote" teacher not subject to the Ordered mandate. Michael Sill, the United

Federation of Teachers ("UFT") Director of Personnel, responded to my email. He stated that he would reach out to DOE about my situation of having the working conditions that will be given to exempted and accommodated individuals. Mr. Sill also advised me to appeal with mention of my current working conditions as a remote worker in a non-school building. (See Email from Mr. Sill as **Exhibit E**)

14. I was only given one (1) day to file an appeal which I did on 9/23/21, which I was directed to submit to the Scheinman Arbitration & Mediation Services.
15. On 9/24/21, I participated in the Arbitration hearing. I informed the Arbitrator that I was already a REMOTE worker not working in a DOE school building and that the Order should not apply to me. I also stressed that I follow the Bible health laws that prohibits me from taking anything that would alter my natural immune system. I shared that I follow all THE TEN LAWS of the Bible for health and that my religious medical practice protected me from all diseases and that I did not want to disobey God's health laws.
16. At the hearing, a DOE representative inquired about my affiliation with the Seventh Day Adventist Church and stated that the Seventh Day Adventist Church does not oppose the vaccine. I explained that it is my personal sincere religious belief in God's laws and the requirements of the Bible that I should

not take the vaccine, regardless of my affiliation with the Seventh Day Adventist Church. I repeated what I said at my opening statement given at the arbitration. The Supreme Court in the case *Welsh v. United States* 398 US 333 (1970) stated that a person's sincerely held belief does not have to be consistent with the beliefs of any religious organization.

17. Also, during the hearing, the UFT Representative Matt Kirwan confirmed my "remote work status" and acknowledged that Michael Sill from the UFT said he would speak with the DOE on my behalf about how I do not engage in in-person instruction and that my working conditions are the same as exempted and accommodated teachers.
18. On 10/3/21, I received via email the attached decision from the Arbitrator denying my request for an exemption despite all the evidence regarding my REMOTE work status and my sincere religious beliefs. The date on the letter was 9/25/21. (See **Exhibit F** regarding Arbitration Denial letter)
19. I later found out that the Arbitrator had entered an agreement between the DOE and our teachers' union the UFT stating that it would ONLY grant religious exemptions to members of the Christian Science faith and the Nation of Islam. (See Arbitration Award attached as **Exhibit G**)

20. On 10/4/21, I reached out to Mr. Sill and Mr. Kirwan explaining that I had not heard from them regarding their promised advocacy on my behalf.
21. Mr. Sill responded to my above line #20 via email in a dismissive way, stating that he was sorry that my appeal did not turn out the way I had hoped but that he could no longer help me and that my only recourse was the courts or vaccination.
22. On 10/5/21, I received an email from SOLAS stating that because the arbitrator denied my exemption that I was placed on a forced "Leave of Absence" without pay. There was no explanation about why I was denied. (See **Exhibit H**)
23. On 10/6/21, I submitted a new application to SOLAS explaining that I do not provide in-person instruction within a school building.
24. On 10/7/21, I received another email with SOLAS stating that my "Repeated Application previously reviewed and determined." The email did not address the fact that my original denial was based on incorrect information. (See **Exhibit I**)
25. On 10/18/21, as stated above, my Assistant Principal couldn't understand why I am not able to resume teaching remotely. He provided me with the attached letter, confirming my remote work status in a non-DOE building; not "pos[ing] a risk to the health and safety of the children because she does not work from

a school building. There is no discernible reason Miss Bryan would need to be vaccinated to perform her duties.." (See **Exhibit B**)

26. On 11/24/21, I emailed my Union (United Federation of Teachers) Chapter Leader Emmanuel Duruaku to file a grievance on the following: (See **Exhibit J: Requesting Chapter Leader**)

The grounds on which this grievance is based: I have been placed on unpaid leave/ unpaid suspension unjustly by the DOE pursuant to its vaccination mandate under the Order that did not apply to me as a remote worker in a non-school building; with my sincerely held religious belief submitted for religious exemption. Also, I have been marked as unauthorized absence unjustly by the DOE.

Contractual article and section alleged to be violated: Article 21 Section E. Also, being marked as unauthorized absence is not an article defined in the contract.

Specific remedy sought: I seek that the DOE places me on paid leave/ paid suspension pending hearing or alternatively reinstatement me to my paid remote position in a non-school building and provide back pay for my current forced leave without pay status. Also, I seek that the DOE removes the "unauthorized absence" mark on my record.

27. On 12/3/21, UFT Grievance Specialist Parniece Richardson assisted me with my Grievance form and submitted it to my principal for a Step 1 grievance meeting. Ms. Richardson along with UFT representative Michael Santos informed me that Step 1 of the grievance process is on the school level. They informed me of the following: (1) the principal does not have the authority to reinstate me to my remote Home Instruction position nor remove unauthorized absences; (2) Step 1 is procedural and you will be denied by the principal; (3) however, this Step 1 is necessary in order to move onto Step 2 in which they would advocate for me when moving forward to Step 2. (See **Exhibit K**)
28. On 12/3/21, pursuant to the Kane v. De Blasio and Keil v. NYC court orders, I was given the opportunity to re-appeal for a religious exemption to the Citywide Panel. I submitted my re-appeal on this day through DOE's SOLAS. (See **Exhibit L**)
29. On 12/8/21, I had my Step 1 meeting with principal Ramona Pizarro. She said that she wished that she could reinstate me and remove the unauthorized absences from my attendance but it is beyond her control and that I would have to move on to Step 2. After the meeting, I emailed Ms. Richardson and Mr. Santos providing details from the meeting and requesting for next steps to move on to Step 2 as they said would happen. (See refer back to **Exhibit K**)
30. Again, my request for the right to continue to work "remote" as my accommodation was still denied and I received the attached denial letter from my principal. (See **Exhibit M**)
31. At 3:20pm on 12/17/21, I received an auto-generated email from the director of the UFT Grievance/Arbitration Department David Campbell stating

"Following the review of your Step 1 grievance, the UFT Grievance Committee has concluded that your case cannot be successfully pursued to Step 2 of the grievance process. Should you wish to appeal this decision, please email Saul Zalkin, szalkin@uft.org, within 10 days of receipt of this letter." This email did not provide reasons as to why I was denied my grievance from moving to Step 2. (See as **Exhibit N**)

32. However, at 3:50pm on 12/17/21, I received a conflicting email from Ms. Richardson stating, "We reviewed your case on Monday, 12/13/21. You will receive an email with the decision and next steps." (See **Exhibit O** email correspondence with Parniece Richardson.)
33. On 12/28/21, UFT grievance representative Saul Zalkin emailed me regarding appealing the grievance denial with advisement to call him. Within his email, he attached an explanation why my grievance was denied from moving to Step 2. (See **Exhibit Pa.** Mr. Zalkin's email and **Exhibit Pb** his explanation)
34. Despite NYCDOE utter failure to acknowledge my remote work status, on 1/7/22, I received an email from NYCDOE Division of Human Resources stating that "Your appeal of your religious exemption to the COVID-19 vaccine mandate has been submitted to the Citywide Appeal Panel" requesting more information from me about my religious beliefs that needed to be submitted by Friday, January 14, 2022 at 8:00 pm. Again, as usual I was given a short amount of time to respond when I had already provided no less than four times information about my religious beliefs.(See **Exhibit Qa** and **Exhibit Qb** for Q&A)

35. However, I received another conflicting notice on 1/10/22 from David Campbell stating that "Your appeal to the Grievance Department's decision not to proceed to Step 2, regarding the case noted above, has been carefully reviewed by this Department" and that I needed to once again file another appeal to receive the right to work remote when I was already granted the remote position and once again I was only given ten (10) days notice to respond.
36. As of 1/7/22, I am still awaiting the decision from the Citywide Appeal Panel regarding my Religious Exemption reappeal.
37. Because of this entire corrupt process of demanding me to prove my religious beliefs and the NYCDOE refusal to acknowledge that they hired me to work in "Remote Education", I have been stressed to the point of emotional breakdown. I cry everyday having to deal with being labeled a fake and a trouble maker in my workplace.
38. I am suffering from anxiety manifesting in lack of sleep, teeth grinding and shoulder pain from the stress of going back and forth with the NYCDOE for the last five months while they have completely ignored my remote status.
39. I am also angered by the fact that NYCDOE has placed me on leave without pay to punish me for not taking the vaccine.
40. All of these unnecessary demands on me to provide information over and over again has caused me to relive the pain of being put on leave without pay and to suffer the financial hardship of losing pay.
41. At no time has anyone from NYCDOE ever called me and met with me to learn about my remote work status so that they would know that my job did not need to be accommodated and did not need to go through this horrible 5-month process of seeking an accommodation when I did not need one. NYCDOE has refused to communicate with me and has forced all communication to go through an internet portal called SOLAS.

42. I am about to lose my house and my career that I have worked so hard to achieve all because the NYCDOE failed to just meet with me to learn the truth about my remote work status.

I declare under penalty of perjury under the laws of the State of New York that the foregoing is true and correct.

February, 2022.

Dated this 4 day of Feb

A. Bryan

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

Subscribed and sworn to (or affirmed) before me on this 4 day of Feb, 2022 by the person who has signed as A. Bryan, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Witness my hand and official seal.

[Signature] [Affix Notary Seal]

Signature of Notary Public

VIRGINIA MESTRE
NOTARY PUBLIC
STATE OF NEW JERSEY
MY COMMISSION EXPIRES FEBRUARY 24, 2024

**AFFIDAVIT OF AMOURA BRYAN
RELIGIOUS EXEMPTION**

STATE OF NEW YORK)
) ss.
COUNTY OF ~~KING~~ *New York*)

AMOURA BRYAN, being first duly sworn on oath, deposes and declares as follows:

1. I am above the age of 18 and am competent to make this affidavit.
2. Currently, I serve as a Remote Special Education Teacher, employed by DOE Home Instruction School. My remote teaching assigned location is within the office building located at 333 7th Avenue, New York, NY 10001. This building does not house students and I do not have any face to face interaction with students. (See the attached Offer to serve as a Special Education Teacher District position)
3. I provide remote instruction through Google Classroom and have been approved for this position since July 2021.
4. I was born in New York to a religious Christian family that are strong Bible believers who taught me to read the Bible for myself.
5. I grew up going to a non-denominational church and when I became an adult I started attending a Bible study group that taught me to observe the seventh-day Sabbath and to follow the health laws of the Bible.
6. I participated in church activities as a youth. I have remained faithful to God and did not stray away from God as an adult. While I was baptized into a specific church, the leaders of the church do not control my relationship and commitment to God and the Bible.
7. I obey God and not people. So, my church affiliation, which I choose not to mention, does not control my health and my body and their position has no authority in my life. I am making the request for the religious accommodation based on my own faith practices and not the faith or belief of an organization.
8. When I was growing up, my mother who is Caribbean always used natural remedies to heal any ailment. I grew up taking natural remedies like oil of Oregano, maca flour, Moringa and Ashwaganda to name a few.
9. Consequently, as an adult I still rely on natural remedies and supplements and I do annual herbal cleanses.
10. My use of natural remedies and herbs is also based on my faith in the Bible where it says in Rev 22:2 that the "leaves of the tree were for the healing of the nations."

11. Due to my church upbringing and faith in the Bible, I believe that God is the manufacturer/creator of all life on this earth and in the universe and as the "manufacturer", God has authority to give instruction on how best to care for this complex machinery we call the body since the Bible explains God is the creator in Genesis Chapter 1.
12. The Bible is truly my guide and directs my life, including my health care choices.
13. For me, the Bible provides **B**asic, **I**nstructions **B**efore **L**eaving **E**arth by giving clear instruction on how to live, how to make choices and specifically how to take care of the body that God created for me.
14. Consequently, I believe according to the Bible that I can obtain the life God promises to give after death, which is a new heaven and earth and a new body to those who obey God's voice and instruction. It says in Deuteronomy 30:30

"That thou mayest love the LORD thy God, *and* that thou mayest **obey** his voice, and that thou mayest cleave unto him: for he *is* thy life, and the length of thy days: that thou mayest **dwel in the land** which the LORD sware unto thy fathers, to Abraham, to Isaac, and to Jacob, to give them. This land is the "new Jerusalem" that comes down out of heaven as stated in Rev. 3:12.
15. Because I want to obtain the new body in the new heaven and earth, I obey God's voice which is written in the Bible. I believe that I do not own my body but that my body is the temple of God (1 Cor. 6:19) and that "If any man defile the temple of God, him shall God destroy: for the temple of God is holy, which temple ye are". (1 Cor 3:17)
16. Therefore, I do my best to protect and take responsibility for my entire body down to the smallest part of my body, which is the human cell. It says in Luke 16:10 that "He that is faithful in that which is least is faithful also in much..."
17. I also believe based on 1 Cor 3:17 that I must not defile my body temple of God with anything that can change the natural functions of my organs and systems of my body. Therefore, I do not smoke, drink or use any illicit drugs.
18. I also firmly believe what is says in Ex 15:26 that if I keep God's commands and laws and if some sickness does come upon me (like Covid 19), that God is "the Lord that heal[s]" me. But I do understand that healing does not always come in this life, but that the true healing is in the promised after life in eternity with God.
19. Furthermore, I accept the Bible command that I must keep my body holy and not ingest any "unclean" substance (See Lev 7:21 & 2 Cor. 6:17), which includes the blood of animals (See Lev 17:10-11) or take any action that unnecessarily increases my risk of death or cause damage to organs or cause my cells to function contrary to how God manufactured my cells to work naturally. (Luke 19:17 – says that when "thou hast been faithful in a very little..." there is a reward.)
20. Moreover, Ex 20:13 says that "Thou shall not kill", which I believe based on Luke 19:17 that I must not "kill" myself nor the smallest thing on my body, which

is the human cell. I believe in the broad application of the command that we should not kill.

21. There are also specific Biblical laws or laws of nature given by God to instruct us on how to specifically take care of our body temple so that we are not destroyed for our abuses in our body. One Bible school teacher calls them T.H.E. T.E.N. L.A.W.S of health, which actually are religious medical practices or natural laws that we must obey based on the Bible verses listed below:

“Law #1 Trust” in the God of the Bible as the creator of the universe who made all things and controls the life and death of everything. Ex 23:25 says, “If any of you shall serve the Lord your God....., **I will take sickness away from the midst of thee.**” Trust is something that every human being exercises because they make choices every day. I chose to trust the Lord when I get sick because it is God who heals.

Law #2 Hygiene Law – Ex. 20:19-20, Ps 51:2– These verses instruct Bible believers to “wash their hands and their feet” that they die not - both spiritually and physically. The hygiene law is one that every person knows is important, but not everyone follows and as a result, sickness and communicable diseases occur on this planet.

Law #3 the Law of Exercise – Isa 42:5 – This verse says that when a person waits on the Lord they shall run and not be weary, they shall walk and not faint. This is the law of exercise – wherein we are instructed to trust God by exercising our bodies through running and walking so that we will not faint and grow weary in this life.

Law #4 the law of Temperance – Acts 15:29 and 1 Pet 2:11 – These verses instruct Bible believers to abstain from fleshly lust and from eating the blood of animals and from unclean things. The law of temperance is the law of “abstinence” wherein Bible believers are counseled to abstain completely from things that are harmful, like alcohol, smoking, unclean foods with blood and sexual immorality, to list a few. We are also instructed in 1 Cor. 10:31, which says that whatever you eat or drink or whatever you do, it should be to the glory of God. These verses provide clear instruction that whatever we do in our bodies it should be done to please God and those things that we are instructed to abstain from, those things are not pleasing to God. I believe that God’s instruction to practice abstinence is for our health and wellbeing and the well-being of others. Research reveals that the use of alcohol, smoking, illicit sex and the consumption of animal-based food with the blood all cause premature death.

Law #5 the law of Excellent Air – Isa 42:5,2:22, Job 33:4, Eze 37:5– These verses speak of the “breath” or “air/oxygen” of life that comes from God and that we must do our best to breath God’s pure fresh air, which is the substance of all life. It is a known fact that poor air quality effects our health and causes respiratory diseases.

Law #6 the law of Natural Plant-Based Nutrition – Gen 1:29 – In the beginning God stated in Gen 1:29 as follows, “And God said, [b]ehold, I have given you

every herb bearing seed, which *is* upon the face of all the earth, and every tree, in the which *is* the fruit of a tree yielding seed; to you it shall be for meat." That word "meat" translated from the Hebrew means "food". The original and eternal diet God gave to mankind is a 100% plant-based diet. Recent research also reveals that a plant-based diet prevents and reverses chronic disease. Medicinal herbs are also known to reduce or eliminate the symptoms of sickness. I follow the Biblical plant-based diet so I can live a clean life both mind, body and spirit. To me Food is medicine.

Law #7 Lots of Rest – Ex 23:12 – This verse is the command for all people to "rest" on the seventh day of the week, which is sundown Friday to sundown on Saturday called the Sabbath. The rest day was blessed by God in the beginning in Gen 2:1-2 as the day God rested from all His work.

Law #8 Law of Attitude of Gratitude – Ps 43:5 – This verse says that when we "praise" the Lord and show gratitude to the Lord, the Lord is the "health" of our countenance. The law of gratitude and praise brings healing of mind and body.

Law #9 Law of Water – Ex 23:25 says, that "Ye shall serve the Lord your God, and he shall bless thy bread and they water; and I will take sickness away from the midst of thee". The Lord promises bread and water to remove sickness from His people. Water is an essential element in the universe. Without water, nothing can live, and all provided by God.

Law #10 Sunshine – According to Genesis 1:16, Ps 50:1, 2 Sam 23:4 & Job 8:16 God made the sun which the rays of light cause all green vegetation and life to spring forth from the ground. Research studies have established that no life can exist on this planet without the Sun. 2 Sam 23:4 specifically says, "And *he shall be* as the light of the morning, *when* the sun riseth, *even* a morning without clouds; as the tender grass *springing* out of the earth by clear shining after rain."

22. I don't just believe in these health laws, I practice THE TEN LAWS in my life because I appreciate the gift of life God has given me. I do understand that God's promises are conditioned upon complete obedience to these instructions and if I do not follow one law, I know I can get sick from my disobedience to a law. I do believe that God forgives when I ask for forgiveness, but his forgiveness does not mean I continue to disregard practicing THE TEN LAWS to care for my body.
23. Therefore, at least weekly if not daily I observe THE TEN LAWS. Daily I pray and express my Trust in God and his healing methods, which includes THE TEN LAWS.
24. Daily I follow the hygiene law of washing my body, my house, my hands, and everything I am around to keep clean.
25. I take walks outside to get fresh air to keep my lungs clear.

26. Walking is how I get my exercise. I walk 2-3 times per week several miles.
27. I try to get weekly sunshine so I can get natural Vit D, which protects me from major respiratory illnesses or reduces the severity of any flu or illness.
28. I try to get adequate amounts of daily rest, but I do struggle at getting to bed early because I work so much preparing for the classroom the next day. I am working on doing better at getting to bed early.
29. I have a plant-based predominant diet, as I do periodically eat fish (I am a pescatarian) based on my faith. However, since this pandemic, recently I have chosen to go 100% plant-based primarily because I know God is telling me to grow in my faith and follow his health laws 100% and not eat any dead animal so that I can be in even better health.
30. Daily I make sure I drink water and am increasing the amount I get since the Pandemic
31. Finally, I express my gratitude to God through daily prayer and listening to Christian music.
32. This is how I practice my faith by putting THE TEN LAWS to work in my body as part of my health care plan. I am NOT perfect at doing all the laws, but I believe there is no better health plan in the universe to treat and prevent all disease than what the Bible instructs me.
33. Consequently, I do not have chronic lifestyle diseases like high-blood pressure, even though I am overweight caused by a past thyroid problem that my trust in God's plan has helped me to do better than most with my condition.
34. Furthermore, while I had exposure to Covid -19 back around the beginning of 2020, I had mild symptoms that I did not realize I was sick. Nevertheless, my regiment of taking my herbs and supplements listed above helped me to fight any severe Covid.
35. Within a few days I was feeling better.
36. I was recently tested for Covid anti-bodies after getting the virus and my test results which is attached shows I have natural ant-bodies. The medical research establishes that my natural immunity is better than vaccine induced immunity. See MedRXIV study comparing Natural Immunity to vaccine induced immunity - <https://www.medrxiv.org/content/10.1101/2021.08.24.21262415v1>
37. While other people may have faith in the vaccine to keep them from getting Covid-19, I have the right to believe and put my faith in the Biblical religious medical practices of following THE TEN LAWS of the Bible. I choose to practice my religious medical practices as my best protection against severe Covid in the future along with my own natural anti-bodies and not inject some foreign material into my body that will alter how God created my natural immune system.

38. God gave me 12 systems of my body, one of which is the "immune system" and I believe that my immune system was constructed by God to fight against foreign invaders like viruses. It is my predominantly plant-based diet and following THE TEN LAWS that make my immune system strong and function effectively against all disease, which has done. I take care of my "immune system" by following THE TEN LAWS so that my immune system will kill off any virus or any other sickness naturally.
39. Based on my deep belief in the Bible, taking the vaccine would be a betrayal to God who has kept me alive and in good health most/all of my life.
40. Finally, I have done my research and found the following medical journals establish that my religious medical practices of THE TEN LAWS are effective in preventing and treating many diseases, including Covid-10. My religious practices are not based on a blind faith. Rather, my religious medical practices are supported by medical literature, and can work for all people to prevent chronic disease and severe illnesses and Covid-19:

Religion, Spirituality, and Health: The Research and Clinical Implications
ISRN Psychiatry. 2012; 2012: 278730.
 Published online 2012 Dec 16. doi: [10.5402/2012/278730](https://doi.org/10.5402/2012/278730) (states that faith improves mental and physical health outcomes)

Behavior change for better health: nutrition, hygiene and sustainability
BMC Public Health. 2013; 13(Suppl 1): S1.
 Published online 2013 Mar 21. doi: [10.1186/1471-2458-13-S1-S1](https://doi.org/10.1186/1471-2458-13-S1-S1)

The Role of Exercise, Diet, and Cytokines in Preventing Obesity and Improving Adipose Tissue
Nutrients. 2021 May; 13(5): 1459. Published online 2021 Apr 25. doi: [10.3390/nu13051459](https://doi.org/10.3390/nu13051459)
 PMID: PMC8145589 (this study establishes that exercise is a good intervention for reducing severe Covid 19 by reducing cytokines caused by obesity- by preventing and reversing obesity individuals can have better outcomes against Covid 19)

COVID-19 and obesity: fighting two pandemics with intermittent fasting
Trends Endocrinol Metab. 2021 Sep; 32(9): 706–720. Published online 2021 Jun 25. doi: [10.1016/j.tem.2021.06.004](https://doi.org/10.1016/j.tem.2021.06.004)

Intermittent Fasting: A Heart Healthy Dietary Pattern?
Am J Med. Author manuscript; available in PMC 2020 Aug 10.
 Published in final edited form as: Am J Med. 2020 Aug; 133(8): 901–907. Published online 2020 Apr 21. (This article supports the "abstaining" or temperance in how often to eat and the timing of eating)

Intermittent fasting: is there a role in the treatment of diabetes? A review of the literature and guide for primary care physicians
Clin Diabetes Endocrinol. 2021; 7: 3. Published online 2021 Feb 3.

Air pollution by NO₂ and PM_{2.5} explains COVID-19 infection severity by overexpression of angiotensin-converting enzyme 2 in respiratory cells: a review

Environ Chem Lett. 2020 Sep 18: 1–18. (This article points out that poor indoor air quality directly increases the severity of Covid 19 infections and that increasing God's pure air within indoor environments can reduce Covid severity and deaths)

The Young Age and Plant-Based Diet Hypothesis for Low SARS-CoV-2 Infection and COVID-19 Pandemic in Sub-Saharan Africa
Plant Foods Hum Nutr. 2021 Jun 24: 1–11

(Study reveals the plant-based diet and gut microbiota hypothesis of low SARS-CoV-2 infectivity in sub-Saharan Africa. The study points out that plant-based foods are good sources of protease inhibitors and anticoagulants.)

Plant-based diets, pescatarian diets and COVID-19 severity: a population-based case-control study in six countries

BMJ Nutr Prev Health. 2021; 4(1): 257–266. Published online 2021 Jun 7. (Study points out that people on a plant-based diet have a 70% reduced risk of Covid infections)

Sleep in Older Adults and Its Possible Relations With COVID-19

Front Aging Neurosci. 2021; 13: 647875. Published online 2021 Jun 11. (In this review, they discuss the relationship between sleep and COVID-19 among older adults, focusing on three different aspects: (1) Sleep-related issues that might increase the likelihood of getting infected by SARS-COV-2; (2) Sleep disturbances that might increase the predisposition to worse COVID-19 prognosis and outcomes; and (3) COVID-19-related aspects affecting community-dwelling older adults, such as social isolation, quarantine, and home confinement, among others, that might impact sleep.)

Potential immunomodulatory effects of vitamin D in the prevention of severe coronavirus disease 2019: An ally for Latin America (Review)

Int J Mol Med. 2021 Apr; 47(4): 32. Published online 2021 Feb 1. doi: 10.3892/ijmm.2021.4865

Investigating the Potential for Ultraviolet Light to Modulate Morbidity and Mortality From COVID-19: A Narrative Review and Update

Front Cardiovasc Med. 2020; 7: 616527. Published online 2020 Dec 23. doi: 10.3389/fcvm.2020.616527

Evidence Regarding Vitamin D and Risk of COVID-19 and Its Severity

Nutrients. 2020 Nov; 12(11): 3361. Published online 2020 Oct

Cytokine storm modulation in COVID-19: a proposed role for vitamin D and DPP-4 inhibitor combination therapy (VIDPP-4i)

Marcelo Maia Pinheiro, Andrea Fabbri, Marco Infante
Immunotherapy. 2021 Apr: 10.2217/imt-2020-0349. Published online 2021 Apr 28.

Hypotheses about sub-optimal hydration in the weeks before coronavirus disease (COVID-19) as a risk factor for dying from COVID-19

This article describes experimental, clinical and epidemiological evidence that suggests that chronic sub-optimal hydration in the weeks before infection might increase risk of COVID-19 mortality in multiple ways. Sub-optimal hydration is associated with key risk factors for COVID-19 mortality

- 41. In summary, these medical research articles establish that if anyone follows the Biblical religious medical practices of THE TEN LAWS anyone can have optimal health, prevent premature death and reduce the severity of Covid-19.
- 47. In addition, I have reviewed the testimony of Dr. Christina Parker, PhD who testified before the Michigan legislature back in August (See her testimony starts at 8:00min) and she stated that vaccines are not designed to stop the spread of a virus, but rather all vaccines are designed to minimize the "severity" of a virus on the body.
- 48. Also, I found several recent medical studies that clearly established that following a plant-based diet is approximately 73% effective in reducing "severe" Covid-19 infections. See these additional articles:
Diet may affect risk and severity of Covid -19- Science Daily Journal
<https://www.sciencedaily.com/releases/2021/09/210908180530.htm>
- 49. Therefore, I have medical evidence that my faith in following my religious medical practice of THE TEN LAWS of God, specifically a 100% plant-based diet, which I am currently practicing, is equally as effective, if not more effective, than the Covid-19 vaccines.
- 50. Because I practice my religious medical practices and I have lasting anti-bodies, I should not be mandated to take a vaccine that does not provide all the benefits that my religious medical practices provide. I do not want to gain the world, but loose out on the new heaven and earth because I disobey God, especially when I don't need to disobey God to help others.
- 51. Finally, my religious medical practices are a benefit to others because when I stay healthy by practicing THE TEN LAWS, I am doing a service to my community and my fellow workers by taking care of my body to reduce the possibility of getting severe Covid-19.

I declare under penalty of perjury under the laws of the State of New York that the foregoing is true and correct.

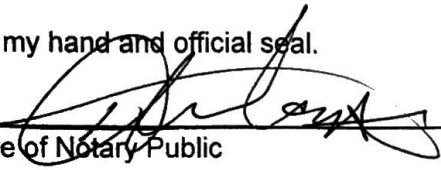
Dated this 20 day of September, 2021.


Amoura Bryan

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

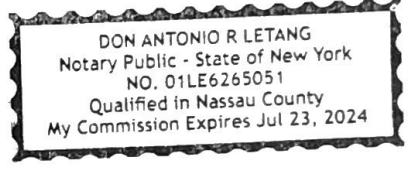
Subscribed and sworn to (or affirmed) before me on this 20th day of September 2021.
2021, by Amoura Bryan, proved to me on the basis of satisfactory evidence to be the
person(s) who appeared before me.

Witness my hand and official seal.



Signature of Notary Public

[Affix Notary Seal]



Appendix #28

8. Notwithstanding my remote work ability, I was placed on leave without pay by the DOE starting October 4, 2021. See **Exhibit A**
9. It was declared for public safety reasons during the Covid-19 Pandemic, on March 15, 2020 that the Mayor Bill DeBlasio determined that all schools would go to remote instruction.
10. However, starting on July 1, 2021, DOE employees began receiving information about returning to the office, face coverings and COVID-19 vaccines. At this time, it was communicated that employees would not be asked to disclose their vaccination status. See **Exhibit B**
11. On 7-26-2021, an email was sent out by Chancellor Meisha Porter discussing that effective September 13, 2021, all DOE employees must have proof they are vaccinated for COVID-19 or, if not vaccinated, be tested for COVID-19 on a weekly basis. See **Exhibit C**
12. On 8-2-2021, an email from the NYC Division of Human Capital regarding the Face Covering Policy for City Employees was sent out. If you were unvaccinated, you were directed to wear a mask at all times while in the workplace. Follow-up emails were sent on 8-12-2021, 8-20-2021, 8-23-2021, 9-1-2021, 9-3-2021, and 9-12-2021 from Division of Human Capital and Chancellor Meisha Porter with guidance to returning to the office on vaccines, vaccination portal, face coverings and testing. See all emails as **Exhibits D**
13. Other than receiving instruction regarding required Covid-19 testing, masking hand, surface sanitation and hand washing for public safety and health to stop the spread of Covid-19, no other instructions or training was provided by the DOE regarding other safety precautions was provided to employees to reduce the risk of contracting or spreading the virus that causes Covid-19.
14. On 9-18-2021, an email was sent from the Division of Human Capital informing employees of the process of applying for Covid 19 Vaccine Mandate Related Exemption

or Accommodation through the online portal called SOLAS (Self-Service Online Leave Application System). See **Exhibit E**

15. On 9-21-2021, I uploaded a Religious Exemption Request into SOLAS. An emailed response was received from SOLAS confirming receipt of my Religious Exemption request. See **Exhibit F**)
16. On 9-22-2021, I received an email from SOLAS stating that my application failed to meet the criteria for a religious based accommodation. It informed me of how to APPEAL and that it had to be done in one (1) school day of the notice in SOLAS. See **Exhibit G**
17. At no time did the DOE ever provide any information regarding how to make a request for the vaccine exemption or any other safety precautions that could be used in lieu of taking the vaccine. Neither did the DOE inform me of my right to obtain accommodations including work place safety equipment beyond the basic face mask but of a high grade of equipment that would make the office safe for me and other staff. No one from DOE ever reached out to me to discuss how my job can be worked 100% remote and that I had already been working remote.
18. On 9-23-2021, I received an email confirming my request to appeal was received. I was given only approximately 1 day to submit an appeal. See **Exhibit H**
19. On 9-23-2021, an email was sent from the Division of Human Capital outlining the consequences for mandate non-compliance. See **Exhibit I**
20. But almost daily or at least several times a week, I was getting notices from the DOE and/or from the Chancellor urging me to take the vaccine or I would be placed on Leave without Pay.
21. On 9-27-2021, an email was sent from Chancellor Meisha Porter stating that the temporary injunction was dissolved and implementation of the mandate would begin in

the NYC DOE on 10-4-2021. Proof of vaccination needed to be uploaded in the Vaccination Portal by Friday, October 1, 2021 at 11:59 PM. If proof of vaccination is not uploaded by Friday, October 1, 2021 at 11:59 PM, employees would be removed from payroll on Monday, October 4, 2021. On Friday, October 1, 2021, I informed my supervisor, Dinh Lu-Berio, via telephone call that I would fall into this category. On September 30, 2021, an email was sent out reminding employees to upload proof of vaccination into the Vaccination Portal by 11:59 PM on October 1, 2021 or beginning Monday, October 4, 2021, employees would be placed on Leave Without Pay status. See **Exhibits J and K**

22. Then on 10-3-2021, I received an email with an Arbitration Award between the DOE and the United Teachers Federal (UFT) that explained that there was some type of agreement between the DOE and UFT that would only allow Covid vaccine exemptions for certain religious groups, namely the Church of science and that no other religious groups of beliefs would received an accommodation. See **Exhibit L**
23. Prior to 10-3-2021, I was never given any information about the UFT meeting with the New York City DOE to negotiate on behalf of members regarding the requirements for the Covid-19 vaccine. My union, CSA, which agreed with and signed onto the same Arbitration Agreement without informing me and the rest of their members or giving us a chance to vote on the arrangement.
24. I had learned that the UFT had entered into an arbitration agreement that only provided exemptions from the Covid-19 vaccine requirement to only people of a certain religion and that others could apply.
25. On October 15, 2021, I received a paycheck. I emailed the payroll secretary to inquire about how to pay back the money received as I was placed on Leave Without Pay status. Lizette Diaz was unable to tell me how to return the money. I followed up on 11-15-2021 and did not receive a response. See **Exhibit M**.

26. I was very upset, distraught and angry that my 16 year career was in jeopardy due to a vaccine that had never been required before of teachers.
27. On October 28, 2021 and November 2, 2021, emails were sent reminding employees on LWOP that deadlines to choose a severance option (10-28-2021) or extend your LWOP status (11-30-2021) were approaching. See **Exhibits N and O**
28. On November 19, 2021, an email was sent by the Division of Human Capital regarding the New Appeal Option for Religious Exemption to the COVID-19 Mandate. To submit the appeal, it had to be done through the SOLAS system no later than 11:59 PM on Friday, December 3, 2021. The email stated we did not have to upload the original documentation submitted, but could upload any new documentation. I uploaded a letter to the Citywide Panel regarding a remote work accommodation on December 2, 2021. On December 2, 2021, an email was sent by SOLAS confirming receipt of the new appeal. See **Exhibits P, Q and R**.
29. The entire process of seeking an exemption from the vaccine was exhausting, stressful and confusing.
30. Nevertheless, on January 7, 2022, an email was sent from the Division of Human Resources stating my appeal was sent to the Citywide Appeal Panel and asked for additional information regarding my religious exemption to the COVID-19 vaccine mandate which needed to be submitted by Friday, January 14, 2022 at 8:00 PM. See **Exhibit S**.
31. Then on March 28, 2022, I received an email notice that my City-wide panel denied my appeal for an accommodation. I was distraught and have experienced sleepless nights for weeks.
32. Subsequently, I filed a claim of religious harassment and an ADA claim with the EEOC.

33. This entire DOE process for obtaining an exemption and accommodations to continue to work has caused me tremendous anxiety, stress and frustration. As an Administrator for the DOE, I am extremely disappointed in how the mandate was handled by leadership and because I know that DOE employees did not need to be put on LWOP, including myself, suffered great anxiety and depression that my colleague would treat me and others in such an unjust manner.

34. More could have been done to preserve my job and the jobs of others during the Pandemic and the DOE has wrongly chose to refuse its employees our rights to continue to work with some type of health and safety protections that allows us to continue to do our jobs.

35. I have been emotionally spent and anguished to the point I have experience headaches, stomach pains, and nerve pain.

I declare under penalty of perjury under the laws of the State of New York that the foregoing is true and correct.

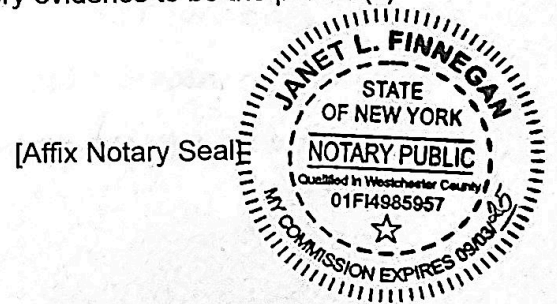
Dated this 17th day of April, 2022.

J. Harding
J. HARDING

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

Subscribed and sworn to (or affirmed) before me on this 17th day of April, 2022, by J. HARDING, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Witness my hand and official seal.
Janet L. Finnegan
Signature of Notary Public



Appendix #29

**AFFIDAVIT
A. USTARES**

STATE OF NEW YORK)
)
COUNTY OF WESTCHESTER) ss:

A. USTARES, being duly sworn, deposes and says:

1. I am above the age of 18, and I am competent to make this affidavit.
2. I am a Social Worker employed by NYC Department of Education for 20 years.
3. In the 20 years I have worked for the DOE, I had never been required to take a vaccine to be able to perform my job effectively.
4. On 7/26/2021, I received an email announcement from NY DOC Chancellor Meisha Porter informing all DOE employees that to “keep the city safe” all City employees and contractors will soon be responsible for meeting Covid-Safe Requirement to be phased in from August 2nd to September 13 wherein all City workers will have to either show proof of vaccination or provide proof of negative Covid-19 test once every seven day. **Exhibit A**
5. Then on 8/23/2021, I received an email from the NYC DOE chancellor Meisha Porter informing all DOE employees of the Order by Dave A. Chokshi, Commissioner of the NY Health and Mental Hygiene and the DOE, Effective September 27, 2021 that all DOE employees were required to provide proof that they had received at least one dose of the COVID-19 vaccine. See **Exhibit B** There was reference in the notice of a right to any exemption from the vaccine requirement.
6. On 9/10/2021, my union the UFT sent an email out to all members stating that there was an arbitration held between the union and the DOE and that there was an agreement that the DOE would offer employee exemptions from the vaccine for religious or medical reasons and that employee had to apply for an exemption through this online portal, SOLAS which would not accept requests until 9/13/2021 until 9/20/2021. See **Exhibit C**
7. We were given just 6 days to complete a request with no instruction or information on how to apply.

8. Prior to the UFT notice, I was never notified of any arbitration meeting between the UFT and the DOE nor was I given a right to vote on the agreement reached by the UFT with the DOE.
9. When I asked around to other teachers and employees, it was my understanding that no one knew about the UFT and DOE arbitration and agreement.
10. On 9/20/21, I applied for a Religious Exemption to vaccinations and an accommodation.
11. On 9/22/21, the DOE denied my request for Religious Exemption an accommodation. See **Exhibit D**
12. On 9/23/21, I attempted numerous times to appeal the denial in SOLAS and I continuously received "ERROR" messages. I was frantic and deeply upset by the technical failures.
13. On 9/24/21, I emailed SOLAS Applications, HR Connect, EMPLOYEE RELATIONS, and Chancellor Meisha Porter explained the technical issue in SOLAS which prevented me from appealing the denial requested that they contact me immediately to resolve the issue and have my appeal recorded. See **Exhibit E**
14. Almost daily we received emails warning us of the vaccine requirement, but I did not get a reply regarding the technical difficulties with the system that prevented me from appealing.
15. Then 10/2/21, I emailed a second time, SOLAS Applications, HR Connect, EMPLOYEE, stating that I did not receive a response to my email of 9/24/21 regarding the technical issue in SOLAS which prevented me from appealing the denial requested they contact me immediately to resolve the issue and have my appeal recorded. See **Exhibit F**
16. On 11/19/21, I emailed the following stating, in summary, that I could not appeal the denial, that I requested assistance numerous times and I requested that an immediate reexamination of my application be done under a fair, constitutionally sound process. See **Exhibit G**
17. On 11/23/21 and 11/30/2021, I again emailed the DOE demanding that they reconsider my appeal due to the technical issues. See **Exhibit H**

18. On 11/30/21, I emailed UFT assistant Secretary, Michael Sill making him aware of the technical issues I had with the SOLAS system recording my appeal to the denial. I explained who I emailed for assistance in resolving the issue and how no one responded. I demanded a re-evaluation of my application. His response was generic and he did not address the specific issue I explained. See **Exhibit I**
19. On 12/10/21, I filed a Group Grievance with UFT which was denied. See **Exhibit J**
20. On 1/31/22, I received email from Division of Human Resources advising I will be terminated as of 2/11/21. See **Exhibit K**
21. On 2/1/22, I emailed my Religious Exemption and Accommodation Request to PanelAppealUpdate@schools.nyc.gov See **Exhibit L, M, and N**
22. On 2/2/22, I emailed LWOPquestions@schools.nyc.gov, stating I received the termination notification in error. See **Exhibit O**
23. As of 2/7/22, I have not received a response from anyone I have emailed to remedy the technical issue with SOLAS and my inability to have my appeal recorded on 9/23/21.
24. At no time did anyone from DOE speak to me directly about how I could continue to work with an exemption in a safe workplace. All the communications received was that all unvaccinated employee were not safe to be in DOE building. All the while from August until February 2022, I was constantly bombarded with emails instructing to get vaccinated or be terminate.
25. Since DOE has placed me unwillingly on Leave Without Pay, in violation of the UFT contract, I have lost thousands upon thousands of dollars of my regular pay, and unrealized interest earned in my Tax Deferred Annuity account and my NYC 457 Plan. I have suffered irreparable and undue burden of financial damage, as well as unnecessary and undue stress caused directly by the illegal and unconstitutional actions of the DOE.
26. My financial condition was so stressful being on leave without pay, that on March 9, 2022 with tears in my eyes and in my heart begging for the Lord's forgiveness, I took the vaccine against my conscious and against my God. While I believe the Lord has forgiven me, I still

carry feelings of guilt and shame that I let the Lord down and did not trust the Lord's will for my life.

27. Once I submitted the proof of vaccine, I was allowed to return to work on March 14, 2022.

28. Since returning to work, I have discovered through conversations with other teachers, that are other teachers who received exemptions from the vaccine based on their religious beliefs.

29. There are many other teachers who like me were harassed by the exemption process and stonewalling with lack of information and barrage of "get vaxxed emails" into taking the vaccine against our faith to keep your jobs.

30. I have feeling of rage and anger with depression and anxiety over having to let the Lord down while the DOE was giving other exemptions and forcing teachers to experience great anxiety. I still cry over this horrible experience and I don't think I will ever get over the trauma of the harassment and having to choose between my God and my job.

31. I have had weeks of sleepless nights, crying and stomach pain from this horrible ordeal. I declare under penalty of perjury under the laws of the State of New York that the foregoing is true and correct.

Dated this 15th day of April, 2022 [Signature]
A. USTARES

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY OR VALIDITY OF THAT DOCUMENT.

Subscribed and sworn to (or affirmed) before me on this _____ day of _____, 2022, by A. USTARES, proved to me on the basis of satisfactory evidence to be the person (or persons) who appeared before me is the person who provide an identification that provides a full first and last name.

Witness my hand and official seal.
[Signature]
Signature of Notary Public



Appendix #30

addition, I received excellent ratings in my teaching observations prior to and during the pandemic thus proving my teaching proficiency did not diminish due to remote teaching. Furthermore, I contacted and supported parents during the height of the pandemic.

7. In over 23 years I have worked for the DOE, I have never been required to take a vaccine to be able to perform my job effectively.
8. Between 7-26-2021 and 8-23-2021, I received several emails from the DOE chancellor Meisha Porter informing me of the Order by Dave A. Chokshi, Commissioner of the NY Health and Mental Hygiene and the DOE, Effective September 27, 2021 that all DOE employees were required to provide proof that they had received at least one dose of the COVID-19 vaccine or get weekly tested. See **Exhibit A**
9. In the 8-12-2021 email from the DOE chancellor Meisha Porter, I was not informed I had the right to any exemptions based on a sincerely held belief or that I had a right to refuse the vaccine for any reason. But the email did indicate that I was required to either get weekly Covid-19 testing or get the vaccine and the only way to be exempted from the weekly testing requirement was to take the vaccine.
10. I remember hearing conflicting information such as there were no religious exemptions that would be offered.
11. As a DOE employee, I was not given any clear information or instruction from the Human Resources Department regarding my right to refuse the vaccine and receive an accommodation so that I could continue to work unvaccinated. The process was

confusing, but yet I was only told of the requirement to either get vaccinated or test for Covid but the testing requirement was not explained either.

12. On 9-1-2021, I received another email from the Chancellor stating that all DOE employees were also required to “face coverings” at all times in DOE buildings and also received the Covid vaccine by September 27. Again, no information about my right to be exempted from the vaccine mandate was provided in the email nor was there any instruction about alternatives to the vaccine as accommodations was explained. See **Exhibit B**

13. Then on 9-10-2021, the United Federation of Teachers (UFT) sent an email stating that the DOE vaccine requirement was valid based on some arbitration proceeding I did not know anything about, and that employees could request medical or religious exemptions from the vaccine by completing an online application form for an exemption on this portal managed through SOLAS that would be available starting that Monday, Sept. 13 and that UFT members will have until Monday, Sept. 20, to apply. Nowhere in the email from the UFT was there any detailed explanation about the arbitration proceeding but the email did say that if I refused the vaccine that I would be put on leave without pay and receive health insurance for 1 year along with other options for severance. See **Exhibit C**

14. I never receive any notice from the DOE or the Chancellor that provided detail about any arbitration or agreement between the DOE and the UFT that was binding on all UFT employee members.

15. The UFT email was confusing because it notified me of the option to seek a religious or medical exemption, but it also stated that I would be put on leave without

pay (LWOP) for not taking the vaccine without regard to whether I was seeking an exemption.

16. I only had 6 business days to get a letter from my religious leader and submit my request for exemption to SOLAS. In addition, there were no clear guidelines or instructions for what I or my religious leader had to write in order for the exemption to be approved. No scoring precise or concise tool or list of criteria that had to be met were provided.
17. I was not given any instructions by the DOE, UFT, or Administrator on how to specifically ask for a reasonable accommodation with my exemption request. Furthermore, this was the first time I ever had to ask for an exemption (it's like asking a student to write a scientific paper without prior knowledge).
18. I submitted my religious exemption on 9-15-2021 via the SOLAS online portal. In summary, my letter written by my pastor and I (as requested by the DOE) states my sincerely held religious belief as a bible believing individual that my body is the temple of the living God therefore, I should not put anything in my body that can defile or harm it but instead, I am to trust in Him one hundred percent to keep me safe if it is His will.
19. On 9-17-21, I received an email stating my application had failed to meet the criteria for a religious based accommodation because, per the Order of the Commissioner of Health, unvaccinated employees cannot work in a school building without posing a direct threat to health and safety. See **Exhibit D**

20. It was not until 9-18-2021 that I received an email from the DOE Human Capital Division stating that I could apply for an exemption through the SOLAS portal. See **Exhibit E**
21. Since I was denied my request on 9-17-2021, I applied again on 9-20-21 and I uploaded an appeal letter via the SOLAS online port in which I stated if my accommodation was not able to be met, meaning remote accommodation, I was willing to continue wearing protective gear (masks) along with taking a rapid covid test every day of the work week (Monday, Tuesday, Wednesday, Thursday, Friday) to not pose a direct threat to the health and safety of any individuals at school.
22. Immediately on 9-20-2021, I received confirmation of my second request to be exempted from the vaccine mandate and I was informed that my appeal was forwarded to the Scheinman Arbitration and Mediation Services. See **Exhibit F**
23. On 9-23-21, I went before an arbitrator, Sarah Espinosa ,as a result of my appeal to the denial of the 9-15-21 exemption application.
24. A DOE lawyer was present and a UFT representative who was not skilled in law nor well versed in the bible. I was extremely nervous and felt very intimidated having to “go against” a lawyer, someone who is an expert in their field, a person who knows how to phrase their defense using “law language.” I thought I was going to faint. I started crying and tried to get whatever words out of my mouth to explain my love for the teaching profession, my years of experience and my reason for not taking the vaccine. After that the DOE lawyer used sophisticated words I did not fully understand but I clearly felt somewhat humiliated by the whole experience as my

UFT union representative was in no way qualified to help me. This was a very traumatic, intimidating and humiliating experience I will never forget.

25. I felt even more defeated when I later found after the arbitration hearing that the arbitrators would only grant exemption to members of the Christian Science faith and the National of Islam which was a result of an agreement between the DOE and our teachers union the UFT. See **Exhibit G**
26. I felt like the entire arbitration hearing was a sham and an interrogation of my religious beliefs in order to get me to take the vaccine contrary to what I believed.
27. Sometime later two or so weeks, the court determined that the agreement between the DOE and the UFT that only allowed religious exemptions for certain religious group was determined to be unconstitutional.
28. While waiting for the appeal decision, I received emails constantly reminding me to either take the vaccine or get weekly testing and to report to work. See **Exhibit H**
29. On 9-25-21, I received an email from VaccineAppeals@scheinmanneutrals.com with an attached 1-page document stating my appeal for an exemption was denied. No explanation for the denial was given. See **Exhibit I**
30. On 9-28-21 & 10-4-21 I emailed VaccineAppeals@scheinmanneutrals.com, the UFT, and all attached, asking for the reason why my exemption was denied and I did not receive a response.
31. Yet, on those same days on 9-28-2021 specifically, I received an email from DOC threatening placing me on LWOP beginning October 4, 2021 if I did not receive the vaccine. Nowhere in that email was I offered the option to continue to Covid-test as an alternative to not taking the vaccine, and the email informed me that I could not

receive my annual leave, CAR or sick leave pay benefits if I am placed on LWOP.

See **Exhibit J**

32. No individual from my school, no administrators, spoke to me about any accommodation I could receive in order to remain teaching in class. I was never offered any safety equipment (like a Powered Air Purifying Respirator that I would be willing to pay so I could keep my job) that could reduce any perceived risks of me working in the classroom in my unvaccinated health status.
33. Again on 10-1-2021, I received another DOE email threatening placing me on LWOP, but I was not given any direction on receiving an exemption or accommodation to that I could continue to work. See **Exhibit K**
34. I am a tenured teacher and none of my rights as a tenured teacher were properly regarded or respected because I cannot be put on LWOP or terminated without DOE following specific due process procedures required by my contract.
35. Nevertheless, on 10-02-2021, I was informed via email from the DOE stating I was placed on leave without pay starting 10-04-21, no attempt was made to accommodate me. See **Exhibit L**
36. I have been on leave of absence without pay (LWOP) from the DOE, since October 4, 2021, which is now over four (4) months.
37. Sometime after the court ruled that the arbitration agreement was unconstitutional, I was instructed to reapply for the exemption and accommodation again, which I did resubmit.

38. While going through the exemption request process, however, I was constantly receiving emails telling me that I was not compliant with threats of being taken off payroll was harassing and intimidating. What made it worse was that I was in the dark during the process, but then I was placed on leave without pay without any explanation. See DOE harassing emails from 7-2021 to 10-2021 as **Exhibit M**
39. On 1-7-22 I received an email stating my religious exemption to the Covid-19 vaccine has been submitted to the City Wide Appeal Panel who was reviewing my request asking for irrelevant additional information which does not address my accommodation, questions such as have I ever been vaccinated before and if I have ever taken vaccines or medications with fetal cell derivatives. See **Exhibit N**
40. I received help from a pro bono law center who responded to the Citywide Appeal Panel letting them know that I did not need to submit anymore of the same information and that I had rights under the New York City Human Rights Act that mandated that the DOE accommodate me by allowing me to work remote as an unvaccinated employee.
41. On 2-2-2022, once again I was denied my request for exemption and accommodation by the Citywide Panel, was informed that the denial was the DOE's final determination. The only explanation given for the denial was that my request to receive appropriate safety equipment mask and to test weekly, which is what I was already doing, was an "undue hardship" to the DOE. See **Exhibit P**
42. No person from the DOE has contacted me to discuss or offer any reasonable accommodations for me to continue to work unvaccinated. I have recently learned through internet research that New York has adopted OSHA requirements for K-12

schools and that safety equipment called Powered Air Purifying Respirator (PAPR) masks can be purchased by the DOE to provide to unvaccinated employees as a necessary to protect the health of unvaccinated employees. The PAPR's prevent the spread of all communicable diseases by 99.7%, but no one at DOE ever mentioned securing OSHA mandated equipment can be worn by unvaccinated teachers so that we can continue to teach and remain safe and to protect others.

43. After receiving the denial letter on 2-23-2022, I received another email from DOE requiring me to either stay on LWOP or be terminated, but again DOE failed to provide any safety equipment or accommodations that could keep me working in safely in the school. See **Exhibit Q**

44. It is my understanding that approximately 22,000 students are not attending school because they want to learn remotely, yet teachers like myself have been denied the right to perform our jobs remotely to teach those children. The children are experiencing the real hardship and not the DOE.

45. The entire process of application for exemption accommodation has been a very intimidating, humiliating, and harassing experience. To have to "prove" to some entity that you have a sincere religious belief after providing a letter from my pastor and then from me and still be denied is unfathomable. To be asked to go before an arbitrator with 1 day preparation and without legal representation was unethical. To have to present your case to an arbitrator with the plaintiff being a lawyer who obviously has a degree in law is not only humiliating but demising as well. This experience has unfortunately left a scar on me, the type of scar that others don't see but suspect. The type of mental and physical scar that results from mental

depression and overeating. This unfortunate occurrence has not only affected me negatively but my family. I am not able to sleep well at night, I feel anxious at times, I no longer speak to my friends as I used to, and more importantly, I had to stop the Applied Behavioral Analysis treatment for my daughter who was diagnosed as being on the spectrum was receiving for the fear that if I was to completely lose my job, I would have to pay back all the money from the medical bills. Also, if I loose medical insurance, I will lose access to medications my husband needs to stay alive.

46. The mental effect of the rushed arbitration with the knowledge that I could possibly lose my job and my ability to get my full pension, placed tremendous stress on me. Furthermore, knowing I did not have legal representation as well as the implications of losing the case would have on my family, I feel could have also impacted my ability to keep myself from breaking down crying during arbitration. I was made a mentally ill defendant at the time and thus I should not have been left to myself to stand trial without a lawyer representation. I should have been awarded a lawyer who could have argued on my behalf for my accommodations.

47. If the legal system does not enjoin the DOE from continuing to deprive employees of reasonable accommodations, I will be forced to leave the City of New York to seek another job in another city.

48. If I do not obtain the relief I need, my home can be foreclosed, my daughter will not be able to get her ABA treatments (which are very costly), and my family in Venezuela (the country with the highest inflation in the world) will not get the monetary help that I send to them on a monthly basis.

49. The DOE should be enjoined from denying the reasonable accommodations of testing and masking or the ability to work remote and allowing employees to work remote because the NYC school children will benefit from having experienced teachers teaching them.
50. On 5-24-21 former chancellor Meisha Porter stated and acknowledged in her email to DOE workers that she knew the past year has required resilience, determination, and flexibility of all members of the DOE community, and we have demonstrated a commitment that has shown why DOE is home to the best educators and education professionals in the world.
51. Students will continue to get the quality education they received at the height of the Covid-19 pandemic from teachers such as myself. Keeping us employed will continue to add to the economy as the more money we have, the more money we can spend in the economy. In addition, not having us in school has proven not to reduce the spread of Covid and has caused an unforeseen burden on teachers and administrators who have had to carry the extra weight, they deserve to get relief. Finally, you will teach students, our future generations that the constitution is able to uphold, protect and respect the human rights of all people.
52. In my school, CMSP 327, my colleague and sister in Christ, Winderh Lopez was granted a religious exemption and provided accommodations so she could continue to work and we attend the same church and we both provided the DOE the same exact letter of support from our pastor. She was provided with the reasonable accommodation of working remotely and is able to teach Spanish and other classes to our students.

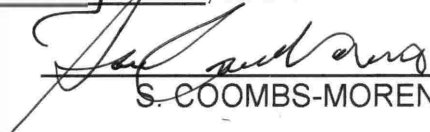
53. It is my understanding that there are many other DOE teachers and staff who have received religious exemptions from the vaccine and accommodations, yet my request and the request of many others has been arbitrarily denied.

54. If all unvaccinated DOE teachers and staff are a public health risk to the school, then all teachers and staff should be placed on LWOP equally or all unvaccinated teachers and staff should be exempted from the vaccine and grants accommodations so that we all can continue to work.

55. The treatment of DOE teachers and staff differently for no reason is unfair discrimination.

I declare under penalty of perjury under the laws of the State of New York that the foregoing is true and correct.

Dated this 7 day of February, 2022.


S. COOMBS-MORENO

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

Subscribed and sworn to (or affirmed) before me on this 7 day of February, 2022, by S. COOMBS-MORENO, (whose full name is reflected on the evidence proved to me which is satisfactory evidence to be the person(s) who appeared before me.

Witness my hand and official seal.

Signature of Notary Public

[Affix Notary Seal]

JEFFREY F STONEY
Notary Public, State of New York
Registration No. 01ST6101699
Qualified in Westchester County
My Commission Expires November 17 2023

Appendix #31

**AFFIDAVIT
S. BROWNE**

STATE OF NEW JERSEY)
) ss.
COUNTY OF UNION)

S. BROWNE, being first duly sworn on oath, deposes and declares as follows:

1. I am above the age of 18, and I am competent to make this affidavit.
2. I am on an involuntary leave of absence without pay from the New York City Department of Education as a Students with Disabilities Teacher for a 12:1:1 Class, for Public School 18R, JOHN GREENLEAF WHITTIER SCHOOL, located at 221 Broadway, Staten Island, NY 10310.
3. I currently hold a Master of Science Degree in General Education/Special Education.
4. I am a licensed certified New York State General Education & Students with Disabilities teacher (birth through 2 and Grades 1 - 6). I am also a tenured teacher for Grades 1-6 General Education license and for Grades birth - 2 Students with Disabilities license. \
5. I'm responsible for planning lessons and instructing 1st, 2nd, and 3rd Grade students using various curriculums. I'm responsible for advocating for students, developing IEPs, and attending IEP meetings on behalf of my students. I collaborate with staff during team meetings and overall staff development.
6. My official licensed teaching assignment began with the NYCDOE in August 2007. Due to FMLA concerns, I resigned in 2014 and rescinded the resignation in 2015. I've been working with the DOE since my return in September of 2015. Prior NYCDOE service includes a Paraprofessional from 1997 to 1998 and a Substitute Teacher from 2005 to 2007.
7. In the 2020-2021 school year, the NYCDOE approved a medical accommodation for me to work remote due to me meeting the eligibility criteria for being a high risk for Covid infection.
8. I taught both Gen Ed./Special Ed. students since the beginning of the pandemic from March 2020 to June 2021. (a period when schools were closed or conducting hybrid instruction). In spite of learning remotely, both groups of students proved to be very successful academically and socially.
9. On 9/13/2021, I officially received email notices about the vaccine mandate. The first email was from the NYCDOE Chancellor, Meisha Porter, dated 7/26/2021, **See Exhibit A**
10. The email noted that *"the Mayor made an important announcement about health and safety requirements for all City workers, which includes all DOE employees. Effective September 13, 2021, all DOE employees must have proof they are vaccinated for COVID-19 or, if not vaccinated, be tested for COVID-19 on a weekly basis."*

11. In all the years I've worked for the NYCDOE I have never been required to get vaccinated. Therefore, having a testing option made me feel comfortable that all NYCDOE employees, including myself, would have the option to work, maintain our religious beliefs, and livelihoods while following COVID-19 safety and health protocols.
12. From July 2021 to December 2021, I received numerous harassment emails and inquiries to submit proof of vaccination in order to maintain employment with the NYCDOE – including, PS 18 Principal Robert Rodriguez, former New York City Chancellor Meisha Porter, Division of Human Capital, and the DOE Vaccine Portal Team. **See Exhibits B - 16 pages**
13. For example, while awaiting a Court ruling regarding the City Mandates, I received an email from former Chancellor Meisha Porter on 9/26/2021 stating:

“All staff must report to work on Tuesday, September 28 and until further notice. This includes staff who are not yet vaccinated and those who applied for a vaccine exemption. Our court date is set for Wednesday, September 29. We are confident that we will be able to proceed with our vaccine mandate for all staff; our students, school communities, and colleagues deserve no less. For those who have not yet submitted their proof of vaccination, please do so as soon as possible using the DOE Vaccination Portal.” See Exhibit
14. On 9/18/2021, NYCDOE (Division of Human Capital) email notice was sent to my DOE email advising that *“DOE staff members may now apply in SOLAS for a COVID-19 Vaccination Mandate Related Exemption or Accommodation.” See Exhibit*
15. The UFT held a Telephone Town Hall Meeting regarding the mandate on September 2, 2021. During the meeting, members were advised that there would be an option to apply for accommodation/exemptions via SOLAS. However, the information wasn't clear about the Religious exemption application process. We were simply told to check the SOLAS site and apply when it was available.
16. The information received from the DOE and the UFT was conflicting and confusing. For instance, The UFT advised members that “clergy letters” were required to apply for a Religious Exemption. However, the NYCDOE noted that *“All applications require supporting documentation which must be submitted at the time of application”*.
17. I am Christian and I believe in the Bible and hold a strong religious belief that my body is my temple. Therefore, I seek natural healing and remedies before resorting to medical interventions. With this in mind, I applied for a Religious Exemption from the NYCDOE's Medical Mandate.
18. The SOLAS site was not open during the dates allotted for the leave applications. When the site was available it was malfunctioning and didn't allow uploads of documents when I tried to upload the documents.

19. There were freezes and the uploaded documents did not display on the confirmation screen. In addition, the application deadlines were limited and confusing. The submission deadline was less than a week and there wasn't anyone available to answer my questions.
20. At no point did the NYCDOE provide guidance or outline the specific criteria for the exemption letter. At no time did any official explain an exemption approval, denial, and appeal process.
21. I applied for the exemption and submitted a letter from my clergy via Solas on 9/16/2021 and on that same day, I received a confirmation of application from HR Connect Medical, Leaves, and Records Administration, a SOLAS-donotreply@schools.nyc.gov email. **See Exhibit** (Case#: A73618)
22. On Friday, September 17, 2021, I received a denial notice from HR Connect Medical, Leaves, and Records Administration (SOLAS-donotreply@schools.nyc.gov) was sent to my NYCDOE email address. **See Exhibit**
23. The email noted that "Your application has failed to meet the criteria for a religious based accommodation because, per the Order of the Commissioner of Health, unvaccinated employees cannot work in a school building without posing a direct threat to health and safety. Due to the configuration for the 2021 - 2022 school year, which includes no remote classwork, we cannot offer another worksite as an accommodation, as that would impose an undue hardship (i.e. more than a minimal burden) on the DOE and its operations."
24. Towards the end of the letter, the email advised "*you may appeal this denial to an independent arbitrator. If you wish to appeal, you must do so within one school day of this notice by logging into SOLAS*". That opportunity was missed because I checked my email during the limited preparatory time in the school day so, I quickly skimmed the email and saw that the Religious exemption application was denied and quickly closed out the disappointing email. I was devastated and felt powerless.
25. No one from the DOE or from my school spoke to me before or after receiving the denial notice about what accommodation I needed to continue if I were granted the exemption.
26. On 9/24/2021, I contacted the United Federation of Teachers, Assistant Secretary Director of Personnel, Payroll, and Special Projects, Mr. Mike Sill, regarding my religious exemption 9/17/2021 denial. I shared with Mr. Still, I wasn't aware that I had one business day window to appeal until he mentioned it to me that day. Then he responded that "*Unfortunately, then, you cannot appeal.*" At this point, I felt hopeless and failed by the NYCDOE and UFT. **See Exhibit**
27. On 10/2/2021, I received notice from the NYCDOE Division of Human Capital noting that I was being placed on a Leave Without Pay (LWOP) because I was not in compliance with the DOE's COVID-19 Vaccine Mandate. I was placed on leave without pay starting October 4, 2021, and currently remain in that status with medical benefits.

28. In between the NYCDOE'S deadline of September 27, 2021, and until I was removed from service I participated in the required testing and masking protocol. I wore masks in the school building daily and submitted my weekly test results to the NYDOE. Since the Religious Exemption denial from the NYCDOE I have sent numerous correspondences to multiple NYCDOE representatives and have not received an appeal for my Religious Exemption application.
29. For example, on 10/3/2021, emails were sent to Chancellor Porter with CC: to Michael Mulgrew, Mike Sill, and my Pastor, Rev. Doctor Mark, V.C. Taylor. In my letter, I requested an appeal to the 9/17/2021 Religious Exemption denial and be provided the opportunity to continue working with my students. **See Exhibit J**
30. On 10/4/2021, I received an email from stayinghealthy@schools.nyc.gov. The email noted that *"There are no appeals for denied accommodations. We advise you to contact your union, if applicable, for guidance."* All other parties didn't respond to my letter. **See Exhibit**
31. On 10/4/2021, I emailed Doctor Cotto (PS 18 Assistant Principal) advising that I was available for work. He responded on the same date, noting *"I appreciate the reminder and thank you for your service. Although you are available to work at PS18, the DOE has communicated that unvaccinated employees are not permitted in the building."* **See Exhibit**
32. At no point of my correspondences with the numerous recipients of the NYCDOE including Employee Relations, Chancellor Porter, PS 18 Principal, Robert Rodriguez, Assistant Principal Jason Cotto, et al regarding my willingness and availability for work with the NYCDOE and a request for an appeal for my Religious Exemption to the Medical Mandate was addressed. In my letter, I requested that I continue the option of testing once a week and continue the practice of the safety protocols that I was following prior to the vaccine mandate.
33. On 10/29/2021, I sent follow up correspondences to NYCDOE representatives including Dr. Cotto (PS 18 Assistant Principal, PS 18 Principal Mr. Rodriguez, PS 18 School Secretary, Stephanie Ferretti, Division of Human Capital and Chancellor Porter, following up regarding my Oct 3, 2021 email requesting an appeal to my Religious Exemption and the right to work in my assigned class for the 2021-2022 school year. To date, I have not received a response from any NYCDOE official. **See Exhibits ..1, ..2, ..3, ..4**
34. On 11/2/2021, an email was sent to my NYCDOE email advising me that I was placed on involuntary LWOP status. The email noted: "If you would like to extend your LWOP status, you may do so by logging into SOLAS and stating your intention between November 1 - November 30. **See Exhibit**

35. On 11/5/2021, I responded to the 11/2/2021 NoReply email address, NoReply@schools.nyc.gov, Chancellor Meisha Porter, Division of Human Capital, and the Payroll Secretary Stephanie Ferretti, advising the following: **See Exhibit**

"Please note I intend to be available for full-time employment with the NYCDOE. Therefore, an LWOP status assigned to me is involuntary. You are requesting that I waive my rights in order to accept your terms by giving up my rights to take legal action against the NYCDOE for me to remain on involuntary leave without pay. Your request is unfair and unjust. Therefore, I reserve all of my rights."

36. On 11/29/2021, I received a final notice letter of termination advising me that if I didn't select an option suggested by the NYCDOE (including waiving my rights) I will be terminated as of December 1, 2021. **See Exhibit**
37. On 11/30/2021, I responded to the 11/29/2021 final notice email I addressed the email to Chancellor Porter and multiple representatives of the NYCDOE and UFT. I requested a follow-up to my previous inquiries for an appeal to the 9/17/2021 Religious Exemption denial and the right to be an active employee according to my contractual agreement for the 2021-2022 school year. **See Exhibit**
38. In that letter, I also inquired as to the reason why I wasn't given an appeal after the November 2021 court-ordered directives to NYCDOE provide Religious Exemption appeals to denied employees.
39. On 11/30/2021, I received a generic response to my email from UFT Member services. The generic response is as follows,

"By court order, people who were denied a religious exemption, then appealed and were denied on appeal, may now re-appeal to a city-wide panel. This opportunity applies only to people who appealed and were denied. Those who did not appeal or who never applied may not re-appeal. People may not re-appeal on a medical basis. You should have received directions on how to go about applying through SOLAS. If you apply for such an appeal, and should it be denied, your time to select the extended leave will be extended to 7 days after receipt of the decision. You must apply to the City panel by Friday, Dec 3."
See Exhibit

40. On 11/30/2021, an email was sent to me notes, Mike Sill, UFT Representative "Unfortunately, at this time, only those individuals who timely appealed their denial of a religious exemption and who were again denied have the opportunity to reapply to the City panel. We are in discussions with the City about broadening this opportunity but we have not reached an agreement." **See Exhibit**
41. On 11/30/2021 UFT General Counsel Beth Norton UFT General Counsel, Beth Norton responded to my 11/29/2021 email to Michael Mulgrew regarding being placed on LWOP status. The email stated, "I am in receipt of your email to President Mulgrew. Unfortunately, at this time, only those individuals who timely appealed their denial of a religious exemption and who were again denied have the opportunity to reapply to the City panel. We are in discussions with the City about broadening this opportunity but we have not reached an agreement." **See Exhibit**
42. On 12/3/2021 I sent follow-up emails to numerous NYCDOE representatives requesting responses to my previous email inquiries and concerns regarding my LWOP status. **See Exhibit**
43. On 12/10/2021, I participated in a group grievance with a group of NYCDOE teachers. Lead Grievant: Brenda DeLisi-Flynn/Case #: Q73899 sent the grievance via email to the UFT and the parties involved in the grievance process.
44. On 12/22/2021, An email denial to Step 2 Grievance was sent to the lead grievant from UFT Mr. David Campbell. The Lead Grievant: Brenda DeLisi-Flynn issued an appeal request via email. **See Exhibit 1, 2 and 3**
45. On 12/28/2021 all NYCDOE staff were sent an email encouraging them to get tested for COVID 19 prior to returning to school on Jan 4, 2021. Yet I remain on LWOP status. **See Exhibit**
46. On 12/29/2021, I received an email from Mr. Saul Zalkin was sent to the Lead Teacher Grievant denying the Appeal. He also provided an Explanation for the Union not pursuing the vaccine unpaid leave grievance. **See Exhibit**
47. On 1/5/2022, I received an email from UFT Rep, John Kramps regarding my 11/30/2021 emails addressed to the NYCDOE et al and the UFT et al representatives requesting assistance with my appeal request and the NYCDOE's threat of Termination. **See Exhibit**
48. On 1/5/2022, I responded to the email from UFT Rep, John Kramps referring him back to 11/30/2021 and requesting that I be provided assistance with returning to work. **See Exhibit**

49. On 1/14/2022, I received an email request for an Appeal to my denial was submitted by my attorney to the New York City Department of Education Appeal Panel via email. **See Exhibit**
50. On 1/17/2022, The "PanelAppealUpdate" email account (PanelAppealUpdate@schools.nyc.gov) sent a confirmation email to my private email account regarding the receipt of the correspondence from my attorney on 1/14/2021. **See Exhibit**
51. On 1/31/2022, I received email correspondence from the Division of Human Resources which noted that I failed to comply with the New York City Health Commissioner's Order requiring vaccination of all New York City Department of Education staff. The letter also noted that "...employment with the New York City Department of Education is terminated, effective February 11, 2022. Please note that your health insurance coverage through the City will also cease upon termination." **See Exhibit**
52. On 2/2/2022, I responded to the Termination request noting that the email appears to be an error because I am a tenured teacher awaiting a court-ordered fresh citywide panel review that I'm entitled to receive, as it relates to my religious exemption request. I reminded the NYCDOE officials that I'm a tenured teacher and I didn't resign, retire or quit. I requested that my human, citizen, and due process rights be honored. **See Exhibit**
53. On 2/2/2022, "I received an email that thanked me for emailing lwopquestions@schools.nyc.gov. The message noted, "If you received the February 11th Termination Email on Monday, January 31st, and you believe you received this message in error we will follow up by February 3rd." **See Exhibit**
54. To date of this Affidavit, no one from the NYCDOE has contacted me to speak to me about if any reasonable accommodation could be provided and what are my options for accommodations. In addition, no one has contacted me from the NYCDOE regarding the February 11th Termination date. **See Exhibit**
55. To date, I have not received any notice of my rights to workplace safety mitigation controls pursuant to the Occupational Safety and Health Act. I just recently learned that OSHA has standards for employers to meet to provide a safe workplace for employees during a Pandemic that causes airborne contaminants. I have never received any type of OSHA notice of hazardous atmospheric contaminants in the school and neither have I ever been trained to identify or correct workplace hazards if they become apparent.
56. I am disappointed by the punitive actions taken against me by the NYCDOE including being forced on LWOP status and terminated. Being forced to leave my career pushed me into a blizzard of emotions: embarrassment, shame, worthlessness, self-pity, anger, anxiety, sadness, and depression. This entire experience has been traumatic, demeaning, and harassing. This process has caused me trauma and emotional distress.

57. The trauma has affected my entire state of mind and overall well-being. I rely so much on my job for emotional and financial security, stability, identity, provision, future plans, the roof over my head, food, and overall livelihood.
58. The numerous coercive letters I have been receiving about submitting proof of vaccination or threatening termination if I don't comply with the mandate, causes me to be afraid of opening my emails. I get anxious every time I log in to the email system because I am tormented about finding a letter terminating me from the career that I love.
59. During the Month of September 2021, I had to call my friends and family members to talk me through going to the school building because every time I got closer to my work site I would get anxious about possibly being told I can't enter the building because I'm not vaccinated.
60. In spite of all of the mistreatment in September 2021, I still remained committed to my students and I kept purchasing supplies for my classroom with my own funds and working way past my contractual hours to set up the classroom for my students because I wanted it to be a welcoming environment for them. It was very heartbreaking for me to pack up and leave those children that I had already bonded with for almost a month. The paraprofessionals and I established routines that we developed as a class. We even created a class contract that we all signed and lived by daily. It was devastating when I had to leave them behind and when I received the involuntary LWOP letter from the NYCDOE instructing me to refrain from contacting my students, causing even more pain.
61. I was interviewed twice in September by the Principal and Assistant Principal about if I was going to comply with the medical mandate before the September 27, 2021 deadline because they needed to make plans to replace me in the classroom. I'm a committed educator and being asked about what my medical intentions were on two separate occasions by the Principal and the Assistant Principal caused me to feel violated and intimidated by my supervisors.
62. In addition, being a transfer teacher at a new school caused me to be afraid of being ostracized by my new administrators and colleagues because I wasn't vaccinated and the mandate insisted that everyone be vaccinated no matter their religious beliefs. It was as if I were deemed unworthy and unhealthy for holding on to my religious beliefs.
63. These coercive and derogatory actions created daily panic and anxiety for me while reporting to work. A week before I was removed from the classroom I was told by the Principal that I was being removed from my work assignment because I'm not vaccinated and not safe to be around staff and students. This made me feel like the scum of the earth. I remember crying when I sent a reminder email to the Principal and Assistant Principal that I was available for work. The fact that the Principal didn't even respond and the Assistant Principal responded that unvaccinated staff members are not allowed in the

building made me feel like I committed a crime because I hold on to my sincerely held religious beliefs.

64. Since the month of September 2021, almost every day I wake up I have been having crying spells and anxiety about whether or not I would ever be able to work with my students and lose my career for standing up for my sincerely held religious beliefs. I have lost my appetite, lost weight, isolated myself from friends and family because I feel worthless and discarded by the NYCDOE, and society in general. Often I pray to God for relief from the severe discrimination that placed me in this challenging emotional, spiritual, and financial bondage. Some days, I consult/counsel with my pastor, family, and friends so that they can pray with me throughout this experience. I also participate in restorative talking circles that are currently experiencing the challenges of being placed on involuntary LWOP status.
65. I keep asking why is this happening to me and when will the daily nightmares end? When will I be able to have a good night's sleep without waking up with night sweats because of bad dreams about being chased out of my classroom by my administrators and colleagues, losing my home to foreclosure, being held down for a vaccine, and other tormenting nightmares.
66. I just don't understand how I moved from being labeled a hero to a villain of the pandemic. Last year teachers were appointed as essential workers and were required to work throughout the pandemic. We even worked through our scheduled Winter Recess. Even when I was feeling overwhelmed during the pandemic I showed up for my students daily, knowing that they needed to have consistent and dependable support during a time of uncertainty and social-emotional challenges. I reported to work and stayed online way past my required NYCDOE screen time because I care about my students.
67. I went above and beyond the call of duty by figuring out how I could reach and teach students outside of the traditional walls of a school building. I was inexperienced with remote instruction but I didn't let that stop me from being innovative, purchasing equipment, and software that assisted me with successfully instructing my students remotely.
68. Prior to this tumultuous experience of my employment security and income source being abruptly taken away, I was current on my expenses, making repairs to my home, taking vacations, saving money for the future, investing, supplementing my parents' income, and donating to family, friends, and charity.
69. Prior to being placed on LWOP, my food security wasn't in jeopardy and I was able to have nutritious meals. Now, I often do not have enough to eat and depend on food donations from friends/family and credit cards. This has significantly impacted my nutrition and health.
70. The involuntary LWOP status catapulted my livelihood into a nightmare and every month since my removal from payroll in October 2021 has been heartbreaking and a financial burden. To think about how much I committed to ensuring that I have excellent payment/credit history with my bills/creditors and now it's in jeopardy of being destroyed due to loss of income from being removed from the payroll.

71. Being on involuntary LWOP has created a financial disaster for my family. I have been living off of my credit cards and depleted my savings. I've been borrowing funds from family and friends to supplement my expenses. In addition, there is household maintenance and repair work that I currently need to get done on my house but I have been forced to forego repairs due to the inability to pay my contractors.
72. I have multiple insurance policies that I make payments to monthly. Due to LWOP status, I'm in jeopardy of those policies lapsing due to non-payment.
73. I am unable to keep up with my utility expenses due to a lack of income. I recently applied for utility assistance with the State of New Jersey and I'm awaiting the decision on my case.
74. In April of 2021, I refinanced my home for a reduced interest rate and mortgage payment. For the first time since I originally purchased my home in 2009, I felt financially secure enough to think about investing in real estate. I was even able to help my daughter with college and pay my credit card balances in full most months.
75. Now, I'm in jeopardy of losing my home due to possible foreclosure on my home. I recently applied for forbearance and I'm currently awaiting a decision about it being approved for temporary relief. Filling out all of that paperwork took hours, was overwhelming, and demoralizing.
76. Disclosing that I wasn't able to pay for my mortgage to the mortgage holder made me feel vulnerable, embarrassed, and despair, because the forbearance application approval isn't guaranteed. I'm placing my life in the hands of a person behind a website that doesn't even know the anguish I'm experiencing. The financial instability and emotional distress that I've been facing since the medical mandate and being placed on involuntary leave without pay is gut-wrenching. The thought of being homeless, without a means of income, and financial instability causes me to panic, gives me anxiety, and puts me in a depressed state.
77. I have never been delinquent on my mortgage payments or any of my current debt. I was even able to make an extra \$200 or more monthly to my mortgage and other debt accounts. Falling behind on my payments for my credit cards and other debt will jeopardize my credit history and prevent me from acquiring loans or credit accounts in the future.
78. Involuntary LWOP has prevented me from enrolling in an Applied Behavior Analysis Master of Science Program at Touro College because I'm unable to pay for the coursework.
79. Being on involuntary LWOP status has prevented me from applying for Federal Loan forgiveness programs because it requires confirmation of my active employment status with the NYCDOE and I am currently on LWOP. Involuntary LWOP will also put me in default for my student loans when the federal-issued forbearance expires in May 2022.

80. While being on involuntary LWOP status, I have had to postpone medical care due to my inability to pay the deductibles/out-of-pocket costs for my medical expenses. Now that I am scheduled for termination on February 11, 2022, I will certainly be unable to afford the associated medical costs. I am concerned about how postponing these services will affect my health in the short/long term.
81. I am currently unable to buy back years of service from TRS as I am on a Leave Without Pay and not eligible to make payments deducted from my paycheck and no longer have the funds to pay the cost to buy back my years of service from the TRS because my savings were used to cover my expenses due to loss of income.
82. During involuntary LWOP status, I have not been earning pensionable time and employer matching funds to my TRS account. In addition, the TRS funds are attached to the stock market, and the funds/accumulated interest hasn't been credited to my account due to contributions not being made on my behalf during this involuntary LWOP period. This will also affect my pension payout amount and retirement date.
83. During involuntary LWOP status, I'm not accruing CAR/SICK days since being placed on leave on 10/4/2021. In addition, the recent Spring 2021 vacation compensation award from the NYCDOE/UFT arbitration agreement was not added to my Vacation bank.
84. I did not receive the "Teachers Choice" credit for purchasing supplies provided to teachers in November 2021. I have not received the staff development and training that other staff members have received/attended during the time I've been on LWOP status.
85. I have missed per session teaching opportunities to work overtime. For example, there are at least three per session programs at PS18 (before/after school, and Saturday Academy) that I missed out on because I'm on LWOP. In addition, I would receive compensation to assist students outside of normal business hours when my class was shut down due to covid in December 2021. These programs are anticipated to continue through June 2022.
86. Being unable to meet my personal expenses and obligations has created a flight or fight feeling inside of me. I'm feeling degraded, desolate, and abandoned by my employer.
87. The NYCDOE's directive of not being allowed to work during the involuntary leave has also created hardship for me. The fact that I am still reported as employed with the NYCDOE has caused me to be ineligible for public resources such as Public Assistance and Unemployment benefits. During an information session on October 6, 2021, with Michael Sill of the UFT, LWOP employees were told that we were not eligible to work and to receive unemployment because we're still considered employed with the NYCDOE. That places me in a hardship position because I'm forbidden from working and haven't been receiving a paycheck or unemployment.

88. Not having the resources and finances I need to survive may cause me to have to move out of the town of Roselle, NJ to seek alternative employment options if the NYCDOE is not enjoined from continuing to deprive me of reasonable accommodation. I have been applying for multiple teacher licenses in reciprocity states and it is very costly to do so. This has added to my financial hardship because I used my credit cards to pay for the applications. In addition, the teacher compensation packages currently offered in states like NJ and many other states aren't comparable with my current salary with the NYCDOE.
89. Being a tenured teacher with over 14 years of service has placed me in an employment compensation tier that will require me to take a pay cut in NJ and other states. Taking a pay cut will cause me to go below the budget I need to sustain my current expenses. In addition, I would be required to start over as a non-tenured teacher. The teacher employment certification criteria are different in every state and would require me to pay certification fees and take exams or professional development/training courses in different states to apply for a teaching position in the middle of the year.
90. Due to being placed on involuntary LWOP status, I am unable to assist my daughter to pay for college as I did before. In addition, I am my parents' caretaker and responsible for assisting my parents financially. Since the being on LWOP, I have reduced my visits to NYC because of the burden of paying for gas and the tolls and I am unable to assist them with their living expenses as I did prior to losing my income in October.
91. Due to being placed on involuntary LWOP status, I was unable to attend my grandmother's final resting service in St. Vincent. I couldn't attend the in-person burial because I was distracted by the uncertainty of whether or not I will still be employed by the NYCDOE. With this in mind, I refrained from the expense of attending the funeral. In addition, I could not embark on a vacation with my family in December 2021 due to the inability to cover the vacation expenses. I was looking forward to visiting my grandmother's grave and being with my friends and family in St. Vincent and the Grenadines for the Christmas holiday. Missing these important events took an emotional toll on me and my family.
92. Since the discriminatory practices against me by the NYCDOE, I've used a lot of resources and time to deal with the matter. My efforts related to my involuntary LWOP status have been like having a full-time job. I've spent a lot of valuable time back and forth researching, communicating with the DOE, attorneys, advocates, and similar agencies, regarding being removed from involuntary leave without pay.
93. The NYCDOE should be enjoined from denying the reasonable accommodation of testing and masking or allowing employees like me to work remotely.
94. I would like all of the lost income, benefits, and personal resources to be restored to me by the NYCDOE. I want the Department of Education to stand by its theme of "equity and excellence for all" and for them to remember the message they sent out to us in their June

24, 2021 correspondence to us. It noted "you continue to support and educate NYC's children during this unprecedented time. We recognize that the COVID-19 public health emergency has presented numerous challenges. You have met those challenges with dedication and flexibility, and we want to make sure you have every tool you need to keep you and your communities safe." The tool I need is to be able to uphold my religious beliefs and still keep my career.

95. As an employee of the NYCDOE, I want to keep the students, colleagues, and myself safe. I am requesting the option to teach online. My hope is to be able to take care of my family and handle my work-related responsibilities and duties, as I did prior to being placed on involuntary LWOP status. I am asking for restitution in all areas of my life that have been adversely affected by being placed on involuntary leave without pay.

96. I have also filed an federal EEOC complaint and they are going to send me a right to sue confirmation. But they know I have a lawyer who is suing for me.

I declare under penalty of perjury under the laws of the State of New York that the foregoing is true and correct.

Dated this 14th day of April 2022.

Sandra Browne
S. BROWNE

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

Subscribed and sworn to (or affirmed) before me on this 14 day of April, 2022, by S. BROWNE, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Witness my hand and official seal.

Anderson
Signature of Notary Public

[Affix Notary Seal]

PAULA ANDERSON
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Nov. 28, 2023
Anderson
4/14/2022



Appendix #32

8. In all the years I have worked for NYCDOE, the NYCDOE has never required me to get vaccinated.
9. A notice of the vaccine mandate, indicating that city employees would be required to show proof of (a) one dose of the Covid-19 vaccine or (b) negative Covid 19 test results every 7 days, was emailed to my work address during summer break on August 12, 2021. See **Exhibit A**
10. The initial notice from my employer did not mention that I had the right to receive religious exemption or accommodation.
11. On August 26, 2021, I received an email from the United Federal of Teachers (“UFT”) stating that employees had a right to request a religious exemption/medical accommodation. See **Exhibit B**
12. On September 18, 2021, I received an email from the NYCDOE Division of Human Capital stating that “staff members may now apply in SOLAS for a COVID-19 Vaccination Mandate Related Exemption or Accommodation” and that the application should be made through the SOLAS- the NYCDOE Leave Application System. See **Exhibit C**
13. The email informing me of my right to apply for religious exemption or medical accommodation, included the following instructions
 - Applications must be made using the [Self-Service Online Leave Application System \(SOLAS\)](#).
 - In SOLAS, employees should select the initial option to "Request Accommodation" and then the option to apply for an Exemption and Accommodation for COVID Vaccine-Related Reasons, and then indicate the category for the application.
 - All applications require supporting documentation which must be submitted at the time of application. The email did not include mention of a date by which I needed to apply for the exemption. Information about exemption application date came from communications from the UFT postings on the “Vaccine Mandate & Exemption” Section of FAQ page of the UFT website. Based on union website postings, the deadline for submitting a request for religious exemption was September 20,2021 @5:00pm, two days after I received notice of the opportunity to apply for the religious exemption.

14. I was not given any explicit instructions on how to make a request for a religious exemption from the vaccine before applying. Based on postings from the UFT member website, I received information that (1) *“Exemption requests are considered only for members who belong to recognized and established religious organizations and not where the objection is personal, political or philosophical in nature.”* (2) *Applications for religious exemptions must be documented in writing by clergy or a religious official.* I prepared my letter of request based on this information. I was unable to obtain a letter from “clergy” in part because of availability and also because my religion does not recognize official clergy. For that reason, I hesitated on whether I should apply, but decided to move forward to the application process anyway. Upon logging in to the SOLAS application system, I discovered that the process consisted of me uploading a letter explaining my sincerely held religious belief and/ or a letter from clergy or a religious official.
15. I was not given any instruction to specifically ask for a reasonable accommodation with the exemption request. The application system did not include any employer-created forms and the application instructions asked only for explanation of sincerely held beliefs.
16. On September 20, 2021, I submitted my request for religious exemption. I requested the religious exemption on the basis that I am a Muslim, in faith and practice who believes in the Sacred Texts of *The Holy Quran, The Bible, and Hadith (teachings from the life of Prophet Muhammad PBUH)*.
17. On September 22, 2021, I received an email from the NYCDOE address solas_donotreply@schools.nyc.gov notifying me that my request for religious exemption had been denied. (Attached is the notification as Exhibit B.) The denial of the request did not contain a reason. The letter stated that *“has failed to meet the criteria for a religious based accommodation.”* Also, the letter explained that *“Per the Order of the Commissioner of Health, unvaccinated employees cannot work in a Department of Education (DOE) building or other site with contact with DOE students, employees, or families without posing a direct threat to health and safety. We cannot offer another worksite as an accommodation as that would impose an undue hardship (i.e. more than a minimal burden) on the DOE and its operations.*

18. Before my exemption was denied, no one from the NYCDOE or from my school spoke to me or contacted me about what accommodations I might need to continue working if my exemption were to be granted.
19. Included in the letter notifying me of the denial of my exemption request, was information regarding my right to appeal and the process by which I could submit an appeal. The letter stated *"Under the terms of the Arbitration Award, you may appeal this denial to an independent arbitrator. If you wish to appeal, you must do so within one school day of this notice by logging into SOLAS <https://dhrnycaps.nycenet.edu/SOLAS> and using the option "I would like to APPEAL". As part of the appeal, you may submit additional documentation and also provide a reason for the appeal."*
20. I did not receive any information regarding what additional information or documentation was required to apply. Additionally, the denial letter did not specify which "criteria" my exemption request failed to meet. I was given **one school day** to request an appeal through the SOLAS system.
21. September 23, 2021, I followed up by logging into the SOLAS system and submitting an appeal the next day. As a part of the process I was required to (1) type a brief explanation of my "reason for appeal" in a text box form (2) upload any additional document in support of my request, but not to upload previously submitted documents.
22. After submitting the application, I received email confirmation of my submission to my NYCDOE email. Within the body of the submission confirmation email, I was also informed that my appeal request and documents, if uploaded, would be forwarded to an independent arbitrator, Scheinman Arbitration and Mediation Services ("SAMS"), and that if I had additional documentation to submit, I could do so by forwarding the materials from my NYCDOE email to the applicable addresses provided within 48 hours.

UFT: AppealsUFT@ScheinmanNeutrals.com

CSA: AppealsCSA@ScheinmanNeutrals.com

Local 237: AppealsTeamstersLocal237@ScheinmanNeutrals.com

Local 891: AppealsLocal891IUOE@ScheinmanNeutrals.com

23. Subsequently, on September 29, 2021, I received notice from the arbitrator assigned to my appeal, Julie A. Torrey, that an Appeal Hearing had been scheduled for me for September 30, 2021 at 11:00 am via Zoom. The letter further explained that my principal was required to provide a “quiet space” and coverage for my duties during the time of the hearing.
24. After receiving notice of the hearing, I contacted my union chapter leader to inquire about the possibility of union representation at the hearing as well as advice on what to expect/ how to prepare for the appeal hearing. The union chapter reached out to our district representative, Patricia Crispino, who informed the chapter leader that someone would reach out to me via phone or email to discuss the matter.
25. I received an email from a union representative, Michael Herron, informing me that he was aware of my appeal hearing and asking if I wanted representation during the hearing. I requested a phone meeting before the hearing, however, that did not happen. I met with Mr. Herron via Zoom at the time of the hearing.
26. A colleague was assigned to cover two of my class periods, allowing me to participate in the hearing via zoom from my classroom. During the hearing, the arbitrator, Julie A. Torry introduced herself and meeting participants; myself, the union representative (Michael Herron), and lawyer for the NYCDOE. She stated the purpose of the hearing was to review an appeal of the denial of submitted religious exemption from the Covid 19 Vaccine mandate.
27. The hearing proceeded as follows: (1) I was sworn in before I provided testimony (2) The union representative asked to be placed in a Zoom Breakout Room to introduce himself to me and clarify the case. (3) Upon return to the main room, the arbitrator asked me to verbally explain my reason for requesting an exemption. (4) I summarized my sincerely held beliefs as stated in my written exemption request. (5) The lawyer representing the NYCDOE responded to my statement by quoting Health Commissioner Choksy on the contents of the vaccine and stated that I had not submitted a letter from clergy in support of my exemption request. (6) The UFT representative requested another Breakout room be created to speak to me privately. (7) In the breakout room, the UFT representative asked me how I intended to respond to the issues/ questions raised by the NYCDOE lawyer. (8) Upon return to the Main room, the arbitrator

said that I could respond to the NYCDOE lawyer's questions. (8) I reiterated part of my statement which had been misconstrued by the NYCDOE lawyer. I also explained my religion's views on "clergy" (not recognized by my religion). (9) The arbitrator asked additional questions: *Have you ever been vaccinated? Do you take over the counter medication?* (9) After I responded to these questions, the arbitrator stated that I would be notified of a decision at a later date and ended the Zoom meeting.

17. On October 1, 2021, I received an email from the email address vaccineappeals@scheinmanneutrals.com with an attachment of the Arbitrator Award document stating that my appeal was denied. The arbitration decision was dated September 30, 2021 and signed by arbitrator Julie A. Torrey. The denial was followed by a statement "*Appellant failed to establish entitlement to a religious exemption .*" **Exhibit D**

18. On October 2, 2021, I received an email notifying me that I was placed on Leave without pay starting on October 4, 2021, due to my unvaccinated status. The Notice also provided options to either resign and waive my right to challenge the resignation, or to continue to stay on "leave without pay" through Sept. 5, 2022 and again waive my rights. This letter was coercive and intimidating in order to force me to take the vaccine. **Exhibit E**

19. On November 19, 2021, I received an email from NYCDOE Division of Human Resources with the subject line "New Appeal Option for Religious Exemption to the COVID-19 Vaccine Mandate" The notice stated that "*other City employees now have an option to appeal a religious exemption denial by their agency to a central Citywide Panel. Based on your status, you now have an opportunity to also appeal to this Citywide Panel.*" It also stated that my "request will be considered by a central Citywide Panel composed of representatives of the Commission on Human Rights, the Department of Citywide Administrative Services, and the Office of the Corporation Counsel. The determination will be made by the panel according to the standards imposed by Title VII of the Civil Rights Act of 1964, the New York State Human Rights Law, and the New York City Human Rights Law." In order to reapply for the appeal, I was required to: (1) submit the new appeal application via SOLAS. (2) Submit the appeal by Friday, 11:59pm on December 3, 2021. (3) materials already submitted did NOT

need to be resubmitted (4) documentation from a religious official is not required but you are free to submit it. Also, the letter stated that I did not need to submit documentation from clergy or religious officials, and that I would remain on Leave Without Pay until a decision was made, after which I would have 7 days from the decision to apply for a Leave Without Pay extension. Also included was a screenshot of the Step-by-step process to follow once inside the SOLAS system. **Exhibit F**

20. On December 3, 2021, I submitted my second appeal request via SOLAS. In the SOLAS system I was asked to include an explanation of reason(s) for appeal. I wrote and uploaded an additional letter, summarizing my sincerely held beliefs and why they prevent me from participating in the Covid19 Vaccination, as well as a summary of my experience during the appeals hearing during which NYCDOE representatives made statements reflecting a misunderstanding of my religion and religious beliefs as they relate to the vaccine. At the conclusion of my appeal, I also stated that “I am open to any restorative processes that can facilitate my continuing to serve the young people and families of New York City Public Schools while honoring my sincere religious beliefs and practice of my faith.”
21. On January 7, 2022, I received an email from NYCDOE Division of Human Resources with the Subject Line “*Your Appeal to the Citywide Panel - Additional Information*” In this letter, I was told that my appeal to the Citywide Panel had been submitted. I was asked to submit additional information, including (1) Whether I have previously taken vaccinations (2) describe this with more clarity, describing any other commonly used medicines, food/drink and other (3) more information about my stated objection to use of derivative fetal cells in the development of a vaccine, and whether there are other medications or vaccinations that I do not take because of this objection. (4) additional occasions you have acted in accordance with the cited belief outside the context of a COVID-19 vaccination. All additional information was to be forwarded to PanelAppealUpdate@schools.nyc.gov by Friday, January 14, 2022 at 8:00 pm
- Exhibit G**

22. To date, I have not been contacted by anyone from the NYCDOE to speak about any reasonable accommodation that could be provided or discuss my options for accommodations
23. I have filed an EEOC Complaint and requested a right to sue.
24. On March 7, 2022, I received a notice that my appeal was denied. See **Exhibit H**
25. On March 8, 2022, I received a follow-up notice regarding my appeal denial, against informing me of my option to resign and waive my rights or get vaccinated. Again, this was harassment and intimidation to coerce me to go against my religious beliefs. See **Exhibit I**
26. On March 21, 2022, I received a final notice of termination. See **Exhibit J**
27. I have not received a Charge notifying me that I have been terminated for “cause” pursuant to NY City Education Law §3020, which is the ONLY basis for which I can be legal terminated.
28. During this entire process of seeking to continue to work unvaccinated, I was never informed about my rights under the Occupational Safety and Health Act, which I just learned of as of this affidavit. I have never been trained in Covid Safety Protocols nor have I been told that I had a right to be provided with workplace equipment that would allow me to continue to work in my unvaccinated status despite the existence of the virus that causes Covid has been declared to be in New York City school buildings.
29. The Court has determined that the agreement between the NYCDOE and the City only allowing religious exemptions for certain religions was unconstitutional.
30. Throughout this process, the constant harassment and coercive nature of the communication and actions taken by the NYCDOE, have created tremendous emotional stress and anxiety for me as I navigate this situation as well as my responsibilities to my family. and community. As a mother and head of household who has been the sole provider for my children, the inability to provide or guarantee stability and emotional security for them during this time, as we all continue to navigate the impacts of the pandemic, has been heart-breaking. As always, I turn to my faith for support. Still, the experience has been horribly stressful and emotionally painful.

31. It has been especially difficult to balance responding to the constant pressure from the NYCDOE, and responding to the needs of my youngest child, a high school senior (soon to be NYC Public School graduate), who should be able to celebrate her hard work and resilience (learning and succeeding through two years of a pandemic) with her mother. Having to split my attention between where it should be (senior pictures, PTA meetings, college applications), and the “new normal” of emails about “consequences of non-compliance” and imminent “unilateral termination” has taken a toll on and dampened the spirit of the entire household. This time and the “senior year” and pre-college planning is an experience our family will never have again.
32. Wanting to shield my family from additional worry and stress, I often isolate myself to express my sadness and disappointment in the injustice of the situation privately. In addition to my personal conversations with the Creator through my own prayer practice, I am grateful that I can express my emotions during my bi-monthly prayer and conversation circles with my online interfaith community, and in the restorative talking circles I participate in with others who are feeling the impact of this time. Both have been therapeutic for me, yet I know that the only real relief from the distress is through remedy and provision of reasonable accommodations that allow me to return to serving as an educator and restoring some of the stability in my day-to-day-life.
33. As a native New Yorker who has lived in, loved, and served my city for all my life, it is painful to think that I might have to move out of the City of New York to seek another job if the NYCDOE is not enjoined from continuing to deprive employees of reasonable accommodation.
34. As the eviction moratorium looms, and I am for the first time in the last 22 years of my life without and restricted from gainful employment and income, I am now vulnerable to the threat of eviction if I do not obtain relief.
35. Additionally I have experienced the gradual destruction of my financial profile and denial of access to tax-payer funded financial resources that will continue to negatively impact me and my family, even after the remedy of restoration of employment and lost income is granted. These negative impacts include:
- A. As this “Leave Without Pay,” created by the NYCDOE as a consequence of non-compliance with Covid 19 vaccine mandate, comes with the

stipulation that the time on leave is “not pensionable,” The benefits of employer funds matching, compounded interest on investments and TRS stock investment during this period will not be received and cannot be recovered.

- B. Because this time is not pensionable, the service time required for me to receive full pension benefits will be pushed back. I was also told by a UFT pension specialist, that if I were to separate from or be separated from service today, I would suffer a 27% reduction in pension payout for the rest of my life at the point of retirement.
- C. I am currently unable to purchase additional service credit due to the fact that I, (1) am not on payroll and unable to make bi-weekly payroll deductions towards service credit purchase, and (2) have no income and am restricted from gainful employment with the NYCDOE or elsewhere, making it impossible for me to pay for service credit out of pocket.
- D. I no longer have the means to pay for non-basic needs expenses which are essential to the wellbeing of my family, namely (1) the out-of-network expenses for therapy sessions for my daughter with a clinician we have come to trust and (2) access to nutrition plan and naturopathic resources & practitioners services that have been helping me to reverse underlying health condition.
- E. With no NYCDOE income and restriction from earning income elsewhere, I struggled to make on-time payments for my monthly expenses and am forced to rely on credit to stay afloat. As a result, my credit bureau ratings have decreased. As a parent and sole financial provider for my household, I fear that a negative credit rating will limit my ability to support my youngest child, who is a graduating senior, with financing her first year of college.
- F. Being placed in the “limbo” of being “employed” but “unpaid” makes it impossible to continue to independently support myself and my family financially, and renders me ineligible for receiving social services and financial support during the time when I need it most. For example, as we were informed during an October 6th UFT Zoom webinar, as an LWOP teacher, we are not allowed to receive unemployment as long as

we remain employed and receive health insurance. Additionally, as I complete applications for other tax-payer supported social supports (emergency rental assistance, utility assistance, Supplemental Nutrition Assistance, Federal Financial Aid), I am repeatedly faced with questions regarding “employment status” and “income” to determine my eligibility.

36. After having worked through the unprecedented circumstance of the Covid 19 Pandemic, making the necessary adjustments as a teacher to support my students academically, socially and emotionally, I had hoped that the 2021-22 school year would be a gentle gradual and reopening for students, families and school staff. When the mayor and school chancellor announced the aggressive fully in-person return to school, I was concerned; but, just as I had taught through the September 11th attacks, Hurricane Sandy disaster and the myriad of constant challenges faced by the community in which I live and serve, I told myself that *this was possible*.
37. I returned to my school building, my classroom, and most importantly, my students, with optimism. I submitted to required weekly Covid testing, masking, physical distancing, temperature checks and health screenings every day. I created a digital classroom, as instructed, in case the schools might have to be shuttered again and pivot to remote. But as I attempted to create a supportive and restorative culture in my classroom, I was faced with a growing culture of intimidation, intolerance, and targeting within the system I was serving- the NYCDOE. There was the increasingly harassing communication from the NYCDOE officials, using divisive language comparing rights and restrictions for “the vaccinated” and “unvaccinated” staff & students, being routinely & publicly questioned about my vaccination status, being constantly warned of the “consequences” of non-compliance. There were the media soundbytes of the school chancellor, mayor and governor, speaking without compassion about how “replaceable” non-compliant teachers are. Finally, being removed without a trace from the classroom & school premises with instructions “not to contact students and families,” has created additional trauma (on top of Covid 19 trauma), for both myself and my students—some of whom have reached out to inquire about why I have not returned but received no reply from me or clear answer from the DOE. We are all left without any means of closure.

I declare under penalty of perjury under the laws of the State of New York that the foregoing is true and correct.

Zena Wouadjou
ZENA WOUADJOU

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

Subscribed and sworn to (or affirmed) before me on this 14 day of April, 2022, by Z. WOUADJOU, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Witness my hand and official seal.

Raymond Bivins
Signature of Notary Public

[Affix Notary Seal]

RAYMOND BIVINS
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01BI6235564
Qualified in New York County
Commission Expires February 14, 2023

Vaccine Portal
DOE Vaccination Portal

D

Division of Human Capital

Thu 8/12/2021 11:33 AM



Report Phishing - Report phishing to help stop future attempts



To:

- Division of Human Capital

Dear Colleagues,

Recently, Mayor de Blasio announced that as of September 13, 2021, all City employees, including DOE employees, are required to provide proof of COVID-19 vaccination or a negative COVID-19 test once every seven days. Employees who have received at least one dose of the COVID-19 vaccine by September 13 will not have to submit weekly test results. (Employees who have one dose but who are not fully vaccinated by September 13 will still be expected to update their records when fully vaccinated to continue to be exempt from the weekly testing requirement.)

In order to be exempt from the weekly testing requirement, you must submit proof of vaccination using the DOE's Vaccination Portal, here: <https://vaccine.schools.nyc/>. For more information and updates, visit the [COVID-19 Vaccination Portal page](#) on the DOE InfoHub.

The Vaccination Portal allows you to provide the DOE your vaccination status and to upload proof of vaccination, which can be an image of your vaccination card, NYS Excelsior Pass, or other government record. Submitting this information will support New York City's pandemic response and recovery efforts, and help ensure that the DOE is a safe place to work for all employees.

The portal will also be enhanced to allow staff who do not submit proof of vaccination to submit the required weekly COVID-19 test results. More details regarding the weekly COVID testing requirement will be shared prior to September 13.

The privacy and security of your information will be protected by technical, physical, and administrative safeguards, including encryption. This information will be kept confidential in accordance with federal, state, and local laws. If you encounter technical issues using the Vaccination Portal, please contact the DOE Help Desk by [opening a ticket online](#) or calling 718-935-5100.

For more information about where to get vaccinated, visit vaccinefinder.nyc.gov or call 877-VAX-4-NYC.
For more information on where to get tested, visit
<https://www.nychealthandhospitals.org/covid-19-testing-sites/>.

Sincerely,

Safety protocols for the coming school year

From: UFT President Michael Mulgrew (noreply@uftmail.org)

To: zwouadjou2000@yahoo.com

Date: Thursday, August 26, 2021, 07:33 PM EDT

[View Online](#)

[Your Rights](#) [Your Benefits](#) [Your Union](#)

Dear Zena,

The city today released its full health and safety plan for the 2021-22 school year, which builds on the strategies we used successfully last school year to keep our school communities safe.

Health and safety continues to be our top priority. We have been working with city and DOE officials throughout the summer to ensure that our members and our students remain safe when schools fully reopen in September amid the pandemic.

New York City schools will follow similar health and safety protocols as last school year on cleaning, ventilation, masks and personal protective equipment, and daily health screening.

Here are highlights of other features of the plan:

Physical distancing in schools

The DOE will follow the CDC recommendation to maintain at least 3 feet between students within classrooms. When it is not possible to maintain 3 feet in a given school, the DOE advises layering multiple other prevention strategies. During meal service, schools will use outdoor spaces and additional spaces in school buildings where possible.

COVID-19 testing in schools

Every school will have 10 percent of unvaccinated individuals who have submitted consent for testing in their school population tested biweekly. Students and staff who are fully vaccinated are not required to be tested.

Positive cases of COVID-19 in schools

Elementary Schools: If there is a positive case in a classroom, all students in the class will be instructed to quarantine for 10 calendar days.

Middle and High Schools: In the event there is a positive case in a classroom, students who are:

- At least 12 years old, vaccinated and not showing symptoms will continue to attend school in-person.
- At least 12 years old, vaccinated and showing symptoms will be directed to quarantine for 10 calendar days.
- Unvaccinated will be directed to quarantine for 10 calendar days. Those students who test negative on Day 5 of their quarantine can return to school on Day 7.

Remote Instruction

The mayor has finally acknowledged the need for virtual instruction for medically fragile children and for those in quarantine, something we have maintained was necessary since last spring.

We are still working out the details of this remote instruction and other challenging aspects of the safety protocols, and we will continue to push for acceptable solutions to these issues at the bargaining table.

[See the full plan](#)

Starting Aug. 31, we will train the COVID-19 building response team in every school to ensure all protocols and procedures are being followed correctly. We will be reaching out to chapter leaders with more details next week. More than 3,000 UFT members benefited from this training last fall.

Update on the vaccine mandate

We are moving ahead with impact bargaining with the city on its new vaccine mandate for DOE employees. While the UFT is a proponent of the vaccine, and we know an overwhelming majority of our members have already been vaccinated, we have a duty to make sure that the city's mandate is implemented correctly and legally.

In impact bargaining, we will ensure that the city respects our members' rights by law and the DOE-UFT contract as it implements the mandate. We will be working at the bargaining table to ensure a fair and equitable process for medical and religious exemptions, an independent review and appeal process for members who are

denied an exemption, and an appropriate outcome for members who decline to be vaccinated.

The Municipal Labor Committee is weighing a lawsuit challenging the city Department of Health's authority to mandate the vaccine. Although our attorneys believe the mandate has a strong legal foundation, as part of the MLC, we support its effort to ensure that every detail of this mandate meets the relevant legal standards.

We know you still have questions as you prepare for the opening day of school in September. We will continue to update you on the latest developments. I hope you are able to attend our next all-member town hall on Thursday, Sept. 2, where I will report on these topics and more.

Sincerely,



Michael Mulgrew
UFT President

United Federation of Teachers
A Union of Professionals
52 Broadway, New York, NY 10004

This email was sent to: zwouadjou2000@yahoo.com

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COVID-19 Vaccination Mandate Related Exemption or Accommodation Application

Division of Human Resources <DHR@schools.nyc.gov>

Sat 9/18/2021 10:47 AM

To: Division of Human Resources <DHR@schools.nyc.gov>

Dear Colleagues,

We are writing to let you know that DOE staff members may now apply in SOLAS for a COVID-19 Vaccination Mandate Related Exemption or Accommodation.

This COVID-19 Vaccine Related Exemption and Accommodation application is for:

- Religious Exemption requests to the mandatory vaccination policy
- Medical Exemption requests to the mandatory vaccination policy
- Medical Accommodation requests where an employee is vaccinated but is unable to mount an immune response to COVID-19 due to preexisting immune conditions.

Applications should be made via the following process:

- Applications must be made using the [Self-Service Online Leave Application System \(SOLAS\)](#).
- In SOLAS, employees should select the initial option to "Request Accommodation" and then the option to apply for an Exemption and Accommodation for COVID Vaccine-Related Reasons, and then indicate the category for the application.
- All applications require supporting documentation which must be submitted at the time of application.

More information can be found on the [Coronavirus Staff Update InfoHub page](#).

Thank you,

NYCDOE Division of Human Capital

SCHEINMAN ARBITRATION AND MEDIATION SERVICES

----- X

In the Matter of the Arbitration X

between X

NEW YORK CITY DEPARTMENT OF EDUCATION X

Re:UFT.1516

and X

ZENA WOUADJOU X

----- X

Issue: Religious Exemption

Date of Hearing: September 30, 2021

Award

APPLICATION FOR EXEMPTION: GRANTED [] DENIED [X] OTHER []

On the record before me, Appellant failed to establish entitlement to a religious exemption.

Julie Torrey

Arbitrator Julie A. Torrey

9/30/21

Date

Notice of Leave Without Pay - PLEASE READ

NYCDOE <noreply@schools.nyc.gov>

Sat 10/2/2021 3:12 PM

To: Wouadjou Zena <ZWouadj@schools.nyc.gov>

Dear Zena Wouadjou,

You are receiving this message because **you are being placed on a Leave Without Pay (LWOP) because you are not in compliance with the DOE's [COVID-19 Vaccine Mandate](#)**. If you are a substitute or in certain titles you have been placed in another inactive status, not a LWOP. **This means you must not report to your work or school site beginning Monday, October 4th.**

While you are on Leave Without Pay (LWOP), you:

- Cannot work and will not receive compensation, but you will continue your medical benefits
- Cannot use annual leave, CAR or sick time
- Cannot enter your work or school site
- Cannot reach out to students or families

In order to return from LWOP status, you must complete two steps using the [DOE Vaccination Portal](#)

1. Upload proof that you have received your first dose of a COVID-19 vaccine. **Proof of COVID-19 Vaccine can be an image of your vaccination card, NYS Excelsior Pass, or another government record**
2. E-sign the attestation stating that you are willing to return to your worksite within seven calendar days of submission.

Once you have completed these two steps, your HR Director and supervisor will also be notified and will work with you to plan your return date.

If you have been vaccinated this weekend and upload this information by Monday morning, you may report to work as usual on Monday, October 4th, and you will be put back on active status.

On Monday, October 4th, if you have an acceptable proof of vaccination (e.g., vaccination card, NY State Excelsior pass, or other government record) but have not been able to upload to the [DOE Vaccination Portal](#), you may show your proof to the School Safety Agent and/or Principal (or designee) at the door. You will be allowed in the building, and you must immediately upload proof of vaccination to the Vaccination Portal and confirm that you would like to return to work in order to ensure there is no break in payroll.

If you encounter technical issues accessing the Vaccination Portal, please contact the DOE Help Desk by [opening a ticket online](#) or calling 718-935-5100. If you need support uploading your proof of vaccination, please contact your principal or HRD who can do so on your behalf.

Please be advised that if you do not intend to return to the DOE after October 1, 2021, you will need to return all DOE property, including computers, IDs, blackberries, and keys, immediately. Failure to return any DOE property that has been assigned to you will delay the processing of your final payment and any payout of leave time.

Employees represented by UFT or CSA who have been placed on LWOP due to vaccination status may select (in SOLAS) special separation or leave options per the arbitration award:

- **Separation with benefits** (available in SOLAS as of Monday, October 4): Employees choosing to separate under this option:
 - **Must share their intention to separate via SOLAS by October 29, 2021.**
 - Will be required to waive their rights to challenge the involuntary resignation, including, but not limited to, through a contractual or statutory disciplinary process
 - Will be eligible to be reimbursed for unused CAR/sick leave on a one-for-one basis at the rate of 1/200th of the employee's salary at departure per day, up to 100 days, to be paid out following the employee's separation
 - Will be eligible to maintain health insurance through September 5, 2022, unless they have health insurance available from another source.
- **Extend the leave without pay due to vaccination status through September 5, 2022** (available in SOLAS as of Monday, November 1 through November 30, 2021):
 - Employees choosing this option will also be required to waive their rights to challenge their involuntary resignation, including, but not limited to, through a contractual or statutory discipline process
 - They will remain eligible for health insurance through September 5, 2022
 - Employees who have not returned by September 5, 2022 shall be deemed to have voluntarily resigned
- Beginning December 1, 2021, the DOE will seek to unilaterally separate employees who have not selected one of the options above or otherwise separated service.

For more information about where to get vaccinated, visit vaccinefinder.nyc.gov or call 877-VAX-4-NYC. For the latest COVID-19 staffing updates, please [visit the Coronavirus Staff Update InfoHub page](#).

Sincerely,

NYCDOE Division of Human Capital

New Appeal Option for Religious Exemption to the COVID-19 Vaccine Mandate

Division of Human Resources <DHR@schools.nyc.gov>

Fri 11/19/2021 5:36 PM

 1 attachments (378 KB)

Directions to use SOLAS to Request Appeal to Citywide Panel.pdf;

Dear Colleague,

According to our records, you appealed a denial of a religious exemption to the COVID-19 vaccine mandate and that appeal was not granted by the third-party arbitrator. As you may be aware, other City employees now have an option to appeal a religious exemption denial by their agency to a central Citywide Panel. Based on your status, you now have an opportunity to also appeal to this Citywide Panel.

Please note the following about this new appeal option:

- Your request will be considered by a central Citywide Panel comprised of representatives of the Commission on Human Rights, the Department of Citywide Administrative Services, and the Office of the Corporation Counsel. The determination will be made by the panel according to the standards imposed by Title VII of the Civil Rights Act of 1964, the New York State Human Rights Law, and the New York City Human Rights Law.
- To submit this appeal, you will use SOLAS, as you have before. Specific login instructions are below. There is no need to re-submit any materials you already included in your original application or in SOLAS as part of your appeal to the arbitrator, however, you may submit new documentation when you submit this appeal in SOLAS. Note that documentation from a religious official is not required but you are free to submit it.
- To be considered by the Citywide Appeal, you must submit the appeal via SOLAS by no later than 11:59 pm on Friday, December 3, 2021.
- While your new appeal is pending you will remain on Leave Without Pay status. However, the deadline to apply for the extension of your Leave Without Pay will be extended until seven calendar days after your new appeal is resolved.
- If you opted for the special provisions separation, you still may re-appeal. If your new appeal is approved, then you will be given a choice to be reinstated.

To make an appeal using this procedure:

1. Log into [SOLAS](#)
2. Click the button **at the bottom-right of your screen** titled "Apply for Leave/Exemption/Accommodation"
3. Go to section "COVID-19 Vaccine Related Exemption or Accommodation" (scroll down if needed)
4. Select "I would like to APPEAL"
5. Provide your consent by clicking "OK" on the pop-up
6. Enter reason for appeal
7. **Optional:** upload additional documentation for appeal
8. Click "Confirm Appeal"
9. Click "OK" on the pop-up
10. You should see the option text changed to "Your appeal is pending a determination"

A copy of these instructions with screenshots from SOLAS is attached to this message. Please do not reply to or forward this message.

Thank you,

NYCDOE Division of Human Capital

Your Appeal to the Citywide Panel - Additional Information

Division of Human Resources <DHR@schools.nyc.gov>

Fri 1/7/2022 7:06 PM

Colleague,

Your appeal of your religious exemption to the COVID-19 vaccine mandate has been submitted to the Citywide Appeal Panel. To assist the Citywide Appeal Panel in reviewing your religious exemption request, please provide the following additional information by Friday, January 14, 2022 at 8:00 pm:

1. Whether you have previously taken any vaccinations.
2. If you have stated that you have a personal religious aversion to foreign or other impermissible substances entering your body, please describe this with more clarity, including describing any other commonly used medicines, food/drink and other substances you consider foreign/impermissible or that violate your religious belief.
3. If you have stated that you cannot take the vaccine because of an objection to using derivative fetal cells in the development of a vaccine, please provide more information about your stated objection and whether there are other medications or vaccinations that you do not take because of this objection.
4. Any additional occasions you have acted in accordance with the cited belief outside the context of a COVID-19 vaccination, to the extent not previously described in the documentation already submitted.

To submit this information, please follow the steps below:

- Written responses should be sent in as an attached document to PanelAppealUpdate@schools.nyc.gov (*Do not send, copy, or reply to this email.*)
- Written responses must be received by email by Friday, January 14, 2022 at 8:00 pm
- Only attach new information/document - do not resend documentation that was already provided.
- Include your Name and Employee ID number in the subject line of your email.

If additional information is not provided, the Panel will consider your appeal based on the materials/information you already submitted through SOLAS.

Thank you,

NYCDOE Division of Human Resources

Reasonable Accommodation Appeal Determination

noreply@salesforce.com <noreply@salesforce.com>

on behalf of

NYC Employee Vaccine Appeals <vaxappeal@dcas.nyc.gov>

Mon 3/7/2022 2:07 PM

To: Wouadjou Zena <ZWouadj@schools.nyc.gov>

The City of New York Reasonable Accommodation Appeals Panel has carefully reviewed your Agency's determination, all of the documentation submitted to the agency and the additional information you submitted in connection with the appeal. Based on this review, the Appeals Panel has decided to deny your appeal. This determination represents the final decision with respect to your reasonable accommodation request.

The decision classification for your appeal is as follows: The employee has failed to establish a sincerely held religious belief that precludes vaccination. DOE has demonstrated that it would be an undue hardship to grant accommodation to the employee given the need for a safe environment for in-person learning

For all employees other than DOE employees: Pursuant to the City of New York's policy concerning the vaccine mandate, you now have **three business days** from the date of this notice to submit proof of vaccination. If you do not do so, you will be placed on a leave without pay (LWOP).

For Department of Education (DOE) employees: Pursuant to New York City Department of Education policy, you have seven calendar days to extend your Leave Without Pay or return to work. If you do neither, you will be subject to termination. For further information and instructions, please see [DOE Denial of Appeal Information](#).

You have received notice that the City of New York Reasonable Accommodation Appeals Panel has denied your appeal.

If you selected to separate by October 29, 2021, or selected to extend your Leave Without Pay (LWOP) by November 30, 2021, no further action is required.

If you remain non-compliant with the New York City Health Commissioner's Order requiring vaccination of all NYCDOE staff, have not already opted to separate or extend your LWOP, and do not opt within 7 calendar days of the notice of the citywide panel's denial of your appeal to extend your LWOP or return from LWOP status, you will be terminated from service with the NYCDOE. Please note that your health insurance coverage through the City will also cease upon termination. You must return all DOE-issued equipment and materials, including your ID, to your supervisor. Information about COBRA will be mailed separately to you at the address on file in NYCAPS. Your school and/or office will be notified of your termination as well.

If you would like to extend your LWOP status, you may do so by logging into [SOLAS](#) and stating your intention **by no later than 7 calendar days after the citywide panel's notice**. Employees choosing this option:

- Will remain eligible for health insurance through September 5, 2022.
- May seek to return from this leave prior to September 6, 2022 by following the steps below on returning from LWOP status. Employees who have not returned by September 6, 2022 shall be deemed to have voluntarily resigned.
- Must waive their rights to challenge such resignation, including, but not limited to, through a contractual or statutory disciplinary process

If you would like to return to work from LWOP status, you must complete two steps using the [DOE Vaccination Portal](#) **by no later than seven calendar days after the citywide panel's notice**:

- a. Upload proof that you have received your first dose of a COVID-19 vaccine. Proof of COVID-19 vaccine can be an image of your vaccination card, NYS Excelsior Pass, or another government record.
- b. E-sign the attestation stating that you are willing to return to your worksite within fourteen calendar days of submission.

Once you have completed these two steps, your HR Director and supervisor will also be notified and will work with you to plan your return date. If you encounter technical issues accessing the Vaccination Portal, please contact the DOE Help Desk by [opening a ticket online](#) or calling 718-935-5100. If you need support uploading your proof of vaccination, please contact your principal or HRD, who can do so on your behalf.

If you believe you have received this notice in error because you have submitted proof of vaccination, please contact LWOPQUESTIONS@SCHOOLS.NYC.GOV immediately.

Appendix #33

**AFFIDAVIT
T. MARTIN**

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

T. MARTIN, being first duly sworn on oath, deposes and declares as follows:

1. I am above the age of 18, and I am competent to make this affidavit.
2. I have worked as a Child Protective Specialist /Child Protection Manager, (CPM), for New York City Children’s Services, (NYCACS), for over 24 years, since my employment to the agency in November, 1996.
3. I have contributed profoundly to the Division of Child Protection for NYCACS. Since 1996, my diligent job performance, supported progressive promotion from a Child Protective Specialist, (CPS), to Child Protective Specialist Supervisors I & 2.
4. My last promotion was to Director of Field Operations, where I worked in the capacity of Child Protection Manager, from 2006 to current. I have worked in the Division of Child Protection, where I gave exemplary services to the Children and Families of New York City, as well as the staffers that I have supervised over the years. I hold a Master of Science degree in Social Work.
5. In my role as a Director of Operations/ Child Protection Manager, (CPM), I am responsible for oversight of 3-4 child protective units. The unit consists of 1 child protective specialist supervisor 2, and up to 5 Child Protective Specialist, (CPS). As the CPM, I manage the day to day operations of protective services units responsible for reports of Child Abuse and Neglect.
6. I provide direct supervision, coaching and guidance to 3-4 child protective supervisors. I am responsible for all compliance and quality case practice initiatives, monitor field activities of the supervisory and child protective specialists. As a CPM, I ensure that operations conform to all applicable federal, state, local mandates and

- agency guidelines. I am responsible for monitoring and evaluating the results of operations by reviewing aggregate and individual performance data.
7. Provide Crisis Intervention, Training, Individual, and Group coaching to support difficult case management needs. Collaboration with internal and external stakeholders to support solutions. Complete progress reports related to critical or media cases. Create and implement management controls to monitor the performance of individual zones and /or units.
 8. Convened regular staff meetings and or individual conferences to monitor performance and support improvement of staffing needs within the team. Prepare performance evaluations, including recognizing outstanding achievements or making disciplinary referrals where appropriate. Collaborated with team members to identify and accomplish agency objectives.
 9. **REMOTE WORK** - At the onset of the COVID-19 Pandemic, all staffers within the Division of Child Protection were afforded approval to telework. During this time, we worked remotely for 4 days, and was required to come into the office on 1 day to support administrative tasks that could not be performed remotely. At the onset of the COVID-19 Pandemic, all staffers within the Division of Child Protection were afforded approval to telework. During this time, we worked remotely for 4 days, and was required to come into the office on 1 day to support administrative tasks that could not be performed remotely. As a Child Protection Manager, I worked remotely for approximately 18 months, (March 12, 2020 – September 2021).
 10. On or around 10/25/21 and 10/28/21, an email was shared to all staffers regarding Covid-19 vaccine mandate. This email also provided directions for requesting Reasonable Accommodation. See **Exhibit A**
 11. On 10/26 & 10/27—I submitted documentation (via reasonable accommodation form to human resources, to request reasonable accommodation based on my religious held sincerely belief. See **Exhibit B**

12. **Accommodation Denial** - On 11/16/21- I received an email along with a copy of my reasonable accommodation request attachment from EEO, Assistant Commissioner, Mr. Siheem Rosenborough to inform me that my reasonable request accommodation was denied.
13. In this denial, Mr. Rosenborough cited the following, "*The employee expresses general anxiety and their personal beliefs concerning matters of fact and less about how the vaccine would violate a sincerely held religious, moral or ethical belief.*" It should be noted that I was never granted a hearing, neither was I granted the opportunity to speak with anyone regarding my request for reasonable accommodation, based on my religious sincere beliefs. Mr. Rosenborough's statement, as noted above, **was not a true representation** of my request for reasonable accommodation based on my sincerely held religious belief.
14. Specific guidance in the document also shared guidance and timeframe to request an appeal. It should be noted that the turn around time for an appeal of this denial only provided a 3-day window for submission of an appeal. See **Exhibit C**
15. On 11/18/21—I submitted an appeal for religious reasonable accommodation, based on the denial of accommodation shared by Mr. Rosenboroguh. See **Exhibit D**.
16. During the timeframe of my appeal, the office of Human Resource –ask.HR portal shared guidance that I am to submit to weekly Covid-19 PCR test pending my appeal decision. For this timeframe I adhered to weekly Covid-19 PCR testing and submitted results as required. It should be noted that I submitted to weekly testing by a reputable urgent care team, c/o Northwell Urgent Care.
17. 12/3/21—Human Resources, ask.HR sent me an email to inform that my reasonable accommodation request was granted, and I am to submit to weekly Covid-19 PCR testing and submission of test results. I was also provided guidance

on the expected requirement for submission of weekly PCR screening. See **Exhibit E**

18. During the period of October 2021 to December 2021. I adhered to weekly submission of Covid-19 PCR testing. These test results were submitted weekly to the ACS Covid portal as requested. During this timeframe of weekly Covid-19 testing, all my test results were negative.
19. On 12/22/21, I received email communication from VaccineAppeals to inform me that my records showed noncompliance with vaccine mandates, and I was given the date of 1/2/22 to submit to vaccine mandates, or I would be on Leave Without Pay, (LWOP), effective 1/3/22. This documentation shared no explanation or reason for denial given. There was no accommodation made for an appeal. See **Exhibit E**
20. Based on the discrepancy in the letters I received on 12/3 and 12/22, I continued to report to work, and adhered to weekly Covid-19 PCR testing and reporting to the ACS Covid test portal. To my dismay, on 1/6/22, I received a call from my Borough Commissioner, Ms. Marsha Kellam, informing me, that as per notification from Human Resources,(HR), she had to regrettable inform me that I should no longer report to work based on email communication received on 12/22/21, regarding Covid vaccine noncompliance.
21. I have reached out via phone to the office of HR, and spoke with Ms. Reid, regarding information regarding LWOP status. Via phone communication, I received no clear guidance as to the length of time for LWOP, or information regarding expectations, accommodation for health care coverage during this time. I also asked if I could use request for leave time accrued, however, I was informed that due to my LWOP status, I could not be approved for any leave accruals that I had on file.

22. Subsequently on 1/12/22, I had a phone conversation with Mr. Rosenborough, (EEO Assistant Commissioner), regarding my LWOP status as well as the discrepancy in letters shared on 12/3 & 12/22. This conversation yielded no resolution to my return to work.
23. On 1/18/22—I shared email communication with Mr. Rosenborough to recap his conversation as well as share additional updates by the Occupational Safety & Health Administration's (OSHA) ruling, as well as the Supremes' court ruling on vaccine mandates, in hopes that this would bring a resolution in my return to work status and approval of my reasonable accommodation request. **See Exhibit G**
24. As a result of my current LWOP status, I have suffered humiliation by the Administration for Children Services. Within less than 24 hours of last day of work on 1/6/22, I was locked out to the agency's database system. This resulted in my denial of access to several email communications regarding my reasonable accommodation requests.
25. I have been financially impacted and unable to provide support to my family, including my 3 young children. I have suffered humiliation based on my inability to pay my children's tuition timely, as a result of denial of payroll. I remain at risk for not having access to our medical facilities due to risk of having no health coverage. Coverage of housing cost is also at risk, due to financial instability.
26. My job provides health insurance coverage for my entire family and children and if I am terminated and lose my health insurance coverage, my children and my entire family would not have access to any healthcare and because I will not have income, I will not be able to purchase Cobra and keep my home for my children.
27. Mentally, this stressor has impacted me, by making me anxious, about what if, as well as next steps to financial freedom. I have become anxious not knowing how I will be able to meet the needs of my children or cover the cost of their tuition. Emotionally I am suffering from the abrupt dismissal from performing my job duties,

or having the ability to have some closure with my staffers. The current status of LWOP has also impacted my family, as I am not able to provide financial help to my family members when needed. The physical strain of dealing with a threat of termination has made me anxious, as I have placed value on giving valuable

28. service to the City of New York, and to treated in this manner, and being denied of my religious held sincere belief is condescending and disregard of my beliefs.

29. My LWOP status has seriously impacted our family's financial stability and could result in our denial and access to the necessities for living a decent life in this society.

30. I received notice from ACS vaccine validation and ACS HR on 1-31-22, informing me that I will be terminated effective 2/11/22. See **Exhibit H**

31. Finally, I have spoken to two other employees who have been granted exemption from the vaccine mandate from the New York City based on their religious beliefs as Muslims and as Hebrew. They have been allowed to continue to do weekly testing and wear a mask to work.

32. I have exhausted all my administrative remedies through the appeal process and the January 31, 2022 letter regarding my expected termination is a final decision.

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33. I understand also that many Muslims and Hebrews have been granted exemptions by New York City which is discriminatory when they deny others who also have sincere beliefs against the vaccine.

I declare under penalty of perjury under the laws of the State of New York that the foregoing is true and correct.

Dated this 9th day of February, 2022.

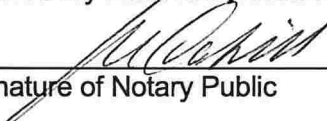


T. Martin

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

Subscribed and sworn to (or affirmed) before me on this 9th day of February, 2022, by T. Martin, proved to me on the basis of satisfactory evidence (which displays the full name) of the person(s) who appeared before me.

Witness my hand and official seal.



Signature of Notary Public

[Affix Notary Seal]

MICHELINA CAHILL
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01CA6064023
Qualified in Suffolk County
My Commission Expires 9/17/2025

Exhibits A - H

EXHIBIT A

EXHIBIT A

From: Commissioner's Announcement <Commissioner.Announcement@acs.nyc.gov>

Sent: Thursday, October 28, 2021 11:44 AM

To: Commissioner's Announcement <Commissioner.Announcement@acs.nyc.gov>

Subject: Commissioner's Announcement: Reminder About the Vaccine Mandate for City Employees: ACS Employees Are Required to Have At Least One Dose of the Vaccine by 5pm on 10/29



Reminder About the Vaccine Mandate for City Employees: ACS Employees Are Required to Have At Least One Dose of the Vaccine by 5pm on 10/29

*You Can Receive the Vaccine at 150 William Street Today & Tomorrow
From 1pm to 5pm*

As a reminder, ACS employees will be required to have at least one dose of a COVID-19 vaccine by 5pm tomorrow (October 29th). Staff who fail to submit the required documentation to OHR by November 1st will be placed on unpaid leave until proof of vaccination has been submitted. Employees have 45 days to receive and submit proof of a 2nd dose (only vaccines that require 2 doses) within 45 days of the first dose.

If you have not yet submitted proof of vaccination, please do so via the ACS CovidClear Portal. You can access ACS CovidClear from any internet connected

EXHIBIT A

device at <https://nyc-acs.labs.mtzb.com/request-vaccination-proof>. If using a computer, the portal is NOT compatible with Internet Explorer, instead use Microsoft Edge or Google Chrome. If using an ACS-issued device, a shortcut to the link is available on the homepage. In order for submissions to be accepted, all information inputted on the form must accurately match the uploaded documentation (e.g. name, dosage date, etc.). Instructions for this easy-to-use portal can be found in the [user guide](#).

If you have not yet been vaccinated, I encourage you to visit the 150 William Street Vaccine Clinic this week. No appointment is necessary. We will be administering the vaccine today and tomorrow (1pm to 5pm) in the 150 William Street, 19th floor Queens Room. To find another vaccination site, go to nyc.gov/vax4nyc. You can also call 877-VAX-4-NYC (877-829-4692) for help finding a City-run vaccination site.

ACS employees will receive an extra \$500 in their paycheck for receiving their first shot between 10/20 and 10/29. The \$500 will be automatically processed through payroll once proof of vaccination has been submitted to OHR by 5pm on 10/29. The \$500 incentive will not be offered after 10/29.

To request a reasonable accommodation to not comply with the COVID-19 vaccine mandate based on a sincerely held religious belief or medical reason, please complete the Reasonable Accommodation Request Form For Vaccine Mandate here <https://forms.office.com/g/03aH0UpgTc> and send all supporting documentation to Ask.EEO@acs.nyc.gov. Employees who request such reasonable accommodations from today forward will be placed on LWOP beginning November 1, 2021 until their reasonable accommodation is determined or they submit proof of vaccination to OHR. Due to the volume of requests, it may take OEEEO some time to respond to your request.

For additional questions, please refer to the attached "FAQ" or contact your supervisor.

EXHIBIT A

2

Vaccine Mandate FAQ 102121.pdf

324.5kb

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- Reply
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 - Reply All
 - or
 - Forward

Send

FAQ on New York City Employees Vaccine Mandate

Policy Details

1. What is the Vaccine Mandate?

Per [DOHMH Commissioner's Order to Require COVID-19 Vaccination for City Employees and Certain City Contractors](#), the New York City Vaccine Mandate requires that all City employees must provide verification that they are vaccinated against COVID-19 by October 29, 2021 at 5 PM.

City employees or covered employees of a human services contractor who provide documentation of having received one dose of any COVID-19 vaccine before 5 PM on October 29, 2021 will be considered fully vaccinated even though two weeks have not passed since their final dose, so long as, for employees who received a two-dose vaccine, they provide documentation that they have received the second dose of that vaccine within 45 days after receipt of the first dose.

"Full vaccinated" means at least two weeks have passed after a person received a single-dose of an FDA- or WHO- approved COVID-19 vaccine or the second dose of an FDA- or WHO- approved two-dose COVID-19 vaccine.

Weekly testing in lieu of vaccination is only allowed if an employer has granted an employee a reasonable accommodation allowing for testing in lieu of vaccination.

Beginning November 1, City staff who are not in compliance with the vaccine mandate and have not applied for a reasonable accommodation will be placed on Leave Without Pay (LWOP). An employee may arrive at work with proof of one dose of vaccine in order to be removed from LWOP and if applicable, must submit proof of second dose within 45 days of the first shot.

2. Which employees must be vaccinated under the Vaccine Mandate?

All City employees, including interns, aides, fellows and volunteers: [The DOHMH Order \(10/20\)](#) requires that proof of vaccination must be submitted by October 29, 2021 at 5 PM.

DOC Employees: Civilian employees and uniformed members assigned to healthcare settings are also immediately subject to the mandate and must submit proof of vaccination by 5 PM on October 29. Healthcare settings include: Bellevue Hospital; Elmhurst Hospital; the DOC infirmary in North Infirmery Command; the DOC West Facility; and/or any clinic staffed by Correctional Health Services.

Other uniformed members at DOC, including Wardens and Chief titles, will be subject to the mandate effective December 1st, as the City works diligently to address the ongoing staffing situation at Rikers Island.

Employees, including subcontracted employees, of human service contracts: [The DOHMH Commissioner's Order](#) requires individuals whose salary is paid in whole or in part from funds provided under a City human services contract to be vaccinated. Contractors must certify they have received proof of vaccination from all employees no later than November 15, 2021.

Certain Employees in Public Health and Educational Settings are already required to be vaccinated:

- **Hospital Employees:** Per State Department of Health regulation 10 NYCRR 2.61, employees of any facility or institution included in the definition of “hospital” in section 2801 of the Public Health Law, including but not limited to general hospitals, nursing homes, and diagnostic and treatment centers must be fully vaccinated, and must have received at least the first dose by September 27, 2021.
 - **Other Public Health Settings:** Per State Department of Health regulation 10 NYCRR 2.61, employees of (i) any agency established pursuant to Article 36 of the Public Health Law, including but not limited to certified home health agencies, long term home health care programs, acquired immune deficiency syndrome (AIDS) home care programs, licensed home care service agencies, and limited licensed home care service agencies; (ii) hospices as defined in section 4002 of the Public Health Law; and (iii) adult care facility under the regulatory authority of the State Department of Health, as set forth in Article 7 of the Social Services Law: must be fully vaccinated, and must have received at least the first dose by October 7, 2021.
 - **All DOE employees:** [DOHMH Commissioner’s Order related to DOE Employees, Contractors, and Others](#) (9/15/21—effective date amended [9/28/21](#)). Proof of vaccination was required as of October 1, 2021. Weekly testing is not an alternative for these employees, except where allowed as a reasonable accommodation. This DOHMH Commissioner’s Order also applies to:
 - City employees who work in DOE settings or DOE buildings
 - Staff of any Charter school serving students up to grade 12
 - Employees of contractors hired by the City, the DOE, or a charter school to work in DOE settings or DOE buildings.
 - In addition, on September 2, 2021, the State Commissioner of Health issued a [Determination on COVID Testing](#) pursuant to 10 NYCRR 2.62 that requires all unvaccinated school staff in P-12 schools to be tested at least once a week. For DOE employees and others covered by the DOHMH Commissioner’s Order, this will effectively apply only to those who have been excused from vaccination as a reasonable accommodation.
 - **Childcare Providers:** [DOHMH Commissioner Order](#) (9/12/2021). Proof of vaccination was required as of September 27, 2021 for staff of early childhood programs or services provided under contract with DOE for Birth-to-5 and Head Start services for infants, toddlers, and preschoolers including 3-k and pre-k services as well as early education programs serving young children with disabilities, Early Learn, pre-school special education pursuant to section 4410 of the Education Law, or by family home-based family child care providers contracted through family child care networks, or programs under contract with DYCD for after school, Beacon, and Cornerstone.
- 3. Which employees of covered contractors may continue to submit proof of vaccination OR submit weekly negative test results?**
- Per [Executive Order 83](#) and [Executive Order 78](#), City contractors’ and subcontractors’ employees may continue to submit one-time proof of vaccination OR test weekly if
- Their salary is paid in whole or in part from funds provided under a City contract;
 - Their work includes physical interaction with City employees or members of the public; and
 - They are not otherwise covered by a vaccine mandate because they work in a covered healthcare, educational, or human services setting.

Contractors were required to certify they have received proof of full vaccination or weekly negative test from all employees and subcontractor employees by October 1, 2021.

Exhibit A

School bus drivers: Although they are not covered by orders issued by the City, on September 2, 2021, the State Commissioner of Health issued a [Determination on COVID Testing](#) pursuant to 10 NYCRR 2.62 that requires all unvaccinated school bus drivers to be tested at least once a week.

4. For the purpose of this vaccine mandate, how are you defining “contracted employee” and “City contractor”?

For the purposes of this policy, a contracted employee and City contractor are, respectively, an individual or entity whose salary or funding is paid, in whole or part, by a human services contract with a New York City agency to perform work within New York City.

Other contractors not otherwise listed in Questions 2 or 3 must still adhere to the COVID-Safe Vaccine or testing requirement detailed in [Executive Order 83](#) and [Executive Order 78](#).

The City strongly urges organizations to adopt this policy as broadly as possible and cover all of their employees, as the City has done. This policy is intended to keep your employees and the clients they serve safe.

5. Does the vaccine mandate apply to the clients served by the City or its contractors?

No. This policy is specific to City employees and City contractors including their staff, volunteers and interns. City contractors should integrate this policy into their own COVID-19 return to office and health and safety policies. Clients must wear face coverings at all times.

6. Does the vaccine mandate cover interns?

Yes, interns, aides, and fellows are covered by this policy. All agencies should update their policies to include this requirement.

7. Does the vaccine mandate cover volunteers?

Yes, volunteers are covered by this policy. All agencies should update their volunteer policies to include this requirement.

8. Does this mandate extend to subcontractors?

Yes, this policy extends to subcontractors including building security, food service employees, and other subcontractors.

9. Do these contractor requirements apply to micropurchase vendors?

Yes, micropurchase vendors are subject to this Commissioner’s Order, however due to the small size of their contract and how difficult it would be to track compliance for so many small and short-term vendors, they do not need to submit a certification and policy. Agencies should check such contractors for proof of vaccination or a negative test (if a reasonable accommodation) prior to their entry to a job site. For example, a photographer who comes to the office for half a day would need to show proof of full vaccination or a negative test.

10. Will the City be providing on-site vaccination at City worksites?

Vaccination is widely available and convenient for all New Yorkers. The City will continue to bring mobile vaccination clinics to select worksites, including certain City worksites.

Vaccination

- 11. If an employee, intern, or volunteer gets their first dose prior to when they are subject to this requirement will they be required to provide weekly test results?**

A City employee who provides documentation of having received one dose of any COVID-19 vaccine on or before October 29, 2021 at 5 PM will not be required to undergo weekly testing.

An employee who receives the first dose of any COVID vaccine after October 29, 2021 will be required to undergo weekly testing until they have submitted proof of full vaccination.

Regardless of date of vaccine, if the City employee received a two-dose vaccine, the employee must provide documentation that the second dose has been administered within 45 days of the first dose.

- 12. Where can people be vaccinated?**

Vaccination is free and convenient across the five boroughs and in bordering counties. Over 95% of all NYC residents live within half a mile of a public vaccination site. Convenient vaccination sites can be found via <https://www.nyc.gov/vaccinefinder> or by calling 877-VAX-4-NYC. For anyone who lives within the five boroughs (including City employees and contractors' employees), the City is also making at-home vaccination free and available; call 877-VAX-4-NYC or visit <https://www.nyc.gov/homevaccine> to sign up to have a team member come to your home to vaccinate you and any other household members, with any of the three FDA-authorized vaccines you choose.

- 13. Which vaccines count? What if the employee has been vaccinated with a non-FDA approved vaccine?**

Only FDA-authorized and WHO-approved vaccines will be accepted.¹ As of the date of this FAQ, FDA-authorized vaccines include the Pfizer, Moderna, and Johnson & Johnson vaccines.

It is possible that someone was vaccinated outside of the country with a non-FDA approved vaccine. Only vaccines listed for emergency use by the World Health Organization (WHO) are acceptable and the person needs to have received a complete vaccine series. [The current list of vaccines authorized by the WHO for emergency use is here.](#)

People who have started, but not completed, a full series of a vaccine that is approved by the WHO, but not by the FDA, should receive a complete vaccine series with a U.S. FDA-authorized vaccine.

Employees, interns and volunteers who have been vaccinated outside the U.S. may submit their vaccine record from the place where it was administered.

¹ Exception: clinical trial participants who received two doses of Novavax are considered fully vaccinated although not authorized by FDA or WHO.

Exhibit A

14. What counts as proof of vaccination?

Employees, interns, and volunteers may submit, using secure means, proof of vaccination directly to their own agency or contract organization. Employers should maintain a confidential record of the employees who have demonstrated proof of vaccination.

Proof must be:

- An official CDC card or other official immunization card bearing the employee's name and date(s) of vaccine administration. The employer must see this document or a photograph of it;
- An Excelsior Pass issued by the State of New York; or
- The NYC COVID SAFE app that clearly displays an image of the CDC card or other official immunization card with the above noted requirements. The NYC COVID SAFE app can be downloaded for Apple or Android (or by searching "NYC COVID Safe" on Apple app store or Google Play store).

Proof of vaccination for vaccines administered outside the U.S. must be an official immunization record and will include all of the following:

- First name and last name
- Date of birth
- Vaccine product name (ex: Moderna)
- Lot number (note: lot number may not be included on all official cards)
- Date(s) administered
- Site where the vaccine was administered or person who administered the vaccine or the country where the vaccine was administered.

15. How will City agencies use the proof of vaccination?

Agencies will collect vaccination proof from City employees using secure means. This information will be used to identify employees who have not submitted proof of full vaccination and to compile a list of employees who have not submitted proof of vaccination and must wear a face covering in both shared and non-shared spaces and must submit weekly negative COVID-19 test results until their vaccine series is complete.

See information below under "Enforcement and Compliance" regarding consequences for failure to comply.

16. What if an employee, intern, or volunteer is vaccinated, but lost their CDC vaccination card?

Employees, interns, and volunteers who lost their CDC vaccination card should contact the medical provider where they got vaccinated to get an official record of vaccination. If an employee, intern or volunteer was vaccinated in New York City, they can request their immunization record through the DOHMH self-service portal [My Vaccine Record](#).

17. Can employees take time from their shift to get vaccinated?

All employees are allowed to take up to four hours to get vaccinated during their workday. Employees who get a vaccine may take up to four hours on each of the days they receive a vaccination. Please see [PSB 600-4 Temporary Citywide Policy for Vaccination of City Employees against SARS-CoV-2](#) for more information. In addition, all employees may be entitled to paid excused leave for any side effects experienced due to the vaccination. Please see [Updated](#)

Exhibit A

[Guidance for City Agencies on Leave Policy Applicable During the Outbreak of Coronavirus Disease 2019 \(COVID-19\)](#) for more information.

It is suggested that City contractors adopt the same or similar policy. The City will reimburse contractors for costs associated with providing time off to employees getting vaccinated.

18. Will the City be offering excused time off to get a booster dose? Will there be additional benefits (additional comp time) for employees that receive a booster shot?

Time off to get a booster shot is covered under [PSB 600-4 Temporary Citywide Policy for Vaccination of City Employees against SARS-CoV-2](#), but additional compensatory time is not offered for the booster.

19. Will employees, interns, and volunteers be expected to pay out of pocket for vaccine?

No. Vaccination is free to all New Yorkers including City and contracted employees; the majority of City employees have chosen to protect themselves and their community by getting vaccinated.

20. What incentives are available for vaccination?

From October 20-29, 2021, employees will be eligible to receive \$500 through payroll, in addition to a \$100 gift card available at City operated vaccination sites, if they receive their first vaccine dose during that time period.

FISA-OPA will provide agencies with a new PMS pay event code to enter when proof of vaccination is provided by an employee to their agency for the period of October 20-29, 2021.

Please visit <https://www1.nyc.gov/site/coronavirus/vaccines/vaccine-incentives.page> for a full list of incentives offered for vaccination.

In addition, City employees are eligible to receive up to three hours of compensatory time under [PSB 600-4 Temporary Citywide Policy for Vaccination of City Employees against SARS-CoV-2](#).

Reasonable Accommodations

21. Will there be any medical or religious accommodations?

Medical or religious accommodations will only be granted in limited circumstances. If the employee, volunteer, or intern has medical or religious concerns that prevent them from complying with the vaccine mandate, they should speak to their EEO officer regarding a potential reasonable accommodation. Any employee who is awaiting a reasonable accommodation determination from their agency must continue to submit a negative test result within every seven day period.

23. On what basis can an employee apply for a reasonable accommodation if they have reason not to be vaccinated?

Reasonable accommodations may be granted only for documented medical or religious reasons.

The NYC Department of Health has indicated that the *medical basis* for a *permanent* medical exemption includes:

Exhibit A

- Documented contraindication such that an employee cannot receive any FDA-authorized vaccines, with contraindications delineated in [CDC clinical considerations for COVID-19 vaccine](#).
- Limited cases in which, despite seeking vaccination, an individual is unable to mount an immune response due to preexisting immune conditions.

The NYC Department of Health has indicated that the *medical basis* for a temporary medical exemption includes:

- An employee who is within the isolation period after COVID-19 infection
- An employee who is within 90 days of monoclonal antibody or convalescent plasma treatment of COVID-19
- Treatments for conditions as delineated in CDC clinical considerations, with the understanding that CDC guidance can be updated to modify considerations over time, and/or determined by a treating physician with a valid medical license responsible for immunosuppressive therapy, including full and appropriate documentation that may warrant temporary medical exemption for some period of time because of active therapy or treatment (e.g. stem cell transplant, CART-cell therapy) that would temporarily interfere with the patient's ability to respond adequately to vaccination
- Pericarditis or myocarditis not associated with COVID-19 vaccination or pericarditis or myocarditis associated with COVID-19 vaccination

Note: The length of *temporary* medical exemption will be determined on a case-by-case basis and with consideration for provided medical documentation. An employee will be required to be vaccinated at the end of the temporary period.

A sincerely held *religious, moral or ethical belief may be a basis* for a religious accommodation. A request based solely on a personal, political, or philosophical preference does not qualify for a religious accommodation.

24. What alternative to vaccination is allowed if an employee is granted a reasonable accommodation?

For requests filed after October 27, 2021, the only allowable accommodation from vaccination without causing an undue hardship and/or disruption is submission of a weekly negative test result.

25. Is there a deadline for a City employee apply for a reasonable accommodation from being vaccinated?

Yes, there is a deadline to apply:

- Existing City employees must apply for a reasonable accommodation with their agency EEO officer for this vaccine requirement no later than October 27, 2021 in order to avoid Leave without Pay (LWOP) on November 1, 2021. Employees who seek reasonable accommodations from their agencies after October 27, 2021 will be placed on LWOP until the reasonable accommodation is decided, including any appeals.
- New hires must **apply** for a reasonable accommodation before the start date of their new position.

Exhibit A

26. How should an employee apply for a reasonable accommodation from being vaccinated?

An employee seeking a reasonable accommodation from vaccination should apply to their EEO Office (although some agencies designate a different entity to handle these requests). Any employee who requests a reasonable accommodation from their agency on or before October 27, 2021 and is awaiting a reasonable accommodation determination from their agency or an appeal decision must continue to submit a negative test result within every seven day period.

27. Can an employee appeal the reasonable accommodation of their agency?

Yes. An agency that denies a reasonable accommodation request must provide written information to the employee whose request has been denied on the appeals process, including a link to the City's online appeals request portal (to be distributed to APOs).

If an employee is denied a reasonable accommodation by their agency, they may appeal the decision **within 3 business days**.

An employee may submit an appeal via the online review request portal (to be distributed to EEOs and APOs), which will automatically notify their agency EEO Officer of the appeal. The request for review must include a reason for the appeal. Upon notification of the appeal, the Agency EEO Officer will upload all records concerning the Agency determination of the reasonable accommodation request within **one business day**. Supplemental material may be requested to make a determination on appeal.

An agency must issue a written determination. If the accommodation is denied or the employee disagrees with the accommodation granted, the written determination must also include information about the appeals process.

Review of all appeals will be completed before November 25, 2021.

28. What is required of an employee while awaiting the determination of their reasonable accommodation and/or reasonable accommodation appeal?

An employee who requested a reasonable accommodation from their agency on or before October 27, 2021 and is awaiting a reasonable accommodation appeal determination must continue to submit a weekly negative test result within every seven day period, as previously required. Employees who seek reasonable accommodations from their agencies after October 27, 2021 will be placed on Leave Without Pay (LWOP) until the reasonable accommodation is decided, including any appeals.

29. What is required of an employee if their appeal is denied?

If an employee's appeal is denied, they must submit proof of the first dose of a vaccination **within 3 business days**, and if required, of a second dose within 45 days thereafter. If an employee refuses to be vaccinated within this timeframe after an appeal is denied, they will be placed on Leave Without Pay.

Testing

30. Who must submit to testing?

Employees who are awaiting a determination on a reasonable accommodation request submitted on or before October 27 or who were granted a reasonable accommodation will be required to submit to weekly testing. An employee who receives the first dose of any COVID after October 29, 2021 will be required to undergo weekly testing until they have submitted proof of full vaccination.

All contractors that are not covered by a vaccine mandate must continue to comply with the COVID-Safe vaccine or testing requirement.

31. Where can people find testing?

If an employee is seeking testing, the City of New York offers free COVID-19 testing in convenient locations across the five boroughs and will continue to do so, but employees may go to their trusted medical professionals as well. There are hundreds of PCR testing locations in the five boroughs; the list can be found at <http://www.nyc.gov/covidtest>. If employees prefer to receive a test specifically at a City-sponsored site, that list can be found here: <https://www.nychealthandhospitals.org/test-and-trace/testing>.

32. When must employees who have been granted a reasonable accommodation submit a weekly test?

Beginning November 1, for employees with a reasonable accommodation to submit a weekly negative test instead of submitting proof of vaccination, for each day that an employee reports to work onsite, they must have had a negative COVID-19 PCR test taken within the preceding seven days. This test result, which must be submitted to HR, must be negative. An employee who has been tested within the preceding seven days but is still waiting for the result may report to work with a pending test result as long as they meet the criteria of the health screening, and provided that the test result is submitted to HR as soon as it becomes available.

Ordinarily, results should be submitted within two to three days of specimen collection and an agency may follow up with an employee who has not yet submitted results to ensure compliance.

33. For employees, interns, and volunteers who have a reasonable accommodation to do weekly testing, which tests qualify?

Only polymerase chain reaction (PCR) tests processed by medical professionals qualify. These tests usually take one-two days to process at a lab, but some PCR tests are rapid tests. Both rapid and non-rapid PCR tests can be used. An employee may request a reasonable accommodation for a different type of test.

34. For employees, interns, and volunteers who have a reasonable accommodation to do weekly testing, do rapid tests qualify?

Rapid PCR tests will qualify for this requirement.

35. For employees, interns, and volunteers who have a reasonable accommodation to do weekly testing, do at-home tests qualify?

At-home tests will not be accepted at this time.

36. What happens if an employee, intern, or volunteer tests positive?

An employee, intern or volunteer who tests positive must not report to work until they meet all the criteria of the health screening and all of these conditions are met:

- a. It has been at least 10 days since their symptoms began or, if asymptomatic, since a positive test result;
- b. They have not had a fever for at least 24 hours without the use of a fever reducer; and
- c. Other respiratory symptoms (cough, shortness of breath) have improved.

An employee must also notify HR if they develop symptoms of COVID-19 while in the office or if they test positive for COVID-19 and were in the office during their infectious period. HR will then activate the Rapid Response Team, as detailed in [Managing the Office in the Age of COVID-19](#).

For information on the City's Leave Policy during COVID-19, please see: [Updated Guidance for City Agencies on Leave Policy Applicable During the Outbreak of Coronavirus Disease 2019 \(COVID-19\)](#).

37. Can an employee who is not vaccinated, has received a reasonable accommodation, and has tested positive for COVID-19 be exempt from the weekly testing requirement?

Per the NYC Department of Health, unvaccinated staff who test positive should not get tested again until at least 90 days after their initial positive test and will need to be exempt from weekly testing during that time. However, they should be strongly encouraged to get vaccinated.

Employees who are subject to the weekly testing requirement because they have been granted a Reasonable Accommodation should seek a modification of their Reasonable Accommodation to be exempt from testing in these circumstances, and must provide appropriate documentation. They should get tested during this time if they develop new symptoms that are consistent with COVID-19.

See DOHMH guidance: <https://www1.nyc.gov/assets/doh/downloads/pdf/covid/covid-19-testing-recommendations.pdf>.

38. What happens if an employee continues to test positive within three months of recovering from COVID-19?

Employees who test positive within three months after recovering from the first COVID infection will not receive COVID-19 excused leave during that three-month period unless they have new COVID-19 symptoms.

39. What happens if an employee is supposed to come in, but says their test results are pending? Do we track how many times someone does this?

Employees who have been tested, but whose test results are pending should come to work as long as they meet the criteria of the health screening. They must provide proof of test collection while they await the result. Repeated delays in compliance should be reviewed by applicable HR staff, with disciplinary action taken, as necessary.

40. Can City and contracted employees take time from their shift to get tested?

City employees subject to weekly testing under an approved reasonable accommodation may be tested during their work hours, but some restrictions apply:

- Employees should work with their supervisors to schedule a time for testing.
- Employees may be required to get tested at the beginning or end of their shift.
- If testing is offered at an employee's place of work, they may not use work hours to be tested off-site.
- If testing is not onsite at the workplace, employees should get tested in a place close to their home or work.
- Employees will be required to document time taken to seek testing and will be required to seek the fastest option available.
- Testing time should be scheduled so that it does not have any detrimental impact on operations.

Contracted organizations may develop their own policies and procedures with regards to testing. However, no additional funding will be provided associated with time off for testing.

41. Are employees required to be tested at an onsite location?

No, employees may choose where to be tested, but if testing is offered at an employee's place of work, they may not use work hours to be tested off-site.

42. May employees use overtime to get tested?

No, City employees may not use overtime to get tested.

43. Will tests at City sites be billed to employees' insurance (which the City pays)?

For many of the tests conducted, employee insurance will be billed. At City-run sites, FEMA requires that the City attempt to bill for all tests in order to seek federal reimbursement for any costs not covered by insurance. For this reason, the City will attempt to bill for most tests performed by a City provider regardless of the fact that the City pays for the insurance coverage. The City does provide some testing without billing for it because the testing is funded by sources of federal funds that are not subject to FEMA rules and regulations.

44. Who is responsible for paying for tests at non-City sites (to the extent it isn't covered)?

Tests are widely available at no cost to individuals across dozens of City-sponsored test sites. Private providers may charge for testing or charge a co-pay and all New Yorkers are strongly encouraged to ask about associated costs before being tested. Most providers across the City will attempt to bill insurance for test collection.

Face Coverings**45. Do all employees and visitors have to wear a face covering, even if fully vaccinated?**

Yes. Anyone in a shared indoor City workspace able to medically tolerate a face covering must wear a face covering that covers their mouth and nose at all times (except when eating or drinking). A shared indoor City workspace is a communal or open office setting in which individuals cannot be separated by a closed door.

An employee who has provided proof of full vaccination may remove their face covering when in an unshared indoor City workspace.

Any City employees and contractors conducting City business outside, who are able to medically tolerate a face covering, must wear a face covering at all times (except when eating and drinking) when interacting with members of the public. See [Executive Order 79](#).

Further, a face covering is required for all individuals (including those who are fully vaccinated) at all times when interacting with the public or present in a pre-kindergarten to twelfth grade school, public transit, homeless shelter, correctional facility, nursing home, or health care setting.

46. What additional face covering requirements apply to employees, volunteers and interns who are not fully vaccinated?

Employees, interns, and volunteers who have not provided proof of full vaccination must wear a face covering at all times, even when alone in a non-shared space, unless they have an approved reasonable accommodation.

Agency HR staff will generate a list of employees, volunteers, and interns required to wear a face covering in non-shared spaces because they have not submitted proof of vaccination. The list will be securely shared with designated supervisors and other designated agency personnel who will conduct audits of face covering compliance. Agencies should proactively audit for compliance on a regular basis. In the compliance support role, designated agency staff must never inquire about an employee's medical condition; such inquiries may be a violation of federal law. Refer to the guidance issued by the City's Chief Privacy Officer on 7/30/21 for further information about handling individuals' confidential vaccination status and related information, or email PrivacyOfficer@cityhall.nyc.gov.

Enforcement and Compliance

47. Do staff have to tell the City whether or not they are vaccinated?

Yes. Vaccination is required for all City employees covered by [the DOHMH Order](#) as a term of employment.

48. How will City agencies track compliance?

Each agency will track compliance for their employees, interns, and volunteers. Agencies are responsible for verifying individual vaccination status of each employee, intern, and volunteer, and monitoring compliance with vaccine and face covering requirements, and where applicable, with weekly testing.

49. Are there privacy concerns with handling employee vaccination information, documents, and COVID-19 test results?

Employee vaccination information and COVID-19 test results are considered confidential medical information under the federal Americans with Disabilities Act and are also types of identifying information that are protected under the City's privacy law. This information must be kept private and secure and may only be shared with designated agency staff and City officials. Refer to guidance issued by the City's Chief Privacy Officer on July 30, 2021 for further information on handling this information, or email PrivacyOfficer@cityhall.nyc.gov.

50. What tools can an agency use to collect and store vaccination or testing proof?

Agencies developing or utilizing a survey tool to collect proof of employee vaccination status or COVID-19 test results, because it is confidential medical information, must only use tools that have successfully completed the citywide application security review and have the appropriate controls to support the storage, transmission, and handling of information classified as "Restricted" information under the NYC Cyber Command Policies & Standards. If an agency procures a vendor to develop its survey tool, the contract should include NYC3 security provisions and be reviewed by the Chief Privacy Officer to ensure appropriate privacy protections are included. For further information, contact PrivacyOfficer@cityhall.nyc.gov or legal@cyber.nyc.gov.

51. What is the penalty for non-compliance? Will non-compliant employees be subject to termination?

Beginning November 1, City staff who are not in compliance with the vaccine mandate and have not applied for a reasonable accommodation will be placed on Leave Without Pay (LWOP). An employee may arrive at work with proof of one dose of vaccine in order to be removed from LWOP and if applicable, must submit proof of second dose within 45 days of the first shot. Employees who refuse to comply will be terminated in accordance with procedures required by the Civil Service Law or applicable collective bargaining agreement.

It is important for agencies to establish a system to ensure that no employee who has been notified of non-compliance and Leave Without Pay returns to the worksite until they have submitted required proof of compliance.

It is suggested that contracted organizations adopt a similar policy. If providers are non-compliant, contracting agencies will exercise any rights they may have under their contract.

52. How long should an employee be on Leave Without Pay (LWOP) before termination proceedings begin?

Absent any collective bargaining agreement providing for other procedures, employees should be placed on LWOP effective November 1 and may be subject to discipline or other adverse employment action. Further guidance will be forthcoming.

53. How will the Vaccine Mandate be enforced for contracted organizations?

Except for micropurchase vendors, all City contractors with covered contracts must submit a certification signed by the organization's Executive Director or equivalent that they are complying with the City's Vaccine Mandate by uploading it directly to their PASSPort vendor profile or sending it to their contracting agency if they do not have a PASSPort account. Organizations must also submit their updated internal policies that reflect the mandate.

The Certification of Vaccine Mandate should be uploaded to the Miscellaneous Documents section of the Documentation tab in your PASSPort vendor profile, under the label "Vaccine Mandate." Vendor Policies Establishing Vaccine Mandate should be uploaded to PASSPort with [Executive Order 78](#) ([/Executive Order 83](#)) and [Executive Order 79](#) policies under the label "Vendor Vaccine and Face Covering Policies"

If an agency does not manage contracts via PASSPort, it must independently collect contractor certifications and policies and monitor them in an ongoing manner.

Note: this certification is in addition to the certification that they are complying with [Executive Order 78](#) ([/Executive Order 83](#)) and [Executive Order 79](#), which requires face coverings for unvaccinated employees and compliance with the COVID-Safe vaccine or test requirement.

Contractors are subject to reviews for compliance. Like all other contract provisions, if providers are non-compliant, contracting agencies will exercise any rights they may have under the contract.

54. In City agencies, do staff have to show proof of vaccination or testing multiple times a day every time someone comes in and out of the workplace?

No. HR will be responsible for monitoring proof of vaccination, or weekly test compliance for those who have a reasonable accommodation.

55. Does a test have to be within the previous seven days or in the same calendar week?

The test must be within the previous seven days and does not need to be in the same calendar week.

56. Will employees be required to use the City's NYC COVID Safe application?

No. The NYC COVID Safe application should be on every phone issued by the City of New York, if an employee wishes to use it. However, employees may choose to provide one-time documentation of vaccination or provide weekly documentation of a test via any proof acceptable to the employer and consistent with guidance provided above.

Where can I find...

- Vaccination sites: www.nyc.gov/vaccinefinder
- Vaccination appointments: www.vax4nyc.nyc.gov and 877-VAX-4-NYC
- How to schedule an at home vaccine appointment: www.nyc.gov/homevaccine and 877-VAX-4-NYC
- A testing site: www.nyc.gov/covidtest
- A City-run testing site: www.nychealthandhospitals.org/test-and-trace/testing/
- A doctor or nurse to talk with about my vaccination concerns: call 311 and ask to talk to a clinician about COVID-19 vaccination
- Assistance for New Yorkers experiencing Long COVID: www.nyc.gov/aftercare
- CPO Privacy Guidance dated 7/30/21 contact PrivacyOfficer@cityhall.nyc.gov

Vaccine Mandate Timeline:

- **10/20-10/29:** City employees may receive \$500 incentive via payroll to receive first vaccine dose
- **10/27:** Last day to submit reasonable accommodation request to avoid being placed on Leave Without Pay (LWOP) on 11/1/2021.
- **10/29 at 5 PM:** Deadline to submit proof of vaccination to avoid being placed on LWOP 11/1/21.
- **11/1:** Employees placed on LWOP who have not submitted proof of at least one dose of vaccine.
- **11/25:** Final determinations of appeals

Exhibit B

Appendix A

REASONABLE ACCOMMODATION REQUEST FORM

This form and all information must be kept confidential.

APPLICANT/EMPLOYEE INFORMATION		
Print Full Name Tracy-Ann Francis-Martin		<input type="checkbox"/> Job Applicant <input checked="" type="checkbox"/> Current Employee <input type="checkbox"/> Other
[REDACTED]		[REDACTED]
EMPLOYEE INFORMATION (Complete this section if you are working at the agency even if you are currently on leave.)		
Civil Service Title Admin Director of Social Services		Office Title Director of Field Operations[CPM]
Office Telephone Number [REDACTED]	Division Child Protection	Supervisor Name and Phone Number Sharon Rogers, (718) 725-6666
Location 92-31 Union Hall St, Queens NY		
APPLICANT INFORMATION (Complete this section only if you are a <u>job applicant</u>)		
Position/Title Sought		Division/Unit (if known)
Location of Position (if known)		
Part(s) of employment process for which an accommodation is requested		
<input type="checkbox"/> Job Application	Job Vacancy Notice Number (if known):	

<input type="checkbox"/> Interview	Interview Date:
<input type="checkbox"/> AtWork	
<input type="checkbox"/> Other (please specify):	
Agency Contact Person (if known)	Phone Number
<p>Basis of reasonable accommodation request:</p> <p><input type="checkbox"/> Disability</p> <p><input type="checkbox"/> Religion</p> <p>Describe your religious belief/practice/observances and identify the accommodations that you request:</p> <p>_____</p> <p>_____</p> <p><input type="checkbox"/> Status as Victim of Domestic Violence Sex Offenses or Stalking</p> <p><input type="checkbox"/> Pregnancy, childbirth or a related medical condition</p>	
<p>Identify the situation which requires accommodation.</p> <p><u>Be specific.</u> (Attach additional sheets of paper, if necessary.)</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>	
<p>Is the condition for which you are requesting an accommodation</p> <p><input type="checkbox"/> Permanent <input type="checkbox"/> Temporary <input type="checkbox"/> Unknown</p> <p>If temporary, anticipated date accommodation(s) no longer needed:</p> <p>_____</p>	

Describe the nature of reasonable accommodation requested and how the accommodation will assist you to perform the essential functions of the position held or desired, or to enjoy the benefits and privileges of employment. Please be specific.
(Attach additional sheets and present supporting documentation as appropriate.)
See attached documentation.

If equipment is requested, please specify brand, model number and vendor, if known.
N/A

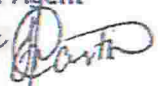
For Reasonable Accommodations based on Disability you may be required to provide verification by a health professional or a disability service provider (e.g. ACCESS-VR, NYS Commission for the Blind and Visually Impaired).

This CONFIDENTIAL documentation should be provided to the Disabilities Rights Coordinator or EEO Officer.

Documentation must:

- Be written on the official letterhead of the qualified health professional or health professional's organization.
- Identify the health professional's credentials. e.g., M.D., D.O.
- Be dated and signed by the health professional.
- Describe the severity of the disability and its limitations in detail as they currently exist and only in relationship to the job.
- State whether the duration of disability is permanent or temporary or unknown.
- If temporary, specify the date the disability is expected to no longer require accommodation.
- Indicate the extent to which the accommodation will permit you to perform the essential functions of the job or to enjoy the benefits and privileges of employment.

I certify that I have read and understood the information provided in this request, and that it is true to the best of my knowledge, information and belief.

Date 10/26/21	Requestor's Signature/Authorized Agent Tracy-Ann Francis-Martin 
------------------	--

DO NOT WRITE IN THIS SECTION		
<p>To be completed by agency staff supervising the employment application process or supervising an employee requesting a reasonable accommodation. After completing, supervisors must provide a copy of the entire form to the employee or applicant, and immediately send a copy to the EEO Officer or DRC.</p>		
Name and Title of Supervisor or Staff supervising application process:		
Unit/Division:		
Location:		
Phone Number:		
Date Request Received:		
<input type="checkbox"/> Supporting Documentation Included	<input type="checkbox"/> Supporting Documentation Not Included	Date:
Signature		
To be completed by the DRC or EEO Officer		
Date Request Received by DRC or EEO Officer:		
Date Supporting Documentation Received by DRC or EEO Officer (if any):		
Signature		

Appendix B

CITY OF NEW YORK

AUTHORIZATION FOR RELEASE OF MEDICAL INFORMATION

Please see attached

Authorization for Release of Health Information Pursuant to HIPAA form

Appendix C

REASONABLE ACCOMMODATION REQUEST RECORD OF STEPS AND OUTCOME	
Name of Applicant/Employee: Tracy-Ann Francis-Martin	Telephone Number [REDACTED]
Address: [REDACTED]	
Request Number Type request here	Received by:
Date Received:	Time Received:
Method of Filing <input type="checkbox"/> In Person <input type="checkbox"/> Phone <input type="checkbox"/> Mail <input type="checkbox"/> E-mail	
DOCUMENTATION OF STEPS TAKEN TO CONSIDER REQUEST	
DATE	COMMENTS

RESOLUTION	
<input type="checkbox"/> Granted Date:	Type of Accommodation Granted: <input type="checkbox"/> As requested <input type="checkbox"/> Different from what was requested Please provide specifics: (Attach additional sheets as needed.)
<input type="checkbox"/> Denied Date:	Reason for Denial:
Date when letter granting or denying the requested accommodation was sent to employee or applicant:	

Signature: _____ Date: _____

Appendix D

GRANTING OF REASONABLE ACCOMMODATION REQUEST To be completed by Deciding Official	
1.	Full Name of Individual requesting reasonable accommodation:
2.	Basis for reasonable accommodation request:
	<input type="checkbox"/> Disability
	<input type="checkbox"/> Religion
	<input type="checkbox"/> Status as Victim of Domestic Violence Sex Offenses or Stalking
	<input type="checkbox"/> Pregnancy, childbirth or a related medical condition
3.	Specific Accommodation Requested:
4.	Decision:
	<input type="checkbox"/> Reasonable accommodation granted as requested
	<input type="checkbox"/> Alternative accommodation granted
Describe Accommodation Granted:	
Deciding Official	
Name (print):	

Signature:	

Date granted: _____	
Telephone: _____ Email: _____	
cc: EEO Officer, and if applicable, Agency Personnel Officer, manager/supervisor.	

Exhibit B



David A. Hansell
Commissioner


William Fletcher, LCSW
Deputy Commissioner

Marsha Kellam
Borough Commissioner

Division of Child Protection

165-15 Archer Avenue
Queens, NY 11433

(718)557-1745 tel.

To: Equal Employment Opportunity
From: Tracy-Ann Francis-Martin, CPM 
Date: 10/26/2021

RE: Accommodation for Covid-19 Vaccination Reasonable Accommodation

I am submitting this letter to support my application for exemption and reasonable accommodation from the COVID-19 vaccine mandate for Municipal Employees.

My beliefs embodied in the Healthful Living, through practical, holistic, and living a healthy lifestyle, is contradictory to the mandates for the COVID-19 Vaccine. As a result of this belief, I stand firm in my faith of the biblical health laws of the bible which gives me guidance for my life with regards to what goes into my body. My belief in my religious obligation through practical, holistic living, and healthy lifestyles, supports the maintenance of my healthy immune system. I am seriously concerned for the impact of the COVID-19 vaccine and my immune system being compromised. While I give credit to obeying the laws of the land and ascribe to taking advice from health care physicians and organizations, the final call and decision regarding to medical care, is ultimately my personal decision.

I Tracy-Ann Francis-Martin, respectfully seek a reasonable accommodation concerning the New York City's Municipal Employee's Covid-19 vaccine mandate. I hereby request a reasonable religious exemption and accommodation to not take the COVID-19 vaccine at this time.

Below are the highlights that qualifies me for the right to my religious beliefs and convictions according to the laws of the land.

Employers have an obligation to accommodate an employee's sincerely held religious belief under Title VII of the Civil Rights Act (Title VII), unless the accommodation creates an undue hardship. A sincerely held religious belief can include an employee's religious-based objection to vaccinations.

Under Title VII an employer should thoroughly consider all possible reasonable accommodations, including, telework, and re-assignment.

Under Title VII, once an employer is on notice that an employee's sincerely held religious belief practice or observance prevents the employee from getting a Covid-19 vaccine, the employer must provide a reasonable accommodation, unless it would pose an undue hardship.

All employers, including state and local government employers, with 15 or more employees are covered under the ADA and Title VII. Federal government employers are also covered by Title VII.

Title I of the Americans with Disabilities Act (ADA) requires employers to provide reasonable accommodation to qualified applicants and employees with a disability unless the employer can demonstrate that doing so creates an undue hardship to the employer or poses a direct threat to the safety of the employee or others in the workplace.

In 2015, the Supreme Court clarified the requirements of Federal law, Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000e. The Supreme Court held that employers cannot make a worker's need for religious accommodation "a motivating factor" in an adverse employment action, such as termination. The Court explained that a company must do more than simply follow its religion neutral employment policies – it must make affirmative efforts to provide religious accommodation, even giving the employee who needs accommodation "favored treatment."

The nature of a favorable outcome and support for reasonable accommodation, based on my religious beliefs will assist me greatly. First, this accommodation will allow me to stay true to my religious beliefs personified in "Healthy Living". Secondly, a reasonable accommodation will alleviate my anxiety and pressure that that my inability to take the Covid-19 vaccine could impact me with performing my regular duties as a Child Protection Manager, (CPM), and my ability to work in an environment that offers supports, counseling and resources to families and children.

I am remain optimistic that you will be able to arrange a suitable accommodation regarding my refusal to take the Covid-19 vaccine, based on my biblical beliefs and conviction, while at the same time

Exhibit B

allowing me the right to remain in your employment. My decision to not receiving the Covid-19 vaccination translates into a full respect for you and the best interests of your company.

Thank you in advance for your anticipated cooperation with my request.

Sincerely,

Ms. Tracy Ana Francis-Martin

Exhibit C



DENIAL OF REASONABLE ACCOMMODATION REQUEST

To be completed by Deciding Official

1. Name of Individual requesting reasonable accommodation:

Tracyann Francis-Martin

2. Basis for reasonable accommodation request:

- Disability
- Religion
- Status as Victim of Domestic Violence Sex Offenses or Stalking
- Pregnancy, childbirth or a related medical condition

3. Specific Accommodation Requested:

The employee is requesting to submit weekly proof of PCR testing instead of receiving the vaccine.

4. Request for reasonable accommodation denied because (you may check more than one box).

- Employee's request determined not to be related to a disability
- Employee's request determined not to be related to religion
- Employee determined not to be a victim of domestic violence, sex offenses, or staking
- Request determined not to be because of pregnancy, childbirth, or related medical condition
- Accommodation Would not Meet Requested Need
- Accommodation Would Cause Undue Hardship
- Documentation of Need for the Accommodation Inadequate
- Accommodation Would Require Removal of an Essential Function of the Job
- Accommodation Would Pose Direct Threat
- Other (Please specify)

Exhibit C

5. Reason(s) for the denial of reasonable accommodation:

The employee expresses general anxiety and their personal beliefs concerning matters of fact and less about how the vaccine would violate a sincerely held religious, moral or ethical belief.

6. If the individual proposed one type of reasonable accommodation, which is being denied, but rejected an offer of a different type of reasonable accommodation, explain both the reasons for denial of the requested accommodation and reason why chosen accommodation would be effective.

7. Appeal:
If you wish to appeal this decision, you must do so within three (3) business days from receipt of this determination. All appeals must be submitted using the following URL:
<https://www.nyc.gov/vaxappeal>.

If you do not have access to a computer, you should immediately contact this office for assistance in filing your request for an appeal.

If you are a union member, please also consult with your union to determine if you have a right to appeal this decision through an arbitration.

Deciding Official

Name (print): Siheem Roseborough

Telephone: 212-341-2519

Email: siheem.roseborough@acs.nyc.gov

Signature: Siheem Roseborough
Digitally signed by Siheem Roseborough
DN: cn=Siheem Roseborough, o=ACS, ou=Office of Human Resources,
email=siheem.roseborough@acs.nyc.gov, c=US
Date: 2021.11.16 12:55:55-0500

Date Denied: 11/16/2021

cc: EEO Officer, Deputy EEO Officer, ACS Office of Human Resources

Exhibit D



Huntington Seventh-day Adventist Church
 21 W 9th St, Huntington Station, New York 11746
 E-mail: a.neilturner@gmail.com
 Phone: 203-543-0931

Date 11/18/2021

TO WHOM IT MAY CONCERN:

Re: HR - Tracy-Ann Francis-Martin

As the pastor of the Huntington SDA Church, I verify, that **Tracy-Ann Francis-Martin** is currently a member in good and regular standing.

**RE: Tracy-Ann Francis-Martin's sincerely held religious, moral and ethical beliefs.
 Accommodation for Covid Vaccination/Religious Belief and Practice**

1. **Covid Vaccine violates Tracy-Ann Francis-Martin sincerely held religious, moral and ethical beliefs based on,**
1 Corinthians 6:19 – “What? Know ye not that your body is the temple of the Holy Ghost which is in you, were given from God, and you do not own your body. You are bought with a price, so glorify God in your body and in your spirit which belongs to God.”
1 Corinthians 10:31– “So whether you eat or drink or whatever you do, do it all for the glory of God“.
 As a person with sincerely with religious, moral and ethical beliefs and a Seventh Day Adventist, Tracy-Ann Francis-Martin has, a moral and ethical belief in Jesus and the bible. This relationship with Jesus confirms that the health laws given in the bible will guide her life with regards to what goes into or on her body.

Examples of Tracy-Ann Francis-Martin's sincerely held religious, moral and ethical beliefs based on the words of the bible that she should stay away from any food, drink, drugs, alcohol or anything that would destroy her body which is the temple of the living God.

Exhibit D

Leviticus chapter 11 - clean and unclean foods, drink and animals. **Romans 14:21** - "It is good neither to eat flesh, nor to "to drink wine, nor anything whereby thy brother stumbles or is offended, or is made weak." **Proverbs 20:1** - "Wine is a mocker, strong drink is raging: and whosoever is deceived thereby is not wise." **1 Corinthians 6:9-10**; "Know ye not that the unrighteous shall not inherit the kingdom of God? Be not deceived: neither fornicators, nor idolaters, nor adulterers, nor effeminate, nor abusers of themselves with mankind, nor thieves, nor covetous, nor drunkards, nor revilers, nor extortioners, shall inherit the kingdom of God." **Romans 13:13** - "Let us walk honestly, as in the day; not in rioting (drunken partying) and drunkenness." **Ephesians 5:18** "And be not drunk with wine, wherein is excess; but be filled with the Spirit;"

This religious exemption request is based on **Tracy-Ann Francis-Martin** sincerely held religious, moral and ethical beliefs that her body, according to scripture, as the temple of God and thus, it is her conscientious belief that the vaccine goes against her religious beliefs. Mrs. Francis-Martin cites 1 Corinthians 6:19 as the foundation of this belief. It states: what? Know ye not that your body is the temple of the Holy Ghost which is in you, which ye have of God, and he are not your own." KJV

We also believe in not working on the Saturday, which is the 7th day of the week, from sunset Friday to sunset Saturday evening. **Tracy-Ann Francis-Martin** ascribes to obeying the laws of the land and she ascribes to taking advice from her health care physicians and organizations, but for her **sincerely held religious, moral and ethical beliefs** the final call belongs to **Tracy-Ann Francis-Martin**.

Tracy-Ann Francis-Martin is requesting accommodations concerning employer's vaccination requirement, to not take the Covid Vaccine currently. Rather she will continue with the weekly Covid testing mandate and protocols.

Below are the highlights that qualify **Tracy-Ann Francis-Martin** for the right to her religious convictions according to the laws of the land.

- ✓ Employers have an obligation to accommodate an employee's sincerely held religious belief under Title VII of the Civil Rights Act (Title VII), unless the accommodation creates an undue hardship. A sincerely held religious belief can include an employee's religious-based objection to vaccinations.
- ✓ All employers, including state and local government employers, with 15 or more employees are covered under the ADA and Title VII. Federal government employers are also covered by Title VII; however, for disability accommodations, federal government employers must comply with the Rehabilitation Act of 1973 instead of the ADA, although the protections are similar.
- ✓ Title I of the Americans with Disabilities Act (ADA) requires employers to provide reasonable accommodation to qualified applicants and employees with a disability unless the employer can demonstrate that doing so creates an undue hardship to the employer or poses a direct threat to the safety of the employee or others in the workplace.

Exhibit D

- ✓ In 2015, the Supreme Court clarified the requirements of Federal law, Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000e. The Supreme Court held that employers cannot make a worker's need for religious accommodation "a motivating factor" in an adverse employment action, such as termination. The Court explained that a company must do more than simply follow its religion neutral employment policies – it must make affirmative efforts to provide religious accommodation, even giving the employee who needs accommodation "favored treatment." The Supreme Court explained the law with the following example:

An employer may not make an applicant's religious practice, confirmed or otherwise, a factor in employment decisions. For example, suppose that an employer think (though he does not know for certain) that a job applicant may be an orthodox Jew who will observe the Sabbath, and thus be unable to work on Saturdays. If the applicant requires an accommodation of that religious practice, and the employer's desire to avoid the prospective accommodation is a motivating factor in his decision, the employer violates Title VII. EEOC v. Abercrombie & Fitch, 135 S.Ct. 2028 (2015)

I am confident that you will be able to arrange a suitable accommodation for **Tracy-Ann Francis-Martin** based on her sincerely held religious, moral and ethical beliefs and refusal to take the Covid vaccine, while at the same time allowing her the right to remain in your employment. **Tracy-Ann Francis-Martin** remains committed, loyal and dedicated to being the best employee she can be.

It is because of **Tracy-Ann Francis-Martin** respect for God's authority that leads her to ask kindly for an exemption for receiving the Covid vaccination based on her sincerely held religious, moral and ethical beliefs. **Tracy-Ann Francis-Martin** is requesting that she be allowed to maintain the weekly Covid testing. This would be welcomed and adhered to. **Tracy-Ann Francis-Martin** is committed to full rights and beliefs for all parties involved in this company.

Thank you in advance for your anticipated cooperation with **Tracy-Ann Francis-Martin's** request.

Thank You, and Gods richest blessings to you,



Neil A. Turner, Senior Pastor

Exhibit E

Email received on 12/3 from Human Resource

Francis-Martin, Tracy (ACS) <tracy.francis-martin@acs.nyc.gov>
Fri, Dec 3, 2021 at 5:11 PM

Tracy-Ann Francis-Martin, MSW

• W (718)725-3778 • Cell (917)769-1866

Words of Kindness are as welcome as the smile of Angels.

From: acs.sm.HR.COVIDTest <HR.COVIDTest@acs.nyc.gov>
Sent: Friday, December 3, 2021 5:00 PM
Subject: ! WEEKLY PCR TESTING ! REMINDER & INSTRUCTIONS!
Importance: High

Hello,

Pursuant to the conditions of your request for reasonable accommodation, you are required to submit proof of a negative COVID-19 PCR test result every 7 days. Below are helpful instructions to aid in this process:

- **COVID-19 PCR Tests are required once every 7 days.**
 - You must be tested once every 7 days and submit proof of that test to HR.
 - For example, if you are tested on a Monday, your next test is due the following Monday.
 - Antigen tests are not accepted.

Exhibit E

- **All PCR tests must be submitted to the ACS CovidClear portal**
 - Access Link: <https://nyc-acs.labs.mtzb2b.com/request-vaccination-proof>
 - **The portal is only accessible from Microsoft Edge, Google Chrome and ACS Mobile Devices.**
 - After submitting your test to the portal you will receive an automated message confirming your submission.
 - After your submission is approved, you will receive an automated message indicating approval and will include your next due date.

Additional Information

- **“PENDING” Test Results**
 - You may submit proof of a “PENDING” test result.
 - If the weekly deadline is approaching, you may submit proof of a “PENDING” test result to the portal and continue working until you receive the final test result.
 - Once you receive the final test result, submit the final test result to the portal.
 - Don't delay! If your deadline is approaching, submit the “PENDING” test result. Then make sure to follow up and submit the corresponding NEGATIVE test result.
 - If you submit multiple back-to-back “PENDING” test results, and fail to submit the corresponding final NEGATIVE test results, you will be placed on leave without pay until the required documentation is received.
- **Excused Absence**
 - Please refer to the attached guide for submitting excused absence for COVID-19 testing in Citytime.
- **Due Dates & Reminders**
 - When your submissions are approved, you will receive a message indicating your next PCR test due date.
 - You will receive two weekly reminders which will indicate your next PCR test due date.
- **LAST CHANCE Reminder**
 - When your weekly deadline is approaching, you will receive a “LAST CHANCE” reminder message indicating that your weekly PCR test must be submitted by the end of the day.
 - If you fail to submit the required documentation by the deadline, you will be placed on leave without for the following day and until the required documents are received and approved by HR.
- **Multiple Consecutive Pending Test Results**

Exhibit E

- If you submit multiple back-to-back “PENDING” test results, and fail to submit the corresponding final NEGATIVE test results, you will receive a warning message alerting you of this.
 - If you fail to submit the required documentation by the deadline, you will be placed on leave without for the following day and until the required documents are received and approved by HR.
- **Leave Without Pay**
 - Pursuant to the conditions of your request for reasonable accommodation, if you fail to provide the required documentation by the established deadlines, then you will be placed on Leave Without Pay until the required documentation is received and approved by HR.
 - Please make sure to carefully review your documents and be mindful of the messages and alerts sent to you by HR in order to avoid instances of leave without pay.

Thank you,

ACS Office of Human Resources

For general HR inquiries please email - ask.hr@acs.nyc.gov

Exhibit E



Submitting Excused Absence in CityTime for PCR Testing Requirement

12/01/2021

What is the testing requirement?

In accordance with Citywide requirements, employees who have not submitted proof of COVID-19 vaccination are required to submit proof of a negative COVID-19 PCR test every 7 days.

Where am I supposed to submit the test?

Employees are required to submit their PCR test results to OHR using the ACS CovidClear Portal:

<https://nyc-acs.labs.mtzb2b.com/request-vaccination-proof>

What type of tests are accepted?

Only polymerase chain reaction (PCR) tests processed by medical professionals are accepted. These tests usually take 1-3 days to process at a lab, but some PCR tests are rapid tests. Both rapid and non-rapid PCR tests can be used. At-home tests and antigen tests will not be accepted.

Do I have to get tested on my own time?

Employees may get tested during non-work hours and submit their test results to OHR.

Employees may get tested during work hours under the following conditions

- Employees must coordinate with their supervisor in advance if they are going to get tested during work hours. Testing time should be scheduled so that it does not have any detrimental impact on operations.
- Subject to supervisor approval, employees must coordinate a time to get tested at the beginning or end of their shift.
- Employees will be required to document time taken to seek testing and are required to seek the fastest option available.
- If testing is offered at an employee's ACS work location, they may not use work hours to be tested off-site.

What happens if I don't get my PCR test results right away?

Employees who are awaiting their PCR test results should submit documentation from the lab or testing site indicating the date and time the test was collected and the type of test that was collected.

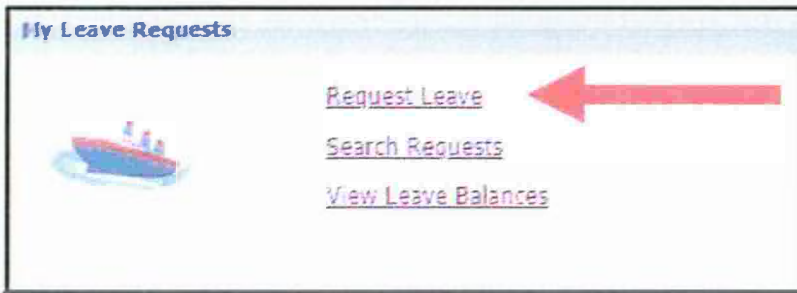
Once the final PCR test results are received, employees should submit the final PCR test result to the portal.

How do I record time for testing in CityTime?

Follow the instructions on the next page for requesting Excused Absence for testing in CityTime.

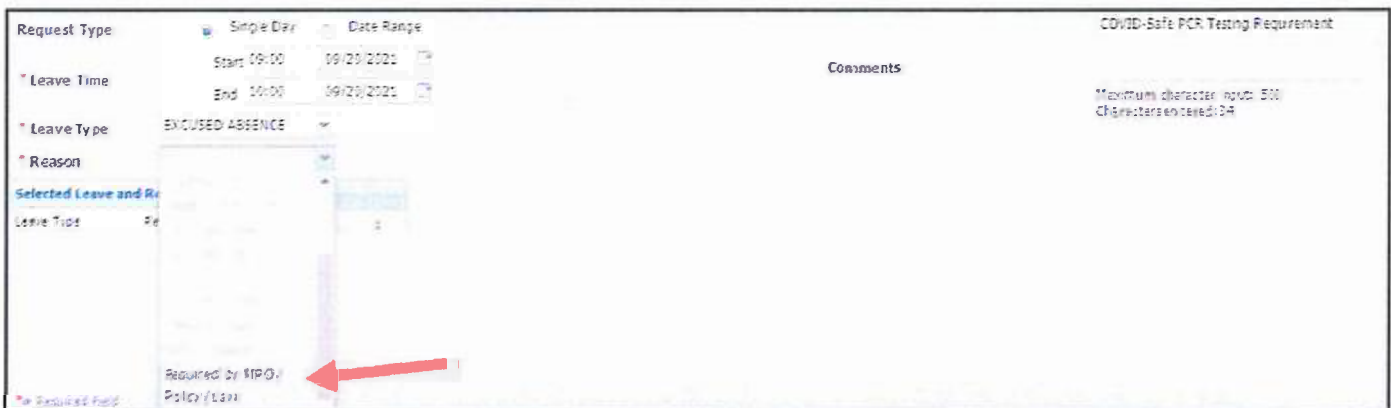
Employees who get tested during work hours will need to provide documentation to their supervisor indicating the date, time and location where the test was taken. A copy must also be provided to your Timekeeper.

Step 1: Navigate to "Request Leave" in CityTime



Step 2: Enter Leave Details

- Leave Date
- Start Time, End Time
- Leave Type = Excused Absence
- Reason = Required by MPO/ Policy / Law



Step 3: Review and Submit

- Click Preview 
- Review Leave Request details
- Click Submit 

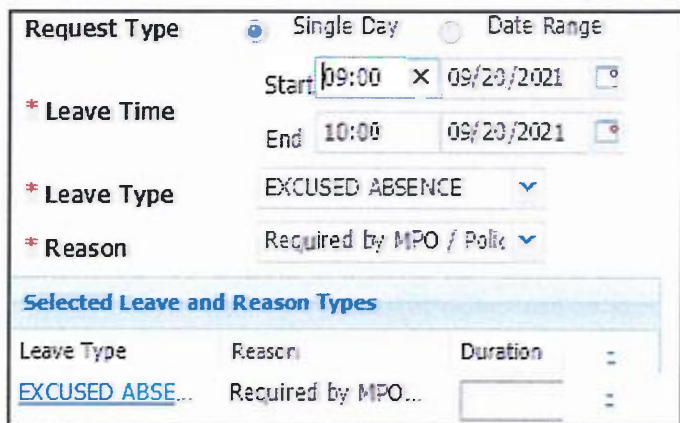


Exhibit F

Exhibit F—Email communication reshared regarding reasonable accommodation denial and request to submit to vaccine mandate.

Good morning TRACYANN FRANCIS-MARTIN

Per DOHMH Commissioner's Order to Require COVID-19 Vaccination for City Employees and Certain City Contractors (<https://www1.nyc.gov/assets/doh/downloads/pdf/covid/covid-19-vaccination-requirement-city-employees.pdf>) , the New York City Vaccine Mandate requires that all City employees must provide verification that they are vaccinated against COVID-19 by October 29, 2021. Our records indicate that you are not in compliance with the vaccine mandate and was placed on LWOP on 01/03/22. This may result in your termination from the agency.

If you wish to return to work in full pay status, please submit proof of vaccination to <https://nyc-acslabs.mtzb.com/request-vaccination-proof> .

Thank you

Sheree Reid, LMSW | Employment Services Deputy Director
The Office of Human Resources
Phone: 212-341-2504 | 646-988-7384

Fax: 917-551-7237

Email: ADMIN.EmploymentServices@acs.nyc.gov

Sheree.Reid@ACS.NYC.GOV

General HR inquiries: email ask.hr@acs.nyc.gov

Exhibit G—

Tracy Martin <my2boyz99@yahoo.com>

To: siheem.roseborough@acs.nyc.gov, Acs. Sm. Ask. EEO

Cc: Tracy Martin

Tue, Jan 18 at 12:39 PM

Good day Mr. Roseborough,

First let me say thank you for speaking with me on 1/12/22 to discuss my denial for my Religious reasonable accommodation regarding exemption from the COVID-19 vaccine. During this conversation we discussed the discrepancy in the original email shared with me on or around 12/3/21, which supported my Religious reasonable accommodation request for exemption from the COVID-19 vaccine mandate, which gave me the option of submitting to weekly COVID-19 PCR test, versus the letter shared on 12/29/21, that informed me that I would be placed on Leave Without Pay (LWOP) as of 1/3/21 for noncompliance with COVID-19 vaccine mandate.

Subsequent to these letters distributed to my attention, the Supreme Court's ruling on 1/13/22, has afforded new options as it relates to the mandatory COVID-19 vaccine mandates. Under this action, the Occupational Safety & Health Administration's (OSHA) ruling was safeguarded. According to OSHA, "**business with 100 or more employees, get vaccinated or submit a negative COVID-19 test weekly to enter the workplace.**"

As I review this document and the ruling by the Supreme Court, I am paying close attention to the use of the conjunction **OR**, as this supports that based on the number of employees within Children Services, I can be granted a Religious reasonable Accommodation to submit to weekly PCR COVID-19 testing.

As a Child Protection Manager,(CPM), and dedicated employee with the Division of Child Protection for 25+ years, I am kindly requesting for my Religious request for reasonable accommodation to NOT take the COVID-19 vaccine, be re-instated. I remain committed to weekly COVID-19 PCR testing, accommodation, based on accommodation granted 12/3/21. I remain committed to the masking compliance, as well as using precautions to support a healthy work space environment.

Mr. Roseborough, I remain hopeful that you will re-assess my request, and grant me favor in re-instating my Religious Reasonable Accommodation.

Looking forward to hearing from you.

Best,
TFM

Exhibit H

From: ACS Office of Human Resources <hr.vaccinevalidation@acs.nyc.gov>
To: ACS Office of Human Resources <hr.vaccinevalidation@acs.nyc.gov>
Sent: Monday, January 31, 2022, 05:14:46 PM EST
Subject: VACCINE MANDATE COMPLIANCE

Good afternoon,

Pursuant to DOHMH's Commissioner Order, all city employees were required to submit proof of at least one dose of a two-dose Covid-19 vaccination by October 29, 2021. Our records indicate that you are currently out of compliance with this order.

You must submit proof of at least one dose of a two-dose Covid-19 vaccine to the [ACS COVIDCLEAR](#) portal by February 11, 2022 or you will be terminated.

To submit your proof of vaccination, please access the [ACS CovidClear](#) portal using the following link: <https://nyc-acslabs.mtxb2b.com/request-vaccination-proof> . **PLEASE NOTE** that this link is only accessible through Microsoft Edge and Google Chrome.

Getting vaccinated has never been easier. Find a site near you at <https://vaccinefinder.nyc.gov/>

For additional questions, please email hr.VaccineValidation@acs.nyc.gov.

Office of Human Resources

150 William Street 16th Flr

NY, NY 10038

Appendix #34

**AFFIDAVIT OF B. REID
RELIGIOUS EXEMPTION**

STATE OF NEW YORK)
) ss.
COUNTY OF QUEENS)

B. REID, being first duly sworn on oath, deposes and declares as follows:

1. I am above the age of 18 and am competent to make this affidavit.
2. I was a Sanitation Worker, Ref #0594359, Q-7a serving as a Street Sweeper for the Department of Sanitation ("Department") since August 16, 2004. My responsibilities included Mechanical Broom Operations to keep garbage off the streets of New York.
3. I operated the Mechanical Broom equipment alone and I have no contact with the public or any other Sanitation workers during my assigned work shifts.
4. On September 11, 2021, I was notified by the Department that I would need to provide weekly COVID-19 PCR tests starting on September 13, 2021, if I chose to not take the COVID-19 vaccination. See **Exhibit A**
5. Since August 2004 until now, I have been approved for religious work schedule accommodations to allow me to observe the weekly Seventh Day Sabbath according to the Fourth Commandment of the Ten Commandments of the Bible. I have over 36 religious accommodation requests for the last 17 years in my personnel file and I have never worked for the Department on the Sabbath in 17 years.
6. Never have I been denied a religious work schedule accommodation since I started my job in 2004.
7. I complied with this order and began submitting weekly testing on September 13, 2021 and continued doing so each following week as required until the date I was placed on Leave Without Pay status.
8. On October 22, 2021, I was then notified by the Department that they would require all employees to receive the COVID19 vaccine by October 30, 2021 or be placed on Leave without Pay status beginning on November 1st 2021. See **Exhibit B**
9. The Vaccine Mandate notice stated that employees may request accommodations for medical or religious exemptions that would have to be submitted to RAExemptions@dsny.nyc.gov by October 27th, 2021.

10. I submitted my request for religious exemption on October 25th 2021, as required by the Department (DSNY). See **Exhibit C**
11. I continued to submit weekly COVID19 PCR tests as was required.
12. On October 28, 2021, I received an email from the DSNY Office of Equity, Diversity and Inclusion notifying me that my exemption request was under review. See **Exhibit D**
13. On November 5, 2021, I received another email from a Dan Hagevick with DSNY, asking for additional information regarding my religious exemption submission. See **Exhibit E**
14. On November 18, 2021, I received an email from DSNY stating they denied my request for religious exemption accommodations. The email included a letter that gave instructions for filing an appeal to the denial, which had to be submitted by November 23, 2021. See **Exhibit F**
15. On November 23, 2021 I submitted my appeal for religious exemption as was required. See **Exhibit G**
16. On November 27, 2021, DSNY issued a notice stating that those who took the vaccine would receive compensation for taking time off to take the vaccine as an incentive and they would receive an additional payment \$500 as a one time incentive to take the vaccine. See **Exhibit H**
17. On January 19, 2022, I received an email from the Department stating my appeal was denied, and that I would be placed on Leave without Pay Status on January 25, 2022, if proof of COVID-19 vaccination was not submitted by January 24, 2022.
18. At no time did anyone from the Department of Sanitation meet and confer with me to discuss any and all possible accommodations or workplace safety mitigation controls. Nor was I trained in OSHA safety standards for COVID mitigation or provided OSHA/NIOSHA approved safety equipment such as a powered air respirator (PAPR MASK) that I specifically requested. There was never any dialogue about the nature of my job to determine if I needed an exemption and accommodation or additional safety equipment due to the Covid-19 Pandemic based on my job description and my unvaccinated status due to my religious beliefs.
19. On February 1st, 2022, I was sent a letter from the Department stating that I would be terminated on February 11, 2022 for failure to complete vaccination as a condition of my employment.

20. I did not complete the vaccination by February 11, 2022.
21. There has never been any determination by the Union or the Courts that the vaccination was a "condition of my employment". When I started my job there was never any pre-employment notice to me that upon acceptance of the job that I agreed to receive any vaccinations as a condition of my acceptance of employment.
22. Also, under New York City law, I can only be terminated for cause of a disciplinary infraction having to do with the essential functions of my job, or if I was convicted of a crime or mortal turpitude. I have never been served a disciplinary charge by the DSNYC.
23. Nevertheless, my employer NYC Department of Sanitation strong armed my Union and told them they had to enter into an agreement regarding the vaccine that would require all Union members to be vaccinated or get an exemption.
24. Under information and belief, it is my understanding that the NY City went to all the Unions misrepresenting to the unions that because the Pandemic is a "public safety and health" crisis that they had to agree to their vaccine mandate terms.
25. I was told by the Union that they entered into an MOU with NY City so that they would protect Union members religious exemptions because the MOU included provisions for providing the exemptions.
26. Instead of granting exemptions to workers like me who has had a religious exemption for my Sabbath observance, NY City was denying requests for exemptions and claiming that the MOU was a term of employment that workers must submit to.
27. When the Union learned of how the NY City was not giving exemptions as was to be permitted under the MOU, my union recanted the MOU and called out NY City for its failures.
28. The unexpected decision to terminate me is unfair and discriminatory especially when others in the Department have also been granted exemptions and accommodations and I have not.
29. The termination letter is my final determination that I have exhausted my administrative remedies.
30. I have filed an EEOC complaint and requested a right to sue, but because of the major backlog, I have not received my right to sue letter yet.
31. This termination has resulted in a loss of my family health benefits. I am the primary provider for my family. I must retain health benefits due to the health needs of my wife and children.

I declare under penalty of perjury under the laws of the State of New York that the foregoing is true and correct.

Dated this 14 day of APRIL, 2022.

Bruce Reid
Bruce Reid

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

Subscribed and sworn to (or affirmed) before me on this 14 day of Apr., 2022, by B. Reid, who provided to me on the basis of satisfactory evidence to be the person(s) who appeared before me is the person who provide identification of their full first and last name.

Witness my hand and official seal.

FEL Latai

[Affix Notary Seal]

Signature of Notary Public

FEL Latai
Faramarz Fred Latai
FARAMARZ FRED LATAI
Notary Public, State of New York
01LA5084018
Qualified in Nassau County
Commission Expires 11/1/25
Apr. 14 / 2022

Appendix #35

**AFFIDAVIT OF
J. RULLO**

STATE OF NEW YORK)
) ss.
COUNTY OF SUFFOLK)

J. RULLO, being first duly sworn on oath, deposes and declares as follows:

1. I am above the age of 18 and am competent to make this affidavit.
2. I was a Sanitation Worker Ref# 0596272 performing Garage Utility duties for the Queens District 7A, New York City Department of Sanitation (DSNY) located at 120-15 31st Ave. Flushing, NY 11356.
3. I served as a Sanitation Worker for over 17 years.
4. My position did not require me to provide face to face client or public engagement. My job consisted of garage maintenance duty including changing truck tires, organizing equipment and inventory and maintaining snow removal equipment. I primarily worked alone in a completely open and very large garage depot area with no contact with the general public, and very little contact with other employees only when necessary.
5. On September 11, 2021, I was notified by the Department that I would need to provide weekly COVID-19 PCR tests starting on September 13, 2021, if I chose to not take the COVID-19 vaccination. See **Exhibit A**
6. I complied with this order and began submitting weekly testing on September 13, 2021 and continued doing so each following week as required until I received a positive Covid test on December 27, 2021 and I was told that I did not need to test again until March 20, 2022, which was called a "test exemption". See **Exhibit A1**
7. On October 22, 2021, I was then notified by the Department that they would require all employees to receive the COVID19 vaccine by October 30, 2021 or be placed on Leave without Pay status beginning on November 1st 2021. See **Exhibit B**
8. The Vaccine Mandate notice stated that employees may request accommodations for medical or religious exemptions that would have to be submitted to RAExemptions@dsny.nyc.gov by October 27th, 2021.
9. I submitted my request for religious exemption on October 27, 2021, as required by the DSNY. See **Exhibit C**
10. I continued to submit weekly COVID19 PCR tests as was required.
11. On October 28, 2021, I received an email from the DSNY Office of Equity, Diversity and Inclusion notifying me that my exemption request was under review. See **Exhibit D**

12. On November 5, 2021, I received an email from a Dan Hagevick with DSNY, asking for additional information regarding my religious exemption submission, which I responded to. See **Exhibit E**
13. On November 18, 2021, I received an email from the DSNY stating they denied my request for religious exemption accommodations. The email included a letter that gave instructions for filing an appeal to the denial, which had to be submitted by November 23, 2021. See **Exhibit F**
14. On November 23, 2021, I submitted my appeal for religious exemption as was required. See **Exhibit G**
15. On November 27, 2021, DSNY issued a notice stating that those who took the vaccine would receive compensation for taking time off to take the vaccine as an incentive and they would received an additional payment of \$500 as a one time incentive to take the vaccine. See **Exhibit H**
16. On January 19, 2022, I received an email from the Department stating my appeal was denied, and that I would be placed on Leave without Pay Status on January 25, 2022, if proof of COVID-19 vaccination was not submitted by January 24, 2022.
17. At no time did anyone from the Department of Sanitation meet and confer with me to discuss any and all possible accommodations or workplace safety mitigation controls. Nor was I trained in OSHA safety standards for COVID mitigation or provided OSHA/NIOSHA approved safety equipment such as a powered air respirator (PAPR MASK) that I specifically requested. There was never any dialogue about the nature of my job to determine if I needed an exemption and accommodation or additional safety equipment due to the Covid-19 Pandemic based on my job description and my unvaccinated status due to my religious beliefs.
18. On February 8, 2022, I received a letter from the Department stating that I would be terminated on February 11, 2022 for failure to complete vaccination as a condition of my employment. See **Exhibit I**
19. I did not complete the vaccination by February 11, 2022.
20. There has never been any determination by the union or the courts that the vaccination was a "condition of my employment". When I started my job there was never any pre-employment notice to me that upon acceptance of the job that I agreed to receive any vaccinations as a condition of my acceptance of employment.
21. I was told by the Union that they entered into an MOU with New York City so that they would protect union members religious exemptions because the MOU included provisions for providing the exemptions.
22. Instead of granting exemptions to workers like myself, New York City was denying requests for exemptions and claiming that the MOU was a term of employment that workers must submit to.

- 23. When the Union learned of how New York City was not granting exemptions as was to be permitted under the MOU, and moving to terminate it's members, my union recanted the MOU and called out New York City for it's failures.
- 24. The unexpected decision to terminate me is unfair and discriminatory especially when others in the Department have also been granted exemptions and accommodations and I have not.
- 25. The Mayor reported at a public press conference that hundreds of other city workers had received accommodations.
- 26. This termination has resulted in the loss of health benefits. I am the sole provider for my family. I must retain health benefits due to the health needs of my wife.
- 27. To go without health insurance coverage will cause serious harm to my family as my wife will not be able to continue to see the doctors for her healthcare needs.
- 28. The termination letter is my final determination that I have exhausted my administrative remedies.
- 29. I have filed an EEOC complaint and requested a right to sue letter, but because of the backlog, I am currently awaiting to receive it.

I declare under penalty of perjury under the laws of the State of New York that the foregoing is true and correct.

Dated this 15 day of April, 2022.

J. Rullo
J. Rullo

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

Subscribed and sworn to (or affirmed) before me on this 15 day of April 2022, by J. Rullo, who provided to me on the basis of satisfactory evidence to be the person(s) who appeared before me is the person whose identification reveals their entire first and last name.

Witness my hand and official seal.

[Signature]
Signature of Notary Public

[Affix Notary Seal]

KEVIN HAGLER
Notary Public, State of New York
Reg. No. 02HA6305622
Qualified in Nassau County
Commission Expires June 9, 2022

Appendix #36

8. On August 26, 2021 I called Milangely Lopez per the email and began to explain to her that I did not like how things were going with regards to the vaccine and that I wanted to file for a religious exemption due to my sincerely held belief in our lord Jesus Christ. At that time there was no mandate, therefore she stated that there was no need to file anything at the time and not to worry. The conversation was kept to a minimum. I hung up and that was the end.
9. As expected, on August 31, 2021, Mayor De blaiso announced via an all City press release that due to the rapidly spreading the variant of the Covid-19 and based on the CDC recommendations, that all New York City employees and contractors were required to either provide proof of vaccination or a negative Covid-19 test beginning September 13, 2021. I learned about the announcement watching New York City TV news. But found the press release online - See Exhibit D
10. Finally, on September 9, 2021 I received an email at 6:31 pm regarding weekly testing and information on the vaccine and protocols regarding the pandemic. Please see **Exhibit E**
11. Then on October 20, 2021, New York City Department of Health (DOH) Commissioner, David Section 3.01(d) of the Health Code, David A. Chokshi, MD, MSc, issued a DOH Executive Order that required City Employees and contractors to only provide proof of vaccination by October 29, 2021 and no reference to the option to provide a negative Covid-19 test was provided in the order. See **Exhibit F**
12. Consequently, on October 20, 2021, I emailed Belinda French, the EEO officer at 9:30 am, requesting a meeting. The meeting took place via phone call at 1:30 pm, at that moment I express to her my sincerely held belief and that I wanted to file for a reasonable accommodation based on religious exemption against taking the COVID-19 vaccine, later that day at 2:13 pm I received an email back with the reasonable accommodation form and instructions. Please see **Exhibit G & H**.
13. On October 21, 2021 I received an email and attachment from HR, stating that "Beginning November 1st, employees who have not provided proof of vaccination against COVID-19 will be placed on Leave Without Pay (LWOP) and be subject to termination of employment. Employees have until October 29th, 2021 to provide Human Resources with proof of vaccination or, until October 27th, 2021 to submit a request for a reasonable accommodation." See **Exhibit I & J**
14. In addition, in the same email, HR attempted to coerce me into getting vaccinated by offering \$600 for complying. If I refused, the consequence would be LWOP. I found this coercion unprofessional and a blatant disregard to all people seeking religious exemption.
15. On October 22, 2021 I submitted my Reasonable Accommodation Request, to the DCAS EEO office, with a written statement outlining my sincerely held religious belief per "Title VII of the Civil Rights Act of 1964, individuals have the right to be free from discrimination on the basis of religion. As part of their religious beliefs, many individuals object to vaccines." and that As a **practicing**

Christian in a covenant relationship with GOD taking the vaccine violates that covenant with GOD as goes against GOD's commandments for me.

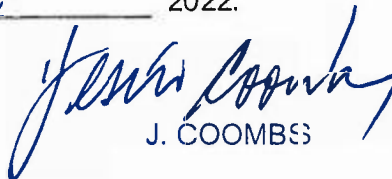
16. On October 26, 2021 I received a call from Milangely Lopez, Investigator at about 11:40 am, Mrs Lopez stated this was an intake conversation and not an interview, she then proceeded to ask a series of questions regarding my written statement and to clarify the phrase "Covenant relationship with GOD", I then proceed to explain my sincerely held religious beliefs. The call took about 15 minutes. At no point in our conversation did Ms. Lopez explains or offers me any type of accommodations available to me. Please see **Exhibit K**
17. At no time during the call did Mrs Lopez consider modifying my workplace, including continuing to allow me to work remotely as a workplace modification that would allow me to remain in my unvaccinated state and work while also maintaining a safe workplace for myself and other employees. Nothing was offered to me by DCAS HR other than the requirement to get vaccinated as a means to stop the spread of the Covid virus in the DCAS building that I was working in at the time.
18. On October 28, 2021, I received another email, which I felt was harassing and coercive, stating that "DCAS employees must submit proof of their first COVID-19 shot to Human Resources by October 29, 2021 at 5pm. DCAS employees who do not comply with this requirement will be placed on leave without pay effective Monday, November 1, 2021." Please see **Exhibit I & J**
19. On November 4, 2021, I received an email from HR stating that employees who are awaiting a determination on or have been granted a reasonable accommodation request are required to submit a weekly test. My reasonable accommodation was not granted to continue to work, while being tested and wearing protective gear. Please see **Exhibit K**.
20. On December 6, 2021, I received an email where Belinda French clearly revealed that the conversation with Melangely Lopez illegally violated my right to privacy. When my conversation with Ms. Lopez was initiated, she stated our conversation was not being taken as a statement but just an intake and that she was just going over what I wrote for her to have a clear understanding of my sincerely held religious beliefs. As an intake, I thought Ms. Lopez was attempting to work with me in good faith to seek a means or tool that would maintain a safe workplace without me having to take the vaccine. Ms. Lopez however, deceived me and misconstrued my conversation that was not established as being admitted as an official record. Please see **Exhibit L, paragraph 4**. Had I known my responses during this phone conversation were being taken as an official record, I would have asked her to simply refer back to my letter so my words would not be misconstrued.
21. On December 6, 2021, I received a denial of my request to be exempted from the DOH vaccine require, which was included in the email from Belinda French **Exhibit L, paragraph 7**, she states based on the information provided and after careful consideration, the office determined that I did not provide sufficient testimony to demonstrate that I had a sincerely held religious observance, belief or practice that would qualify for a religious exemption to the COVID-19 vaccine mandate. However, I provided EEO with 4 testimonies from people who know me between 5 and 50 years in addition to my own testimony with my appeal as to my sincerely held religious beliefs. Please see **Exhibit M**.

22. In the denial, I was offered to appeal the decision as part of the administrative process.
23. Prior to sending my response to the denial, I was given the choice to either have my response reviewed by a panel consisting of the DCAS, Law department and the NYC Commission of Human Rights (called the City-wide Panel) or by an arbitrator. See **Exhibit N**. I decided to have my application reviewed by the panel. See **Exhibit O**.
24. I submitted an appeal to the DCAS City-wide panel and I included in my appeal to the EEO my medical records of my God given immunity to Covid 19, which further supports my case that I don't need to take the Covid 19 vaccine for an immunity that God himself has given me. The test shows that my antibody levels for Covid 19 are higher than the antibody levels of a person with the Covid 19 vaccine. See **Exhibit P**
25. I was only given 3 days to respond to the denial, not sufficient time for a person who has to work full time, take care of a family and other obligations.
26. On December 21, 2021 before receiving an email informing me I was either exempted or denied for my religious accommodation, I was informed by Cris De La Rosa, our Chief of Staff, that I was on the list for employees being placed on LWOP. I immediately reached Belinda French to question this information. See **Exhibit Q**. Belinda stated there was an error in the list and she would reach out to HR regarding the matter.
27. On January 5, 2022 I received an email from Belinda French stating she received an email that informed her my appeal was denied. Upon further investigation into the email, I realized the email originated from noreply@salesforce.com on behalf of NYC Employee Vaccine Appeals vaxappeal@dcas.nyc.gov. Please see **Exhibit R & S**.
28. On January 6, 2022 I requested via email once again to be provided with the reason why my reasonable accommodation exemption was denied. I have yet to receive a reason. In addition, I asked why I was being punished by being placed on LWOP when the new Mayor's address on January 1 or 2, 2022 stated that punitive action will not be taken. I received no response to this question. Furthermore, I asked if I could see or speak with someone to see what all this meant for me and my family and I once again, did not receive a response or the support I requested. Please see **Exhibit T**.
29. On January 13, 2022, I was placed on Leave without Pay (LWOP) because I continued to refuse the vaccine based on my religious sincerely held belief.
30. Then, on January 21, 2022 at 6:14 pm, I received an email from Shameka Blount, DCAS Executive Director, Administration stating that I must comply with the with the Vaccine mandate or I will terminated from my employment with DCAS " Compliance with the vaccination mandate is a condition of your continued employment with the City. If you do not provide proof of vaccination, your employment with the City will be terminated effective February 11, 2022." however this was never a condition of my original employment, and I was not aware that that can change without my consent or knowledge.

31. Because I am the sole financial support of my family I was very upset and also fearful of losing my salary and entire career and harming my family.
32. Since being placed on LWOP, I suffered from headaches from anxiety and had sleepless nights worried about how I would take care of my family. I spent nights praying to the Lord to cause the city to lift the requirement for me to get vaccinated. I prayed to God daily for courage to obey what the Bible, the word of God, calls all believers to do and that is to treat my body like the temple of God and not put unnatural substances in my body.
33. While I cried to God for the days leading up to February 11, 2022, I also had great fear that I was not doing my duty before God to take care of my family. This emotional conflict caused me so much anxiety that I asked God for forgiveness and I went ahead and took the Covid-19 on February 11, 2022 after having my salary withheld for a month.
34. I sent my vaccine card to the DCAS and I was allowed to return to work on February 15, 2022.
35. Since returning to work and speaking to other employees, I have learned that other DCAS employees did receive exemptions from the vaccine and were allowed to continue to work based on their religious beliefs, without being placed on LWOP.
36. Having learned that other employees were given exemptions and not placed on LWOP, I have experienced feelings of guilt for having gone against my religious beliefs when others were given exemptions. My anger, guilt and resentment toward DCAS is so great that I suffer from anxiety and headaches from having let my God down and allowing myself to be coerced into going against my God for a job.
37. I pray daily for forgiveness to deal with the anger and resentment and emotional anguish I feel toward DCAS for forcing me to have to choose between my God, my family and this job. I feel horrible all the time. I pray for peace daily.

I declare under penalty of perjury under the laws of the State of California, where I am temporarily residing to receive emotional help and support, that the foregoing is true and correct.

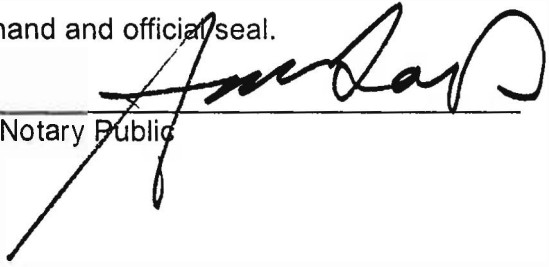
Dated this 18th day of April 2022.


J. COOMBS

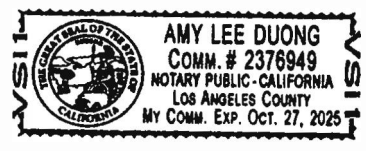
A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

Subscribed and sworn to (or affirmed) before me on this 18 day of Apr. 1, 2022, by J. COOMBS, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Witness my hand and official seal.


Signature of Notary Public

[Affix Notary Seal]




Appendix #37

Preventing Chronic Disease

CDC


PREVENTING CHRONIC DISEASE
 PUBLIC HEALTH RESEARCH, PRACTICE, AND POLICY

COVID-19 and Chronic Disease: The Impact Now and in the Future

[Print](#)
 ESSAY — Volume 18 — June 17, 2021  106

This article is part of the [Advancing Health Equity, Eliminating Health Disparities, and Improving Population Health](#) collection.

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PEER REVIEWED

The Problem of COVID-19 and Chronic Disease

Chronic diseases represent 7 of the top 10 causes of death in the United States (1). Six in 10 Americans live with at least 1 chronic condition, such as heart disease, stroke, cancer, or diabetes (2). Chronic diseases are also the leading causes of disability in the US and the leading drivers of the nation's \$3.8 trillion annual health care costs (2,3).

The COVID-19 pandemic has resulted in enormous personal and societal losses, with more than half a million lives lost (4). COVID-19 is a disease caused by severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) that can result in respiratory distress. In addition to the physical toll, the emotional impact has yet to be fully understood. For those with chronic disease, the impact has been particularly profound (5,6). Heart disease, diabetes, cancer, chronic obstructive pulmonary disease, chronic kidney disease, and obesity are all conditions that increase the risk for severe illness from COVID-19 (7). Other factors, including smoking and pregnancy, also increase the risk (7). Finally, in addition to COVID-19–related deaths since February 1, 2020, an increase in deaths has been observed among people with dementia, circulatory diseases, and diabetes among other causes (8). This increase could reflect undercounting COVID-19 deaths or indirect effects of the virus, such as underutilization of, or stresses on, the health care system (8).

Some populations, including those with low socioeconomic status and those of certain racial and ethnic groups, including African American, Hispanic, and

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Native American, have a disproportionate burden of chronic disease, SARS-CoV-2 infection, and COVID-19 diagnosis, hospitalization, and mortality (9). These populations are at higher risk because of exposure to suboptimal social determinants of health (SDoH). SDoH are factors that influence health where people live, work, and play, and can create obstacles that contribute to inequities. Education, type of employment, poor or no access to health care, lack of safe and affordable housing, lack of access to healthy food, structural racism, and other conditions all affect a wide range of health outcomes (10–12). The COVID-19 pandemic has exacerbated existing health inequities and laid bare underlying root causes.

The COVID-19 pandemic has had direct and indirect effects on people with chronic disease. In addition to morbidity and mortality, high rates of community spread and various mitigation efforts, including stay-at-home recommendations, have disrupted lives and created social and economic hardships (13). This pandemic has also raised concerns about safely accessing health care (14) and has reduced the ability to prevent or control chronic disease. This essay discusses the impact that these challenges have or could have on people with chronic disease now and in the future. Exploring the impact of COVID-19 should help the public health and health care communities effectively improve health outcomes.

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Challenges

The challenges we face as public health professionals are divided into 3 categories. The first category involves the current effects of COVID-19 on those with, or at risk for, chronic diseases and those at higher risk for severe COVID-19 illness. Inherent in this category is the need for balance between protecting people with chronic diseases from COVID-19 while assuring they can engage in disease prevention, manage their conditions effectively, and safely receive needed health care.

The second category is the postpandemic impact of COVID-19 on the prevention, identification, and management of chronic disease. COVID-19 has resulted in decreases of many types of health care utilization (15), ranging from preventive care to chronic disease management and even emergency care (16). As of June 2020, 4 in 10 adults surveyed reported delaying or avoiding routine or emergent medical care because of the pandemic (14). Cancer screenings, for example, dropped during the pandemic (17). Decreases in screening have resulted in the diagnoses of fewer cancers and precancers (18), and modeling studies have estimated that delayed screening and treatment for breast and colorectal cancer could result in almost 10,000 preventable deaths in the United States (19). We have lost ground in prevention across the chronic disease spectrum and in other areas, including pediatric immunization (20), mental health (21,22), and substance abuse (21,22).

Some challenges with health care utilization may be improving, but improvement has not been consistent across all health care visit types, providers, patients, or communities (15). Questions about the impact of the pandemic on chronic disease include:

- What diseases have been missed or allowed to worsen?
- What is the status of prevention and disease management efforts?
- Have prevention and disease management efforts been affected by concerns such as job loss, loss of insurance, lack of access to healthy food, or loss of places and opportunities to be physically active?
- How have effects of the pandemic on health care systems (staff reductions, health practice closures, disrupted services) (23) and public health organizations' deployment of personnel away from ongoing chronic disease prevention efforts been experienced nationally?

The effects of COVID-19, whether negative or positive, on health care and public health systems will certainly affect those with chronic disease. To fully understand the consequences of the pandemic, we need to assess its overall impact on incidence, management, and outcomes of chronic disease. This is particularly salient in communities where health inequities are already rampant or communities that are remote or underserved. Will our postpandemic response be strong enough to mitigate the exacerbation of inequities that have occurred? Can public health agencies effectively build trust in science and community health care systems where trust might never have been fully established or where it has been lost?

The third category relates to the long-term COVID-19 sequelae, both as a disease entity and from a population

perspective. Has COVID-19 created a new group of patients with chronic diseases, neurologic or psychiatric conditions, diabetes, or effects on the heart, lungs, kidneys, or other organs (24)? Has it worsened existing conditions or caused additional chronic disease? And, at the population level, have the incidence and prevalence of chronic diseases increased because of pandemic-related health behaviors or other challenges, such as decreased food and nutrition security?

Given the rollout of COVID-19 vaccines and the coming end of the pandemic, this is an important time to examine the impact of COVID-19. Solutions at all levels are needed to improve health outcomes and lessen health inequities among people with or at risk for chronic disease. Solutions are likely to include increasing awareness about prevention and care during and after the pandemic, building or enhancing cross-organizational and cross-sector partnerships, innovating to address identified gaps, and addressing SDoH to improve health and achieve equity. So, what can be done?

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Raise Awareness

Additional focus is required on several aspects of awareness about the impact of COVID-19. First, public health and health care practitioners need to allay people's fears and help them safely return to health care. We need to reemphasize chronic disease prevention and care, explain how to safely access care, and convey the host of mitigation efforts made by health care systems, providers, and public health to ensure that environments are safe (eg, mask requirements, social distancing). Emphasis on safety and mitigation applies to both disease prevention (such as encouraging healthy nutrition and physical activity, screening for cancer and other conditions, and getting oral health care) and disease management (eg, educating patients about medications to control hypertension, diabetes, asthma, and other chronic conditions). Efforts must also include helping those with chronic diseases obtain access to and gain confidence in the COVID-19 vaccine. Given current community rates of COVID-19 and the need to reenter care after the height of the pandemic, information can help patients make informed choices about the need for in-person care, communication at a distance, or temporary delays in care that is more discretionary.

To garner support to help affected communities, there is a need to build awareness about how COVID-19 has disproportionately affected particular communities, including the unequal distribution of disease, morbidity, mortality, and resources, such as access to vaccines. Awareness is dependent on access to data at the granular geographic level, including information on the burden of chronic disease and the status of SDoH. Communities need data to effectively address health inequities in the aftermath of the pandemic.

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Collaborate on Solutions and Build Trust

Public health plays a significant role in addressing health behaviors (healthy eating, physical activity, avoiding tobacco and other substance use) and community solutions to address SDoH that impact prevention and control of chronic disease. Collaborations at both the individual and system levels, however, are required for success. Collaborative partners include other government and nongovernmental organizations, health care organizations, insurers, nonprofit organizations, community and faith-based groups, schools, businesses, and others. Coalitions and community groups are critical change agents. They have worked with local health departments and others to identify solutions, bring residents into discussions, and implement action. We can learn from them about how best to build trust and foster the innovation they are leading. Solutions must also include direct discussions with residents in affected communities to understand their priorities and effectively address their concerns. These relationships are particularly salient to address SDoH. These factors have been amplified as a direct consequence of COVID-19 and will require a multisector approach to problem solving.

To achieve this will require building trust in both the health care system and the public health system. The pandemic has taken a toll on an already fragile relationship between communities and public health and health care institutions where trust has been absent or insufficient. To begin to address the trust challenge will require investments in outreach, engagement, and transparency. Conversations need to be bidirectional, long-term, and conducted by people who are trusted, who are respectful, and who can identify with affected populations.

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Innovate

Creative solutions are needed to engage populations and promote resiliency among those who are disproportionately affected by COVID-19. Efforts that need to be further developed and brought to scale include the following:

- Leveraging technology to expand the reach of health care and health promotion (eg, telemedicine, virtual program delivery, wearables, mobile device applications).
- Providing more services in community settings, as is increasingly modeled in the National Diabetes Prevention Program (25).
- Using community health workers to assist in assessing current conditions and connecting to community resources.
- Further enhancing approaches to increase access to and convenience of services (eg, increasing access to home screenings, such as cancer screening) or monitoring (eg, home blood pressure monitoring) where appropriate.

Health care approaches, such as telemedicine, have expanded greatly during the pandemic and seem likely to continue expansion over time. As these and related efforts grow, practitioners will need to ensure that existing disparities are not magnified. Care is needed to ensure that those with the highest health needs can access services. For example, are technological solutions easily accessible, available in multiple languages, compatible with readily available hardware options, such as telephones rather than laptops? Are culturally appropriate resources available to help people use and value these technologies? In addition, computer availability and internet access will need to be expanded. Challenges such as unemployment, food insecurity, limited transportation, substance abuse, and social isolation will require a multisector effort uniquely adapted to local contexts. To begin, health equity-focused policy analyses and health impact assessments will help policy makers understand better how proposed SDoH-related action might either exacerbate or mitigate chronic disease inequities. These actions will help us develop a deeper understanding of what individual communities need to mobilize and build resilience for the future. We face serious public health and population health concerns that should be the focus in the near term — particularly as equitable access to COVID-19 vaccines is a consideration in every community across the nation. We clearly have an enormous amount of work to do as we enter recovery from the pandemic, but with recovery comes enormous opportunity.

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Address Long-Term COVID-19 Sequelae

A challenge related to long-term COVID-19 sequelae is that we do not know yet the extent that COVID-19 exacerbates chronic disease, causes chronic disease, or will be determined a chronic disease unto itself. Those interested in chronic disease prevention and management need to follow the research to understand better the role they will play with this emerging situation. Long-term studies and longitudinal surveillance will help clarify these issues, and there is much research to be done. The duty of the public health community is to help ensure that the most important issues from the perspectives of patients, providers, health care, and public health systems are addressed; that potential solutions are developed and tested; and that eventual solutions are delivered where they are needed most.

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How Will the National Center for Chronic Disease Prevention and Health Promotion Contribute?

As the US enters the next phase of pandemic response, the work of National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP) of the Centers for Disease Control and Prevention is evolving to address health inequities and drive toward health equity with a multipronged approach. This approach includes enhanced access to data at the local level, a focus on SDoH including a shift in the Notice of Funding Opportunity process that emphasizes a health equity lens, and an expansion of partnerships and communications.

Placing data in the hands of communities is critical for local coalitions to determine their burden of chronic disease and COVID-19, their access to resources, and the best policies and practices to implement. Data will be useful for local public health, governments, and health care systems, but can also help human services, planning, and economic development organizations. An initial step is making available data from the PLACES Project (26), which provides data on 27 chronic disease measures at the census tract level, allowing communities to understand their own chronic

disease burden. In addition, modules on SDoH are in development to enhance NCCDPHP data surveillance systems. This will increase the ability to overlay chronic disease data and SDoH data at the community level. The need is also a great for core SDoH measures that allow comparisons of related outcomes across communities. NCCDPHP can augment this effort by contributing to and amplifying the SDoH measures identified for Healthy People 2030 (27).

NCCDPHP is focusing on supporting and stimulating SDoH efforts by concentrating on 5 major areas: built environment, social connectedness, food and nutrition security, tobacco policies, and connections to clinical care. For example, SDoH are the foci of recent Notices of Funding Opportunities (available at <https://www.grants.gov>). NCCDPHP supports multisector partnerships in numerous funding announcements and launched a joint effort with the Association of State and Territorial Health Officials and the National Association of County and City Health Officials to identify best practices in multisector collaboration to address SDoH (28). Evidence will help build a standard for success to support local coalitions in their work. States and local communities are sites of innovation, and promoting lessons learned can help build broader efforts. To address urgent needs and facilitate change, NCCDPHP must link with other sectors outside of public health and health care. The work to evaluate these efforts and determine the most effective strategies to address SDoH, therefore, will be integrated fully into NCCDPHP.

An expansion of the Racial and Ethnic Approaches to Community Health (REACH) Program (29) and other programs that address health inequities will help to target resources where they are needed most. REACH and a recently released investment in community health workers (30) demonstrate NCCDPHP's commitment to connecting with populations that are disproportionately affected by chronic disease at the local level. These efforts are aimed at addressing the ramifications of COVID-19 while also amplifying chronic disease prevention efforts. NCCDPHP also intends to enhance the use of a health equity lens, among other approaches, to determine the best use of resources and to help assess outcomes in all programmatic activities.

Finally, communication about the impact of COVID-19 on chronic disease, returning to care, and the extent of health inequities is critical to building trust. Efforts under way include a television and digital media campaign aiming to encourage those with chronic disease to return safely to care (31). In addition to expanding work with partner organizations, both external and internal to government, NCCDPHP will embrace new ways of garnering input from affected communities. Successes and failures experienced by communities during the pandemic will continue to be of the utmost importance to NCCDPHP. In addition, important insights gained from working closely with affected communities will help NCCDPHP continually refine its national chronic disease prevention and control goals and objectives. Activities related to SDoH and health equity, data, and communication will address difficult questions now and into the future. These efforts can only be successful with collaboration and partnerships across multiple sectors.

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Conclusion

The impact of SARS-CoV-2, the virus that causes COVID-19, on people with or at risk for chronic disease cannot be overstated. COVID-19 has impeded chronic disease prevention and disrupted disease management. The problems and solutions outlined here are critically important to help those committed to chronic disease prevention and intervention to identify ways forward.

NCCDPHP is adjusting, preparing, and implementing multiple strategies to address the future. Although the work will be challenging, opportunities abound. NCCDPHP is committed to working with the health care community and a variety of partners at federal, state, and local levels to help address the realities of the post-COVID era.

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Acknowledgments

The authors have no conflicts of interest to report. No copyrighted materials were used in the preparation of this essay.

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Author Information





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Author Affiliations: ¹National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease

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Content source: National Center for Chronic Disease Prevention and Health Promotion



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Appendix #38

12.20.21

Guidance on Accommodations for Workers

Per the December 13, 2021 Order of the Commissioner of Health workplaces are required to exclude staff who are not vaccinated and do not fit within exceptions provided by the Order no later than December 27, 2021.

Pursuant to Section 6 of that order, workers may apply for a Reasonable Accommodation to be exempt from this requirement. Reasonable accommodations may be granted for religious reasons and for documented medical reasons (including documented medical reasons relating to pregnancy).

In some cases it may be appropriate to allow a brief extension of time to be vaccinated for a person who is the victim of domestic violence, sex offenses or stalking. A claim for a reasonable accommodation on this basis should be supported by documentation from a social worker, clergy member or other professional who can confirm the worker's status as a victim.

Employers may deny accommodations that impose an undue burden on the employer. EEOC guidance states that whether undue hardship exists should be based on an analysis of several factors, including:

- the nature and cost of the accommodation needed;
- the overall financial resources of the facility making the reasonable accommodation; the number of persons employed at this facility; the effect on expenses and resources of the facility;
- the overall financial resources, size, number of employees, and type and location of facilities of the employer (if the facility involved in the reasonable accommodation is part of a larger entity);
- the type of operation of the employer, including the structure and functions of the workforce, the geographic separateness, and the administrative or fiscal relationship of the facility involved in making the accommodation to the employer;
- the impact of the accommodation on the operation of the facility.

The attached checklists are not legal advice. The checklists are intended to guide employers and managers in evaluating requests they may receive from workers for reasonable accommodations or exemptions from the requirement that they be vaccinated against COVID-19. It is not intended, nor is it a substitute for legal advice from a licensed attorney.

For more information about the reasonable accommodation process you can review the information provided by the [New York City Commission on Human Rights](#) and the [Equal Employment Opportunity Commission](#).

MAINTAIN COPIES OF COMPLETED CHECKLISTS TO SERVE AS A RECORD FOR ANY EXEMPTIONS OR ACCOMMODATIONS THAT ARE GRANTED.

12.20.21

Accommodation for Medical Reasons

All medical documentation must be from the worker’s health care provider with a valid medical license. The below are circumstances found by the CDC and the New York City Department of Health and Mental Hygiene as worthy of medical exemption from vaccination:

1. A **Permanent** Medical Exemption may be granted if:

- Worker had a severe allergic reaction (for example, anaphylaxis or angioedema) after a previous dose or to a component of all three approved COVID-19 vaccines.
- Worker has a known diagnosed allergy to a component in all three approved COVID-19 vaccines.

2. A **Temporary** Medical Exemption may be granted if:

- Worker has presented medical documentation showing that they are within 90 days of monoclonal antibody or convalescent plasma treatment of COVID-19.
- Worker has presented medical documentation showing they recently underwent stem cell transplant, CAR Tcell therapy, or other therapy or treatment that would temporarily interfere with the worker’s ability to respond adequately to vaccination, or mount an immune response due to treatment.
- Worker has Pericarditis or myocarditis.

The length of a temporary medical exemption will be determined on a case-by-case basis after considering the medical documentation. An employee will be required to be vaccinated at the end of the temporary period.

If any of the above boxes in 1 or 2 are checked, Worker may receive an accommodation and not be vaccinated.

Accommodation

- Weekly PCR testing for COVID-19 and Masking at all times when not eating or drinking. Any eating or drinking must occur at least six feet away from others.
- Telework or remote work that does not expose others to the accommodated worker.
- Leave of Absence.
- Other _____
- No accommodation is granted because the unvaccinated worker would likely pose a direct threat to themselves or others.
- No accommodation is granted because accommodation presents an undue burden on the employer.

Worker Name: _____ Date: _____

Temporary Accommodation Ends On: _____

Employer Representative: _____ Title: _____

12.20.21

Accommodation for Religious Reasons

1. Is the request based solely on a personal, political, or philosophical preference?

- The government should not force people to get vaccines or interfere with medical decisions.
 - This vaccine is not safe or ineffective.
 - COVID is a hoax.
 - Other expression of personal, political or philosophical belief _____
-

If any of the above are the only basis for the accommodation request, Worker does not qualify for a religious accommodation.

2. Is the request based on a sincerely held religious, moral, or ethical belief?

- Worker has explained/documented how the belief requires the worker not to be vaccinated.
 - > Worker saying, for example, they practice a particular religion is not enough on its own.
 - > A clergy letter is not required, but helpful and persuasive when the clergy is someone who has a personal relationship with the employee; Form letters or letters from out-of-town clergy who do not know the worker generally are not.
 - The worker has not taken other kinds of vaccinations previously.
 - >If worker has received other vaccines, they should explain why those vaccines were not against their religion.
 - Worker says religious belief prevents them from allowing certain substances to enter their body.
 - >If yes, the worker should list/describe other commonly used medicines, food/drink, or other substances that they do not allow to enter their bodies.
-

- Worker says that they cannot take the vaccine because it was developed and/or tested using fetal cells that the worker is concerned may have been the result of an abortion.
 - >Does worker takes medications such as ibuprofen (Advil), acetaminophen (Tylenol), or any other medications similarly developed or tested using fetal cell derivative lines? Such behavior would be inconsistent with this religious belief and generally means the worker would be denied an accommodation.

If any of the above are checked, Worker may qualify for a religious accommodation.

Accommodation

- Weekly PCR testing for COVID-19 and Masking at all times when not eating or drinking. Any eating or drinking must occur at least six feet away from others.
- Telework or remote work that does not expose others to the accommodated worker.
- Leave of Absence.
- Other _____
- No accommodation is granted because the unvaccinated worker would likely pose a direct threat to themselves or others.
- No accommodation is granted because accommodation presents an undue burden on the employer.

Worker Name: _____ Date: _____

Employer Representative: _____ Title: _____

Appendix #39



August 22, 2022

PAULA SMITH
[REDACTED]

Employee ID# [REDACTED]

Dear PAULA SMITH,

Earlier this year, you were terminated from employment from the New York City Department of Education due to non-compliance with the employee COVID-19 vaccine mandate. You are now being offered the opportunity to return to employment if you become fully vaccinated, provided that you meet the following conditions:

- Provide proof that that you have received at least one dose of the COVID-19 vaccine no later than September 6, 2022.
- Provide proof of full COVID-19 vaccination (meaning the receipt of two shots of two dose vaccine, if applicable) no later than October 21, 2022 (45 days after September 6).

Former employees who provide such proof will be re-hired within two weeks of providing proof of full vaccination, but no earlier than September 20, 2022.

Please be aware, that employees will be rehired into their title but may receive a different assignment including to a different school.

To provide proof of vaccination by these dates, please take the following steps:


- Send an email to VaccineMandateTermination@schools.nyc.gov
- Put your name and Employee ID# in the subject line (your Employee ID# is found under your address on the top of this page)
- Attach to your email proof of COVID-19 vaccination which can be an image of your vaccination card, NYS Excelsior Pass, or another government record
- You will receive further communications to the email you use to send this information, so please be sure to use an email you will be monitoring.

Thank you,

NYC Department of Education Division of Human Resources



August 22, 2022

ROSEANNA MUSTACCHIA


Employee ID 
Dear ROSEANNA MUSTACCHIA,

Earlier this year, you were terminated from employment from the New York City Department of Education due to non-compliance with the employee COVID-19 vaccine mandate. You are now being offered the opportunity to return to employment if you become fully vaccinated, provided that you meet the following conditions:

- Provide proof that that you have received at least one dose of the COVID-19 vaccine no later than September 6, 2022.
- Provide proof of full COVID-19 vaccination (meaning the receipt of two shots of two dose vaccine, if applicable) no later than October 21, 2022 (45 days after September 6).

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- Put your name and Employee ID # in the subject line (your Employee ID # is found under your address on the top of this page)
- Attach to your email proof of COVID-19 vaccination which can be an image of your vaccination card, NYS Excelsior Pass, or another government record
- You will receive further communications to the email you use to send this information, so please be sure to use an email you will be monitoring.

Thank you,

NYC Department of Education Division of Human Resources



August 22, 2022

JESSICA CSEPKU

Employee ID #: [REDACTED]

Dear JESSICA CSEPKU,

Earlier this year, you were terminated from employment from the New York City Department of Education due to non-compliance with the employee COVID-19 vaccine mandate. You are now being offered the opportunity to return to employment if you become fully vaccinated, provided that you meet the following conditions:

- Provide proof that that you have received at least one dose of the COVID-19 vaccine no later than September 6, 2022.
- Provide proof of full COVID-19 vaccination (meaning the receipt of two shots of two dose vaccine, if applicable) no later than October 21, 2022 (45 days after September 6).

Former employees who provide such proof will be re-hired within two weeks of providing proof of full vaccination, but no earlier than September 20, 2022.

Please be aware, that employees will be rehired into their title but may receive a different assignment including to a different school.

To provide proof of vaccination by these dates, please take the following steps:

- Send an email to VaccineMandateTermination@schools.nyc.gov
- Put your name and Employee ID # in the subject line (your Employee ID # is found under your address on the top of this page)
- Attach to your email proof of COVID-19 vaccination which can be an image of your vaccination card, NYS Excelsior Pass, or another government record
- You will receive further communications to the email you use to send this information, so please be sure to use an email you will be monitoring.

Thank you,

NYC Department of Education Division of Human Resources



August 22, 2022

REMO DELLO IOIO

Employee ID [REDACTED]

Dear REMO DELLO IOIO,

Earlier this year, you were terminated from employment from the New York City Department of Education due to non-compliance with the employee COVID-19 vaccine mandate. You are now being offered the opportunity to return to employment if you become fully vaccinated, provided that you meet the following conditions:

- Provide proof that that you have received at least one dose of the COVID-19 vaccine no later than September 6, 2022.
- Provide proof of full COVID-19 vaccination (meaning the receipt of two shots of two dose vaccine, if applicable) no later than October 21, 2022 (45 days after September 6).

Former employees who provide such proof will be re-hired within two weeks of providing proof of full vaccination, but no earlier than September 20, 2022.

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To provide proof of vaccination by these dates, please take the following steps:

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- Put your name and Employee ID # in the subject line (your Employee ID # is found under your address on the top of this page)
- Attach to your email proof of COVID-19 vaccination which can be an image of your vaccination card, NYS Excelsior Pass, or another government record
- You will receive further communications to the email you use to send this information, so please be sure to use an email you will be monitoring.

Thank you,

NYC Department of Education Division of Human Resources



sanitation

Jessica S. Tisch Commissioner

Adil Tahir
Executive Director
Human Resources

June 17, 2022

VIA OVERNIGHT MAIL

59 Maiden Lane
5th Floor
New York, NY 10038
nyc.gov/sanitation

Bruce Reid

646-885-1081
Adtahir@dsny.nyc.gov

Re: NYC COVID-19 Vaccine Mandate: Option for Reinstatement

Dear: Bruce Reid

As of February 11, 2022 you were terminated from your employment with the City of New York, Department of Sanitation.

The Department of Sanitation would like to offer you the opportunity to return to employment if you become fully vaccinated, provided that you share a copy of your vaccination record and submit proof of at least the first dose by close of business on Thursday, June 30th, and the second dose by August 15th. Compliance with this requirement is a condition of your return to employment with the City. Once you provide proof of full vaccination (both doses), you will be reinstated to your civil service title at your most recent salary within two weeks of submission of proof of full vaccination, with no change to benefits or break in service.

If you wish to resume employment with the City of New York, you must provide proof of receipt of at least one dose of the vaccine by close of business on June 30th, 2022.

To submit proof of vaccination, please use the portal below and/or contact the COVID-19 Hotline at (212) 437-4655.

COVID-19 Vaccination Submission Portal

<https://www1.nyc.gov/assets/dsny/site/contact/covid-19-vaccine-registration>

For information regarding where to get vaccinated, please visit the NYC COVID-19 and Flu Vaccine Finder:

<https://vaccinefinder.nyc.gov>.



August 22, 2022

CHARISSE RIDULFO

Employee ID # [REDACTED]

Dear CHARISSE RIDULFO,

Earlier this year, you were terminated from employment from the New York City Department of Education due to non-compliance with the employee COVID-19 vaccine mandate. You are now being offered the opportunity to return to employment if you become fully vaccinated, provided that you meet the following conditions:

- Provide proof that that you have received at least one dose of the COVID-19 vaccine no later than September 6, 2022.
- Provide proof of full COVID-19 vaccination (meaning the receipt of two shots of two dose vaccine, if applicable) no later than October 21, 2022 (45 days after September 6).

Former employees who provide such proof will be re-hired within two weeks of providing proof of full vaccination, but no earlier than September 20, 2022.

Please be aware, that employees will be rehired into their title but may receive a different assignment including to a different school.


To provide proof of vaccination by these dates, please take the following steps:


- Send an email to VaccineMandateTermination@schools.nyc.gov
- Put your name and Employee ID # in the subject line (your Employee ID # is found under your address on the top of this page)
- Attach to your email proof of COVID-19 vaccination which can be an image of your vaccination card, NYS Excelsior Pass, or another government record
- You will receive further communications to the email you use to send this information, so please be sure to use an email you will be monitoring.

Thank you,

NYC Department of Education Division of Human Resources

August 22, 2022

EVELYN ZAPATA


Employee ID # 

Dear EVELYN ZAPATA,

Earlier this year, you were terminated from employment from the New York City Department of Education due to non-compliance with the employee COVID-19 vaccine mandate. You are now being offered the opportunity to return to employment if you become fully vaccinated, provided that you meet the following conditions:

- Provide proof that that you have received at least one dose of the COVID-19 vaccine no later than September 6, 2022.
- Provide proof of full COVID-19 vaccination (meaning the receipt of two shots of two dose vaccine, if applicable) no later than October 21, 2022 (45 days after September 6).

Former employees who provide such proof will be re-hired within two weeks of providing proof of full vaccination, but no earlier than September 20, 2022.

Please be aware, that employees will be rehired into their title but may receive a different assignment including to a different school.

To provide proof of vaccination by these dates, please take the following steps:

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- Put your name and Employee ID # in the subject line (your Employee ID # is found under your address on the top of this page)
- Attach to your email proof of COVID-19 vaccination which can be an image of your vaccination card, NYS Excelsior Pass, or another government record
- You will receive further communications to the email you use to send this information, so please be sure to use an email you will be monitoring.

Thank you,

NYC Department of Education Division of Human Resources



August 22, 2022

MARITZA ROMERO



Employee ID #



Dear MARITZA ROMERO,

Earlier this year, you were terminated from employment from the New York City Department of Education due to non-compliance with the employee COVID-19 vaccine mandate. You are now being offered the opportunity to return to employment if you become fully vaccinated, provided that you meet the following conditions:

- Provide proof that that you have received at least one dose of the COVID-19 vaccine no later than September 6, 2022.
- Provide proof of full COVID-19 vaccination (meaning the receipt of two shots of two dose vaccine, if applicable) no later than October 21, 2022 (45 days after September 6).

Former employees who provide such proof will be re-hired within two weeks of providing proof of full vaccination, but no earlier than September 20, 2022.

Please be aware, that employees will be rehired into their title but may receive a different assignment including to a different school.

To provide proof of vaccination by these dates, please take the following steps:

- Send an email to VaccineMandateTermination@schools.nyc.gov
- Put your name and Employee ID # in the subject line (your Employee ID # is found under your address on the top of this page)
- Attach to your email proof of COVID-19 vaccination which can be an image of your vaccination card, NYS Excelsior Pass, or another government record
- You will receive further communications to the email you use to send this information, so please be sure to use an email you will be monitoring.

Thank you,

NYC Department of Education Division of Human Resources



August 22, 2022

MARK MAYNE

Employee ID #: [REDACTED]
Dear MARK MAYNE,

Earlier this year, you were terminated from employment from the New York City Department of Education due to non-compliance with the employee COVID-19 vaccine mandate. You are now being offered the opportunity to return to employment if you become fully vaccinated, provided that you meet the following conditions:

- Provide proof that that you have received at least one dose of the COVID-19 vaccine no later than September 6, 2022.
- Provide proof of full COVID-19 vaccination (meaning the receipt of two shots of two dose vaccine, if applicable) no later than October 21, 2022 (45 days after September 6).

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Please be aware, that employees will be rehired into their title but may receive a different assignment including to a different school.

To provide proof of vaccination by these dates, please take the following steps:

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- You will receive further communications to the email you use to send this information, so please be sure to use an email you will be monitoring.

Thank you,

NYC Department of Education Division of Human Resources



65-2

An Official Communication
from the Uniformed Firefighters Association



#54 of 2022 • June 17th

204 East 23rd Street, New York, NY 10010 • Tel: 212-683-4832 • Fax: 212-683-0710 • www.ufanyc.org
Follow us on Twitter: @ufanyc Facebook: @ufanyc Instagram: @fdny_ufa

Employment Reinstatement

The UFA has been notified that the City will be offering employees who were previously terminated under the Vaccine Mandate the opportunity to be reinstated if they receive their first dose of the vaccine by June 30, 2022, and then get the second dose needed to be considered fully vaccinated within 45 days of the first dose. Members will be reinstated on payroll if they are fully vaccinated by August 15, 2022.

The City has advised us that members will be reinstated to their full civil service title and salary with no change in benefits or break in service upon providing proof of full vaccination.

Proof of receipt of at least one dose must be received by the Department no later than June 30, 2022. Proof of vaccination should be submitted via email to HRVaxProof@fdny.nyc.gov.

Fraternally,

Vincent Speciale
Vincent Speciale
Recording Secretary

Andrew R. Ansbro
Andrew Ansbro
President

- Website www.UFANYC.org
 - Send 65-2 info to 652@UFANYC.org
 - Health/Safety concerns to HealthandSafety@UFANYC.org
- ALWAYS CALL to verify your email was received!!!

They are now bribing firefighters who were already terminated, with the chance to be reinstated IF they get their first dose of the poison potion by June 30th.



August 22, 2022

SARA COOMBS



Employee ID #:

Dear SARA COOMBS,

Earlier this year, you were terminated from employment from the New York City Department of Education due to non-compliance with the employee COVID-19 vaccine mandate. You are now being offered the opportunity to return to employment if you become fully vaccinated, provided that you meet the following conditions:

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- Send an email to VaccineMandateTermination@schools.nyc.gov
- Put your name and Employee ID # in the subject line (your Employee ID # is found under your address on the top of this page)
- Attach to your email proof of COVID-19 vaccination which can be an image of your vaccination card, NYS Excelsior Pass, or another government record
- You will receive further communications to the email you use to send this information, so please be sure to use an email you will be monitoring.

Thank you,

NYC Department of Education Division of Human Resources



sanitation

Jessica S. Tisch Commissioner

Adil Tahir
Executive Director
Human Resources

June 17, 2022

VIA OVERNIGHT MAIL

59 Maiden Lane
5th Floor
New York, NY 10038
nyc.gov/sanitation

Joseph Rullo



646-885-1081
Adtahir@dsny.nyc.gov

Re: NYC COVID-19 Vaccine Mandate: Option for Reinstatement

Dear: Joseph Rullo

As of February 11, 2022 you were terminated from your employment with the City of New York, Department of Sanitation.

The Department of Sanitation would like to offer you the opportunity to return to employment if you become fully vaccinated, provided that you share a copy of your vaccination record and submit proof of at least the first dose by close of business on Thursday, June 30th, and the second dose by August 15th. Compliance with this requirement is a condition of your return to employment with the City. Once you provide proof of full vaccination (both doses), you will be reinstated to your civil service title at your most recent salary within two weeks of submission of proof of full vaccination, with no change to benefits or break in service.

If you wish to resume employment with the City of New York, you must provide proof of receipt of at least one dose of the vaccine by close of business on June 30th, 2022.

To submit proof of vaccination, please use the portal below and/or contact the COVID-19 Hotline at (212) 437-4655.

COVID-19 Vaccination Submission Portal

<https://www1.nyc.gov/assets/dsny/site/contact/covid-19-vaccine-registration>

For information regarding where to get vaccinated, please visit the NYC COVID-19 and Flu Vaccine Finder:

<https://vaccinefinder.nyc.gov>.



POLICE DEPARTMENT
Human Resources Division
Administrative Unit
One Police Plaza, 10th Floor
New York, NY 10038

June 17, 2022

Sonia Hernandez

Dear Sonia Hernandez:

As of March 19, 2022 you were terminated from your employment with the New York City Police Department.

The New York City Police Department would like to offer you the opportunity to return to employment if you become fully vaccinated, provided that you email a copy of your vaccination record to the New York City Police Department at meoleave@nypd.org indicating that you have received or will receive at least the first dose by close of business on **Thursday, June 30, 2022**, and that you intend to receive the second dose by **Monday, August 15, 2022**. Compliance with this requirement is a condition of your return to employment with the City. Once you provide proof of full vaccination (both doses), you will be reinstated to your civil service title at your most recent salary within two weeks of submission of proof of full vaccination, with no change to benefits or break in service.

If you wish to resume employment with the City of New York, you must provide proof of receipt of at least one dose of the vaccine by close of business on **Thursday, June 30, 2022**.

For information regarding where to get vaccinated, please visit: <https://vaccinefinder.nyc.gov>

For questions regarding this matter, please contact the Personnel Bureau at 646-610-5878 or meoleave@nypd.org

Sincerely,

A handwritten signature in black ink that reads 'Marisa Caggiano'.

Marisa Caggiano
Assistant Commissioner
Human Resources Division

Appendix #40



The Coronavirus Pandemic >

Map and Cases

Updated Boosters: What to Know

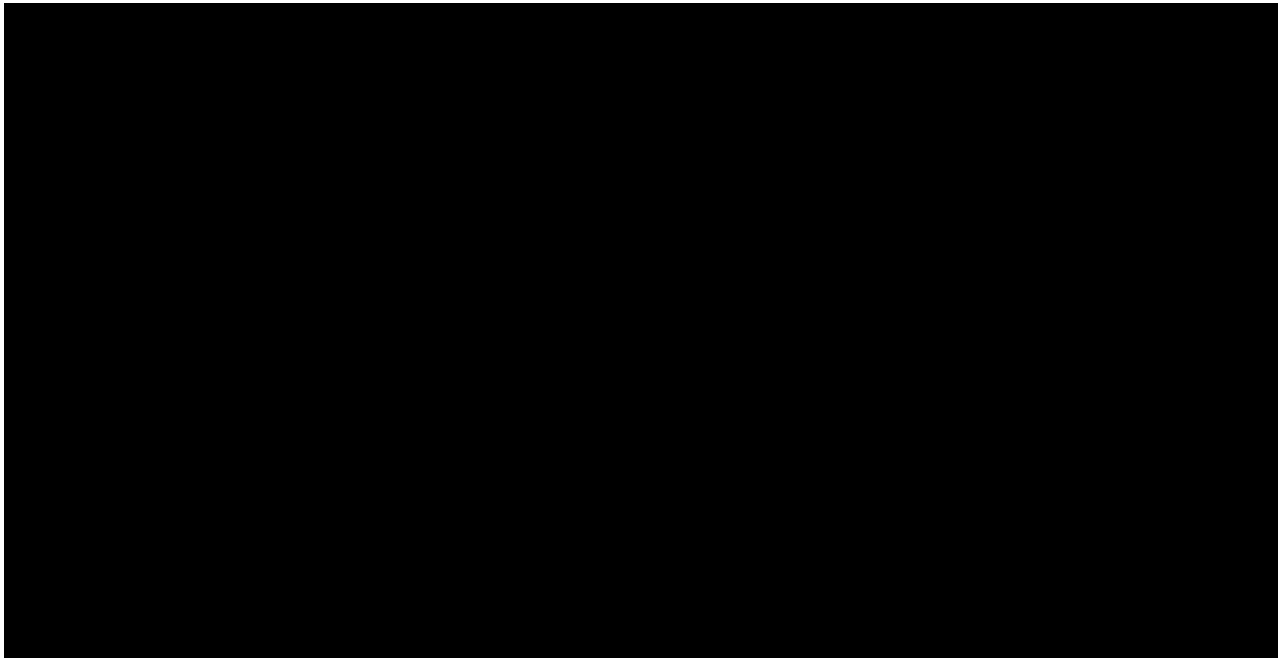
New C.D.C. Guidelines, Explained

Cov

9,000 Unvaccinated N.Y.C. Workers Put on Unpaid Leave as Mandate Begins

Mayor Bill de Blasio said thousands more did get the shot and that the first day of the vaccine mandate went smoothly, without significant service disruptions.

Give this article



About 9,000 municipal employees, less than 6 percent of the work force, were placed on unpaid leave for refusing to get vaccinated. Mayor Bill De Blasio said that there were no disruptions to city services. Benjamin Norman for The New York Times



By Joseph Goldstein and Sharon Otterman

Published Nov. 1, 2021 Updated Nov. 4, 2021

Hundreds of firefighters called in sick in what appeared to be an organized

...hundreds of protesters came in from what appeared to be an organized protest. Sanitation workers were playing catch up, [after garbage collection lagged](#) last week.


But for the most part, New York City's vast municipal work force returned to work as usual on Monday, with more than a few sore arms and new vaccination cards, as the city's [coronavirus vaccine mandate](#) for its employees went into effect, officials said.

"We're not seeing disruptions to any city services," Mayor Bill de Blasio said late Monday morning.

Across all city agencies, Mr. de Blasio said, about 9,000 municipal employees have been placed on unpaid leave — all eligible to return to work as soon as they get a first dose.

Another 12,000 city workers had yet to get their first dose of a [Covid-19 vaccine](#), but had applied for a religious or medical exemption. They are allowed to continue working while the city evaluates their requests. The city has over 370,000 people on its payroll.

ADVERTISEMENT



In the 12 days from when the mandate was first announced and Monday's deadline, the vaccination rate shot up at many city agencies. At the city's Emergency Medical Service, which operates ambulances, the vaccination rate jumped to 87 percent from 61 percent. The Sanitation Department's vaccination rate jumped 20 percentage points, to 82 percent from 62

Appendix #41

**ORDER OF THE BOARD OF HEALTH
TO AMEND THE REQUIREMENT FOR
COVID-19 VACCINATION FOR CITY EMPLOYEES
AND EMPLOYEES OF CERTAIN CITY CONTRACTORS**

WHEREAS, on March 25, 2020, the Commissioner of Health and Mental Hygiene (“Commissioner”) declared the existence of a public health emergency within New York City to address the continuing threat posed by COVID-19 to the health and welfare of City residents, and such declaration and public health emergency continue to be in effect; and

WHEREAS, pursuant to Section 3.01(d) of the Health Code, when urgent public health action is necessary to protect the public health against an existing threat and a public health emergency has been declared, the Commissioner is authorized to issue orders and take actions that are deemed necessary for the health and safety of the City and its residents; and

WHEREAS, on October 20, 2021, the Commissioner issued an “Order to Require COVID-19 Vaccination for City Employees and Certain City Contractors” that required all City employees, except certain Department of Correction employees and certain employees of some City contractors, to provide proof to the agency or office where they work that they had been vaccinated against COVID-19, and required certain employees of some City contractors to provide the same proof to their employer (the “October 20, 2021 Order”); and

WHEREAS, on October 31, 2021, the Commissioner issued a “Supplemental Order to Require COVID-19 Vaccination for City Employees and Employees of Certain City Contractors,” delaying until November 8, 2021, application of the October 20, 2021 Order for certain employees or contractors, and requiring additional City contractors not covered by the October 20, 2021 Order to ensure that certain of their employees, provide proof that they had been vaccinated against COVID-19 (the “October 31, 2021 Order”); and

WHEREAS, on November 1, 2021, the Board of Health ratified and continued both the October 20, 2021 Order and the October 31, 2021 Order; and

WHEREAS, as of February 1, 2023, 331,955 City employees, representing 96% of all City employees, have completed a primary series of vaccination, and high vaccination rates correlate with lower rates of hospitalization and death; and

WHEREAS, as of January 26, 2023, more than 6.6 million adults residing in New York City, representing 99% of all such adults, have received at least one dose of vaccination against COVID-19, and more than 5.9 million adults residing in New York City, representing 90% of all such adults, have completed a primary series of vaccination, and high vaccination rates correlate with lower rates of hospitalization and death; and

WHEREAS, the high rate of vaccination among adults in New York City has proven effective in lessening the burden of COVID-19 on the City’s healthcare system;

NOW THEREFORE BE IT RESOLVED, the Board of Health hereby orders that the October 20, 2021 Order, and the October 31, 2021 Order, as ratified and continued by the Board of Health on November 1, 2021, are hereby **AMENDED** as follows:

1. Paragraph 3 of the October 20, 2021 Order is **REPEALED**, so that a City employee who does not provide the required proof of vaccination as described in paragraph 2 of that Order no longer need be excluded from the premises at which they work.
2. Paragraph 4 of the October 20, 2021 Order, and paragraph 2 of the October 31, 2021 Order, are **MODIFIED**, so that a City human services contractor or other City contractor described in those paragraphs no longer needs to require their covered employees to provide proof of vaccination against COVID-19.

Dated: February 9, 2023

**ORDER OF THE BOARD OF HEALTH
AMENDING COVID-19 VACCINATION REQUIREMENTS
FOR DEPARTMENT OF EDUCATION
EMPLOYEES, CONTRACTORS, VISITORS AND OTHERS**

WHEREAS, on March 25, 2020, the Commissioner of Health and Mental Hygiene (“Commissioner”) declared the existence of a public health emergency within New York City to address the continuing threat posed by COVID-19 to the health and welfare of City residents, and such declaration and public health emergency continue to be in effect; and

WHEREAS, pursuant to Section 3.01(d) of the Health Code, when urgent public health action is necessary to protect the public health against an existing threat and a public health emergency has been declared, the Commissioner is authorized to issue orders and take actions that are deemed necessary for the health and safety of the City and its residents; and

WHEREAS, on September 15, 2021, the Commissioner issued, and on September 17, 2021, the Board of Health ratified and continued, an Order requiring proof of COVID-19 vaccination by September 27, 2021, for Department of Education (“DOE”) employees, visitors to school buildings, charter school staff, and individuals who work in-person in a DOE or charter school setting or DOE building (“September 15, 2021 Order”); and

WHEREAS, on September 28, 2021, the Commissioner extended the deadline by which DOE employees, visitors to school buildings, charter school staff, and individuals who work in-person in a DOE or charter school setting or DOE building were required to comply with the September 15, 2021 Order (“September 28, 2021 Order”), which extension was ratified and continued by the Board of Health on October 18, 2021; and

WHEREAS, as of January 26, 2023, more than 7.5 million City residents, representing 90% of residents of all ages, have received at least one dose of vaccination against COVID-19, with more than 81% of residents having completed a primary series of vaccination; among 5- to 12-year-olds, 58% have received at least one dose and 51% have completed a primary series; among 13- to 17-year-olds, 93% have completed at least one dose and 83% have completed a primary series; and

WHEREAS, as of February 1, 2023, 171,371 DOE employees, representing 99% of all DOE employees, have completed a primary series of vaccination; and

WHEREAS, high vaccination rates correlate with lower rates of hospitalization and death, and the high rate of vaccination among City residents has proven effective in lessening the burden of COVID-19 on the City’s healthcare system; and

WHEREAS, on September 20, 2022, based on guidance from New York State, the Commissioner issued an Order to Rescind the Covid-19 Vaccination Requirement for Participation in High Risk Extracurricular Activities, which was ratified and continued by the Board of Health on October 25, 2022;

NOW THEREFORE BE IT RESOLVED, the Board of Health hereby orders that the September 15, 2021 Order, as amended by the September 28, 2021, Order is further **AMENDED** as follows:

1. Paragraph 1 of the September 15, 2021 Order, as amended by the September 28, 2021 Order, is amended to **REPEAL** the requirement for new DOE staff and new City employees to provide proof of vaccination and **REPEAL** the requirement for staff of any charter school and staff of contractors working in DOE schools or buildings to provide proof of vaccination to their employer, and to **AMEND** the requirement that DOE staff and City employees who worked in-person in a DOE school setting, DOE building, or charter school setting were required to provide proof of vaccination to the DOE or their employer by October 1, 2021 or prior to beginning their employment, so that if any current staff or employee did not provide such proof, they are no longer required to do so.
2. Paragraph 3 of the September 15, 2021 Order, requiring visitors to DOE school buildings to have received at least one dose of a COVID-19 vaccine, as amended by the September 28, 2021 Order, is **REPEALED**.
3. Paragraph 4 of the September 15, 2021 Order, relating to remote participation in public meetings and hearings in DOE school buildings, is **REPEALED**.

Dated: February 9, 2023

**ORDER OF THE BOARD OF HEALTH
RESCINDING ORDERS REQUIRING COVID-19 VACCINATION
IN CHILD CARE AND EARLY INTERVENTION PROGRAMS,
FOR NONPUBLIC SCHOOL STAFF, AND FOR
INDIVIDUALS WORKING IN CERTAIN CHILD CARE PROGRAMS**

WHEREAS, on March 25, 2020, the Commissioner of Health and Mental Hygiene (“Commissioner”) declared the existence of a public health emergency within New York City to address the continuing threat posed by COVID-19 to the health and welfare of City residents, and such declaration and public health emergency continue to be in effect; and

WHEREAS, pursuant to Section 3.01(d) of the Health Code, when urgent public health action is necessary to protect the public health against an existing threat and a public health emergency has been declared, the Commissioner is authorized to issue orders and take actions that are deemed necessary for the health and safety of the City and its residents; and

WHEREAS, on September 12, 2021, the Commissioner issued, and on September 17, 2021, the Board of Health ratified and continued, an Order requiring staff of early childhood programs or services that are provided under contract with the Department of Education or the Department of Youth and Community Development to provide proof of COVID-19 vaccination (the “September 12, 2021 Order”); and

WHEREAS, on November 17, 2021, the Commissioner issued, and on November 19, 2021 the Board of Health ratified and continued, an Order requiring COVID-19 vaccination and face coverings in child care and Early Intervention programs (the “November 17, 2021 Order”), which was modified by the Board of Health on July 21, 2022, to rescind the mask requirement (the “July 21, 2022 Order”); and

WHEREAS, on December 2, 2021, the Commissioner issued, and on December 20, 2021, the Board of Health ratified and continued, an Order requiring COVID-19 vaccination for nonpublic school staff (the “December 2, 2021 Order”); and

WHEREAS, as of January 26, 2023, more than 7.5 million City residents, representing 90% of residents of all ages, have received at least one dose of vaccination against COVID-19, with more than 81% of residents having completed a primary series of vaccination, and 58% of children ages 5 to 12 years have received at least one dose and 51% have completed a primary series of vaccinations; and

WHEREAS, high vaccination rates correlate with lower rates of hospitalization and death and the high rate of vaccination among City residents has proven effective in lessening the burden of COVID-19 on the City’s healthcare system; and

WHEREAS, on September 20, 2022, based on guidance from New York State, the Commissioner issued an Order to Rescind the Covid-19 Vaccination Requirement for Participation in High Risk Extracurricular Activities, which was ratified and continued by the Board of Health on October 25, 2022; and

WHEREAS, on October 25, 2022, the Board of Health rescinded, as of November 1, 2022, the December 13, 2021 Order to Require COVID-19 Vaccination in the Workplace, which had required non-governmental workers to provide proof of COVID-19 vaccination said rescission which took effect November 1, 2022;

NOW THEREFORE BE IT RESOLVED, the Board of Health hereby orders that the September 12, 2021 Order, the November 17, 2021 Order as modified by the July 21, 2022 Order, and the December 2, 2021 Order are **RESCINDED**.

Appendix #42

updated 2/6/23

FAQ regarding New York City Employees and the COVID-19 Vaccine

Definitions

Rehire: Refers to the process to be taken for former employees to become active employees after termination. All former employees referenced in this document are eligible for rehire by a city agency.

Reinstatement: Refers to reappointment to the former civil service title held by the employee.

Vaccine Mandate Details

1. What is the Vaccine Mandate?

Since November 1, 2021, City employees have been required to submit proof that they have received the primary series of the COVID-19 vaccine, per a series of Commissioner of Health Orders. The COVID-19 vaccine requirement applied to current city and DOE employees, nonpublic school staff, early childcare and daycare staff, prospective City employees, as well as visitors to Department of Education (DOE) school buildings.

The Executive Orders 75 and 76 mandating that all new City employees be vaccinated is also rescinded.

On February 6, 2023, Mayor Adams announced the City's decision to rescind its vaccine mandate. As of February 10, 2023, the COVID-19 vaccine is optional for current and prospective City employees.

As of February 10, 2023, agencies should no longer include the vaccination requirement wording in job postings and should no longer ask for proof of vaccination when onboarding. For current open job postings, agencies will receive guidance from DCAS.

Employees who Resigned/Retired

1. Are employees who resigned or retired around the time the vaccine requirement was implemented eligible to be reinstated?

Agencies should follow the Personnel Rules of the City of New York concerning reinstatement of permanent, competitive or labor class employees who have resigned or retired. Agency personnel officers should work with DCAS to reinstate these employees.

Represented employees who resigned or retired after signing the waiver regarding their return are not eligible for reinstatement.

Employees who executed the Extended LWOP waivers are permitted to seek reinstatement.

updated 2/6/23

Terminated Employees**1. Are employees who were terminated due to their failure to comply with the vaccination mandate eligible to be reinstated?****A. Permanent Competitive and Labor Class employees:**

- Includes employees who have completed a probationary term in a permanent position in the competitive or labor class, including uniformed employees.
- These employees are **eligible** for reinstatement if the employee submits a request for reinstatement via email or otherwise in writing, within one year of their date of dismissal.
 - Employees who were terminated effective February 11, 2022, may submit requests for reinstatement to their former agency by March 10th, 2023. All other requests must be made within one year of the termination date.
 - Agencies may take into consideration if an employee had previously requested reinstatement, prior to the Mayor's February 6, 2023 announcement.
- Process:
 - Former employee requests reinstatement from their agency within the one year timeframe.
 - Agency reviews request and determines if there is a vacancy available and whether to rehire.
 - The decision to reinstate a terminated employee is discretionary.
 - The agency may reinstate the applicant if it determines that the reasons provided have merit.
 - The analysis should involve a review of all relevant, specific facts and circumstances pertaining to the applicant.
 - This may include a review of the applicant's documented work performance, including performance evaluations, disciplinary history, compliance with the agency's time and leave requirements and compliance with the City's EEO policies.
 - If applicable, former employee is instructed to apply for vacant position, following the standard agency hiring process.
 - Former employee must agree to waive back pay, civil service rights, in writing.
 - Former employee is onboarded and agency works with DCAS to reinstate employee to civil service title.

B. All other employees:

- Includes probationary, provisional and non-competitive employees.
- These employees are **not eligible** to be reinstated to their former titles. However, as EO75 and 76 have been rescinded, they may apply to any

updated 2/6/23

open City position without needing to show proof of vaccination.

2. **What are the terms of reinstatement?**

A. **Permanent Competitive and Labor Class employees:**

- These employees are **eligible** for reinstatement if the employee submits a request for reinstatement via email or otherwise in writing, within one year of their date of dismissal.
- No Break in service
- Entitled to full seniority
- No change to salary
- Title entry date: Does not change
- City start date: Does not change

B. **Probationary employees:**

- These employees are not eligible for reinstatement.
- These employees are eligible to be rehired.
- These employees may request restoration to the civil service list, if still in existence
 - If appointed to the same agency and same title from the list, the previously served probationary term counts towards the completion of the probationary period.
 - If appointed to a new agency, employee will be required to serve the full term probationary period, unless the agency head elects to credit such person with the time therefore served.
 - New title entry date
 - New City start date
 - New seniority

C. **All other employees- Includes provisional, non-competitive**

- These employees are not eligible for reinstatement.
- These employees are eligible to be rehired:
 - If break in service of more than 31 calendar days:
 - New title entry date: This date would reflect their rehire date in the title they are rehired in.
 - New City start date.

3. **Are employees who were terminated for failure to comply with the vaccine mandate eligible for rehire?**

Yes, employees who were terminated due to the vaccine mandate are eligible for rehire by any City agency, with the understanding they meet all conditions for employment in the rehire position and haven't otherwise signed a waiver indicating they will not return. However, any rehire of any former employee is up to the discretion of the agency head.

Face Coverings

updated 2/6/23

1. Do all employees and visitors have to wear a face covering?

Every City employee and visitor able to medically tolerate a face covering still must wear a face covering that covers the employee's mouth and nose in the following circumstances:

- When interacting with members of the public in an indoor setting;
- during days 6 to 10 after infection with COVID-19 upon returning to the work site; and
- if the employee is employed at a state-regulated health care setting, adult care facility or nursing home; correctional facility; or homeless or domestic violence shelter.

2. Do employees with shortened quarantine periods have to increase their mask protection?

Yes. The employee must be able to consistently and correctly wear a well-fitting face mask, a higher-level mask such as a KN95, or a fit-tested N95 respirator while at work from day 6 to day 10. The mask should fit with no air gaps around the edges.

3. If an employee has a Reasonable Accommodation because they are medically unable to tolerate a face covering, are they subject to a shortened quarantine period?

Employees with a Reasonable Accommodation because they are unable to medically tolerate a face covering are subject to the 10 day quarantine period.

Reasonable Accommodations

1. What if an employee has been granted a reasonable accommodation to be exempt from the COVID-19 vaccine mandate?

Effective February 10, 2023, unvaccinated employees are no longer required to submit to weekly PCR testing or wear a face mask, except in circumstances outlined in the Commissioner's Directive 2020-1. EEO Officers should notify individuals who have a vaccine exemption reasonable accommodation that the accommodation is no longer necessary and ends effective February 10, 2023.

2. What if a current or prospective employee has a pending reasonable accommodation request seeking to be exempt from the COVID-19 vaccine requirement?

Effective February 10, 2023, agency EEO Offices will deny these reasonable accommodation requests as moot since the COVID-19 vaccination is no longer required.

3. Some employees with serious health issues are working from home as a reasonable accommodation because of a high-risk workplace environment due to COVID-19. Do their reasonable accommodations end?

No, their reasonable accommodations do not automatically end as a result of the new policy. Their reasonable accommodations will continue to be evaluated and reassessed on a case-by-case basis.

4. What happens to employees who do not currently have reasonable accommodations or their reasonable accommodations were declined because it was assumed that everyone at the office was vaccinated?

updated 2/6/23

Employees are able to apply for a reasonable accommodation with their EEO Office at any time and they will be assessed on a case-by-case basis.

5. What if employees resigned because their reasonable accommodations were denied? What should they do if they want to work for the city again?

These employees will be subject to the same policy as any other employees who resigned from city employment or were terminated as a result of their failure to comply with the vaccine mandated.

Policies Still in Effect

1. What other COVID-19 related policies are still in effect?

- The COVID-19 Leave Policy is still in effect.
- Leave Policy for Employees to Get Vaccinated is still in effect.
- Leave Policy to Accompany Children to Get Vaccinated is still in effect.
- Commissioner's Directive 2020-1 on Face Coverings.
- The City's COVID-19 Emergency Order (Emergency Executive Order 323) is still in effect, governing the City's authority to maintain open meeting laws, and open restaurants, and apply for COVID-19 FEMA reimbursement.

Where can I find...

- Vaccination sites: www.nyc.gov/vaccinefinder
- Vaccination appointments: <https://vax4nyc.nyc.gov/patient/s/> and 877-VAX-4-NYC
- How to schedule an at home vaccine appointment: www.nyc.gov/homevaccine and 877-VAX-4-NYC
- Free COVID-19 Testing and Treatment: www.nyc.gov/covidtest
- COVID-19 Test Site Finder: <https://maps.nyc.gov/covid-testing/#/> A doctor or nurse to talk with about my vaccination concerns: call 311 and ask to talk to a clinician about COVID-19 vaccination
- Assistance for New Yorkers experiencing Long COVID: www.nyc.gov/aftercare

Appendix #43

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Transcript: Mayor Eric Adams Calls in Live to Caribbean Power Jam's "The Reset Show"

February 10, 2023

J.R. Giddings: Next up, we have the mayor of New York City. Good morning, Mr. Mayor. And how are you?

Mayor Eric Adams: Quite well. I don't know if I fit into the icon status, but I'll take it. Any accolades you can get. It was great seeing the congresswoman on The Hill a few days ago during the state of the nation, and they continue to fight on behalf of the city. And her entire New York delegation was extremely helpful when I saw them last year to talk about funding for the migrant situation. They just rallied to the cause and we're receiving some relief and we're going to continue to lean towards them. So, I know she was just on, but I just want to personally thank her for that.

Giddings: Well, first, before we get into it and in honor of Black History Month, we salute you, Mayor Adams as the 110th mayor of New York City, and the second Black man to lead this city. We celebrate you.

Mayor Adams: Thank you. Thank you. And appreciate that. And sometimes while we are going through the moment, we don't understand that the moment is going to be history one day. I had a visit to the Museum of the City of New York, and as I walked through the museum and looked at the headlines and the articles and the photos, I realized that every step we take, one day my administration is going to be on those walls and people going to say, "Who were you?"

And we have to be extremely careful if we allow our narrative to be defined by those who just don't have our goodwill in mind. That's why these platforms are so important and why we started that initiative of communicating directly with New Yorkers. Because we just can't continue to allow the outside influencers to define the good work we are doing. If you were to pick up the tabloids, you would think this administration didn't have any wins, didn't have any victories, when it is unprecedented victories that we did last year of everything from N.Y.C.H.A. land trust to dyslexia screening, to making childcare affordable for families, what we have done around public safety, reforms, all of these victories, you don't read and hear about them.

You hear about all of these petty, clickable items. How do we get people to click on our articles so we can have people look and see and read? But no, this is a substantial movement to improve how this city is operating. And I am really pleased about the historical nature. As we talk about history, first time in the history five women are running the city as the deputy mayors. First African American woman to be the First Deputy Mayor, second woman in history to be the chief of staff of the mayor of the City of New York of woman of color. The first one was under David Dinkins. And you know, of course, I'm the one that's going to give the same opportunity, first woman of color to run the New York City Police Department, one of the largest police forces on the globe.

When you start to look and see what we are doing, it is just extremely impressive, important and reflective that we're not just here going through the motions. I think that was one of the biggest mistakes that Mayor Dinkins made. He had too many people around him that didn't have the same vision, had a lot of Ed Koch's people who remained in place and he didn't bring on his team so that they were clear on his vision. And Mayor Dinkins did some amazing things, but there were a lot of his team members that remained on the bench waiting for the next term instead of dealing with the term that we had. And I think it's important for me to focus. I'm here right now, do what I have to do right now.

Giddings: Well, Mayor Adams, you just shed some light on the history, more history that's being made coming out of your office. So we applaud you for that.

Two big talking points, and I know I have to get one of my panelists in, Mayor Adams, could you shine some light on the pushback coming from the asylum seekers feeling far removed from services and potential jobs.

Mayor Adams: We have to always be crucial by the numerical minority that the press focus on. Instead of the overwhelming majority that are extremely thankful to New Yorkers for opening their doors. We had a thousand people — close to a thousand people in the hotel in Manhattan — close to a thousand. Everyone was willing because they were single men. And we said to the single men that we need to free up these rooms, which was a temporary location, so that we can get women and children in hotel spaces because we don't want women with children in congregated settings. We do that for everyday New Yorkers.

We have congregated settings for everyday New Yorkers, and so we moved the men out of the setting with hotel rooms and said, this is going to go to women with children, and we are moving you to a congregated setting like we do all the other single adult men in the city. They were willing to do so. A few agitators went there and started yelling and

screaming and saying, don't leave, you don't have to leave, only leaving.

So 40 to 45 of the thousand decided —they said, "We're not going to leave. This is inhumane. We're going to sleep on the streets" Duh. Are you serious? That's not even making any sense. And so those 45 decided to stay on the street. Over 600 went to the location, the H.E.R.R.C. that we had at the Navy Yard. Mind you, the coldest day of the year, I went out there and slept with them. And those men were appreciative. Those men said thank you. We realized what this city is doing, more than anyone else is doing. We just would like to work, we would like to learn English, we would like to participate in this city.

And I support that concept because all of us, no matter who we are, we all came from somewhere. No one is, outside the indigenous people, were here in this country. So everyone should have an opportunity to participate in the pursuit of the American dream. So there's no controversy. It's a created, manufactured controversy based on the excitement of some in the media that they want to give an opinion that we have not been as humane and more humane than any other municipality. Food, shelter, clothing, educating the children, healthcare, everything that one should be doing, we are doing it and we are doing a damn good job in the process.

Giddings: Mayor Adams, what's key, what you just said, you spent a night, you slept over with the asylum seekers. Did I hear correct?

Mayor Adams: Yes. Yes you do. You know what I do every Wednesday night, J.R.? Every Wednesday night at 9 p.m. I'm on 34th Street between 7th and 8th Avenue feeding the homeless. Every Wednesday I'm there. I go there at 9 p.m. when I finish up, then I go and do whatever else I have to do in the subway system or visit the hospitals and talk to my nurses and my 24-hour workers. Midnight. This city doesn't close down at five. Many people think it does. But this is a 24/7 city, and I like to see my overnight workers and talk with them. But I say that to say so many people are talking about what we aren't doing. And I keep saying, "What are you doing?" How many people are going to the shelters, speaking to the migrant workers or going to the shelters, speaking to everyday New Yorkers who have fallen on hard times? How many people who are accountants are going to teach financial literacy in our school? Or how many people who work for the Department of Sanitation are going to show people how to deal with the rodent problem in the city?

Everybody should be doing something. I say, if we all just say, I'm just going to take one hour a day, one hour a week, and do something. With 8.5 million people, you know what we can do with one hour a week?

And as Pastor Straker who I see all over the place —no, no, the biblical lithe and offering is 10 percent. Not only of how much money you have, but 10 percent of our lives should go back to doing something for someone other than ourselves. All of us should be volunteering. And all us folks who sit remotely in their penthouses saying what we're doing wrong, come spend the night in the shelter with me, come visit the shelters with me, come in the train station and talk to the homeless with me. Come and go to the senior centers with me. Stop sitting on the sideline talking about what could have done right. Come and get on the field of battle and show me how to do it right. Since you have all the answers and you're out there.

Giddings: Mayor Adams, I've endorsed you and I continue to endorse you. And there was a reason why when I started this platform, I reached out to you. And the one thing that you said to me, "I'm on board with you, J.R." So audience, if you're listening, this is the type of mayor that we have that runs New York City. When you call upon him, he will tell you what he can do. And nine out of 10 times he does it.

Mayor Adams, now to a big talking point here. You end the vaccine **mandate** today. What about the 2,000 employees that were fired? What do they need to know about their jobs?

Mayor Adams: Well, they can reapply for their jobs. 96 percent of employees took the **mandate**, took the vaccine. 96 percent of employees took the vaccine. And listen, this was a tough time. I remember, and those who are here, our nurses and our healthcare professionals, I know what Covid looked like and I know that if we didn't have those **mandates**, I take my hat off to Bill de Blasio. That was a tough call, "cause you know New Yorkers, no one wants us... No New Yorker wants anyone telling them anything. The mere fact you tell them, if you tell a New Yorker, "You better take this million dollars." They're going to say, "Why? No, I'm not." That's just who we are. We don't want to be **mandate**. We don't want anyone to tell us to put on a mask. That's just who we are. So that was a cultural shift in our mindset to say, we're fighting this dangerous virus.

I was at the hospitals, seeing trailers of bodies. I saw the nurses and doctors and hospital employees wearing plastic bags and makeshift face masks, putting themselves in harm's way. I saw the first responders. I was on the ground, remember, I moved into Borough Hall and dealt with that virus, responding every day on the ground. This was real. If we didn't have that vaccine and we didn't have those **mandates**, we would have lost so many more lives. And so New York has stepped up. They said, "We don't want to do it. I don't want to get injected. I don't want to do this. This is new." But they stepped up anyway.

And so those who made the determination that, no, I still want to come into a work environment and I'm not going to be vaccinated. No, I want to still ride trains, I want to do whatever I want. That just wasn't right. That wasn't right. And they made a decision and the law was on our side that said we could **mandate**, and so they were removed. Now that we're seeing a normalization of Covid, there may be another time that we are going to have to do **mandates** again because these viruses are not going away. We're dealing with a whole new environment of what we are fighting against some of these viruses. They make the decision not to be vaccinated. They lost their jobs. We see the need now to lift the **mandate**, but those who lost their jobs could reapply for their jobs, but they got to reapply just like everyone else.

Giddings: What about pay? Would they get back pay?

Mayor Adams: Nope. Nope. Their back pay is the pay they got when they got another

job somewhere. I mean, New Yorkers should not be paying for someone that wasn't working. And they made a decision. People made a decision to not take the vaccine when they were supposed to. And now keep in mind, there were some people who applied for city work and were told you have to be vaccinated to get the job. And they took the job with that understanding and still said, "No, I don't want to be vaccinated." So no, no. You have a right to come back and be employed and file for your job again. But no, there's not going to be any back pay. We are going to try to be as fair as possible. We listened to a large number of reasonable accommodations. We bent over backwards to understand the needs that people have.

And the goal was not to be punitive, it was to be protective. We had to protect city workers, first line responders, and deal with the crisis that we were facing. I lost five friends in a short period of time due to Covid, one of them being Roy Hastick, who was my mentor. I lost a rookie cop. She was one of my rookie cops that I trained, a young lady who died from Covid. And so all of us, everyone on this Zoom, can tell you about a death that they saw. I remember Ingrid, my chief advisor who has been with me throughout my political career. I was really concerned about her and what she experienced during Covid, her and her husband and her son. And so this was real. And your healthcare professionals here, you remember those calls we did, J.R., with them, explaining to us what we were facing. This was a very frightening period of time for our city, our country, if not the globe.

Giddings: Mayor Adams, you're speaking to everything. And I tell a lot of my associates and friends and I got a lot of pushback on your behalf. And I tell them, come listen. Come here. You get all the facts, all the details when you tune into The Reset. I'm going to pull back for a little bit and I'm going to let Nicole pose a question to the mayor, because the mayor always, always is on the clock.

Nicole: Good morning, Mayor Adams. Great to see you again.

Mayor Adams: You, too, Nicole. How are you?

Nicole: I'm doing well, thank you.

Mayor Adams: Good.

Nicole: I have a question for you, and J.R. stole my first question that he asked, but the other question I had for you is we know that the city is facing a budget shortfall, and it's another topic that's ripe for a lot of disinformation and misinformation. And so we appreciate having you here today. And so my question to you is sort of what are your operating principles for managing this budget shortfall?

Mayor Adams: And it's real and it's frightening. And I had to make some decisions last year that were painful. But I knew that if we make the right decisions slowly, we would be able to absorb some of the budgetary issues that we're facing. So there are several things that are looming that really keeps me up at night. Number one, the fiscal cliff we're about to hit. The previous administration put in place permanent things with temporary money. The stimulus from the federal government is running out in [2025]. It's gone. And so there are things that we put in place that were supposed to be permanent, that that money is disappearing and we have to now reexamine them.

Second, the Healthcare Stabilization Fund. It's a multi-billion dollars that we have to spend in healthcare on city employees, and we want our city employees to have the best healthcare that's possible. And we're one of the few locales where you get healthcare without any premium payment and we want to maintain that. But some of the changes in the healthcare contracts and the R.F.P.s that went out, we're trying to zero in on that. And if we don't get it right, it's going to cost us billions of dollars. We have \$8 billion that we set aside for a rainy day fund, but it's going to go to that and it's going to go to our union contracts. We have to have real union contracts that's going to pay city employees a livable wage as they deal with the challenges of everything that's increasing, from the cost of housing to food, and we want to make sure they're treated fairly and give them the right contracts.

And then we're getting other mandates that's coming from Washington. The governor put in a proposal that we are to pay \$500 million, a half a billion dollars, a year to the M.T.A. We're already paying \$2 billion. They're not leveraging this on any other municipality, but New York City. And then you look at the asylum seeker crisis, 1.4 billion this fiscal year, 2.8 billion next fiscal year is just not possible. It's not sustainable. And so I want to focus on, number one, what are the bread and butter, kitchen table issues that families need? How do we put money back in their pockets? We were successful with the reduced fare Metrocard. We were successful with the childcare. We were successful in earned income tax credit and showing people the money that's available. So there's a lot of money we got for New Yorkers, now I want to spend the year making sure they get it.

But at the same time, we want to make sure we balance the budget without being harmful to those everyday New Yorkers that are in need. And we have a couple of things that we're going to try to do that have never been done before around medical debt and other items that we are focusing on. But we're in a real fiscal challenge. Wall Street, that we receive a large amount of our tax revenue for, is having a terrible year. And that's going to impact our bottom line. And so there are real challenges, but we made some smart decisions in the beginning of the year where we looked at how to stream in our spending and it's paying off now, but we are going to need help from the state and federal government.

Nicole: Thank you, Thank you, Mr. Mayor. And let me take an opportunity to just thank you for your leadership. There's a lot of tough challenges, and many are called, but you're called and you are also chosen. So we appreciate all that you do.

Mayor Adams: Thank you very much. I feel like, Esther — God made me for such a time like this. Reverend Straker.

Giddings: Pastor Straker, your question for the mayor.

Pastor Louis Straker, Jr.: Well, yes sir. I do believe you have been brought to the Kingdom of New York for such a time as this. I really thank you for your leadership. Also want to let the listeners know, on Caribbean Power Jam, that the mayor really cares about the Caribbean community. He recently formed a Caribbean advisory council that's seeking to hear the needs of our Caribbean community. And I want to applaud you for that. Mr. Mayor. Always on top of everything.

I've got a quick question for you. Well actually, I have a number of questions, but I'll narrow it down just to one. And I'm looking at the city and what's happening with these smoke shops. It almost appears we're becoming a city of smoke shops. And I know that you have some concerns about these illegal smoke shops that are popping up, and I think I heard you speak about some restrictions in the law that prohibits the police officers to go in in certain situations. This is a public safety issue. As crime may continue to escalate, what do you have to say about, and what can be done about, these smoke shops that are just popping up all over the city?

Mayor Adams: And you are so right. And I always have to check myself because I'm a little old-fashioned, and I know everybody's modern now, and I'm just not that modern. I just didn't grow up in the atmosphere where any and everything goes. There were just guardrails on my behavior. Now I'm not going to tell you I wasn't mischievous, but mom was clear, that bell was always on the back of the door. And I knew, when her five-foot four stature, that you better not mess with her. And I think the over proliferation of smoke shops, of what we're just seeing in our city and country, is just the erosion of the basic principles that are important of raising healthy children, that they can raise healthy families.

And we sent the wrong message, and I was criticized on the campaign trail when I said, "Listen, if we're going to legalize cannabis, and we should have, because it was too much criminalizing people for having small quantities, we need to deal with a real understanding." We can't just say, "Hey, it's legal" and tell children, "Just go roll a joint on your way to school, smoke a joint, sit in a classroom, drive with being under influence." There has to be some real parameters, education, and I don't believe the legislation was done correctly, and that's why you see so many illegal smoke shops opening. Because you may read the full paragraph in the paper, but half the people just read the headline, "Cannabis is Legal." So now they just want to open a smoke shop anywhere and you don't know what's being sold. Some of it is laced with different items that are being sold. Those who are part of the legal cannabis must go through several layers of testing, they must be part of the legacy project, those who were victimized because of over-policing, heavy-handed policing, are getting benefits from that.

And so we must now fix what I believe the law was attempting to do, but did not follow all the details closely. And you're right, police cannot walk into a shop, see someone selling it and take necessary action. So we built a task force with the sheriff, police, and the Department of Consumer and Workers Protection, so that we can go in and zero in on these shops. We have around about 1,800 shops that are opening now that we are focusing on. The D.A. has partnered with us, that we are now going to go after eviction, the people ignore them, but as you said, pastor, these shops are creating crime. We're getting an increase in robberies of these smoke shops because they are a cash business. You can't use a credit card or check because the federal government has not legalized marijuana or cannabis. So people are going in robbing these shops and it's just really adding to the aggravation of how do we continue to keep our city safe? So we want to zero in on them. I think they're a problem. I think we need to do some real education.

I don't want my children over consuming marijuana or cannabis, just like they shouldn't be over consuming alcohol. We need to be clear of how did this impact our community. They're shops, these illegal shops, they're selling candy-looking items that are edible. They're targeting young people with flavored items, gummy bears, Skittles, all of these items. You will not be able to tell the difference between a package of Skittles and a cannabis-laced package of Skittles. So we need to zero in. Some of the tests that we've done, they have sold to young people who have walked in and purchased. So we've been going after them, but we want a broader, more coordinated effort to do so.

Giddings: Mr. Mayor, is there a restriction on these shops near schools or churches?

Mayor Adams: Yes, the legal ones. The illegal ones are not supposed to be near anything, they're not supposed to be open. So we have a zero in on those illegal ones. The legal ones, they are real restrictions. As we talk about cannabis, there's another issue that is lingering out there, and I'm pretty sure our healthcare professionals could even explain even in detail. Heroin decimated our inner cities in the country.

Heroin during the '60s and the '70s, crack cocaine during the '80s, Fentanyl is the heroin and crack cocaine crises combined. If we don't wrap our heads around fentanyl, you are going to see our communities decimated. That fentanyl is so dangerous and it's laced with everything, and we cannot ignore the increased number and overdoses, how fentanyl is being used. This is a dangerous, dangerous drug. And the real danger, I was down in Washington speaking to the Customs and Border Patrol, that many of the cartels have now become manufacturers, and they're manufacturing large quantities of fentanyl. It's being manufactured in the city. We must get a grip on fentanyl. If we don't, what happened with heroin and crack cocaine is going to look like a walk in the park in comparison to fentanyl.

Giddings: Wow. Mr. Mayor, always remember that if you want to get the message out, you built this platform, you come to this platform and you put the message out there, because the audience need to know, we need to educate them. Like you said, everyone read the headlines. They see you on C.N.N., it's only five minutes. When you're on The Reset, you break it all down, they get all the details, at the briefings. So this is your platform. You'll always get a chance to put forth your message, and we're always happy to have you.

But before you leave, we want to offer our condolences about Officer FayaZ who was killed off duty. I know he's one of your officers, and I think we as a city, we have to come

together, so we offer our condolences.

Mayor Adams: Terrible situation, a young man, two children, lovely wife, lovely family. Two of his cousins were police officers. Always wanted to be a police officer. They said when he was a little child, he would talk about one day he was going to be a police officer. He honored and looked up to his cousins who served. And it's just a terrible, terrible, senseless of violence of how this individual just shot him in his head. And as any of us, we go to purchase a car, we go to do some form of errand, who would've thought this level of violence? And my heart goes out to his family.

That's when I talk about we could have justice and safety. They can coexist. They cannot exist alone. We cannot have safety. And in the Memphis incident that we witnessed without justice, we need both. And I just refuse to be part of the voices who state we could only have one or the other. We could have justice and safety, and in fact, we need justice and safety. That's what I committed my life to and I'm going to continue to do that. But I thank you for acknowledging the loss of that young officer, a young officer in the prime of his life. He passed the sergeant's exam, so he was likely to be promoted, and we lost that young man.

My heart goes out anytime. I've been in the hospitals far too many times, watching mothers in so much pain. I spoke to a mother who lost her young son to a stabbing the other day. You never get used to it, and a part of me dies every time I walk into those hospitals, every time I speak to a parent, a loved one. These babies are dying. More and more are creating the violence, and more and more are the victims of the violence. And that's why we want to make sure we grab them before they get involved in the violent act.

Giddings: Thank you, Mr. Mayor.

Mayor Adams: Bless you all.

Giddings: Again, we honor you for Black History Month.

Mayor Adams: Thank you.

Giddings: Enjoy your day.

Mayor Adams: Take care.

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Appendix #44

RECOMMENDED



Prince Harry appears to stop singing 'God Save the King' during...



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METRO EXCLUSIVE

850 more unvaxxed NYC teachers, aides fired for not complying with mandate

By Susan Edelman

September 17, 2022 | 12:24pm | Updated



The NYC Department of Education fired another 850 teachers and classroom aides for failure to comply with a COVID-19 vaccine mandate.

Gregory P. Mango

MORE ON:
COVID VACCINE

Continuing COVID craziness shows it was never about the science

Marine Corps removes harsh COVID vax penalties for religious accommodations

Moms could have vaccine

The city Department of Education has axed another 850 teachers and classroom aides — bringing the total to nearly 2,000 school employees fired for failure to comply with a vaccine mandate increasingly **struck down in court**.

About 1,300 DOE employees who took a year's unpaid leave — with benefits — agreed to show proof of COVID vaccination by Sept. 5 or be "deemed to have voluntarily resigned."

Of those staffers, 450 got a shot by the deadline and "are

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... could have vaccine disaster if they were to face this team in World Series

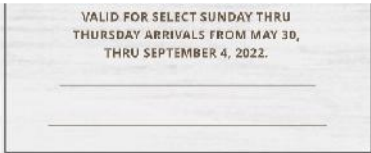
Seniors face significant Alzheimer's risk after surviving Covid: Study

returning to their prior schools or work locations, DOE officials told The Post. They include some 225 teachers and 135 paraprofessionals.

The 850 let go makes roughly 1,950 DOE staffers terminated since the vaccine mandate took effect on Oct. 29, 2021.

Rachelle Garcia, an elementary school teacher in Brooklyn for 15 years and mother of two, worked fully in person during the pandemic and never got sick, she said.

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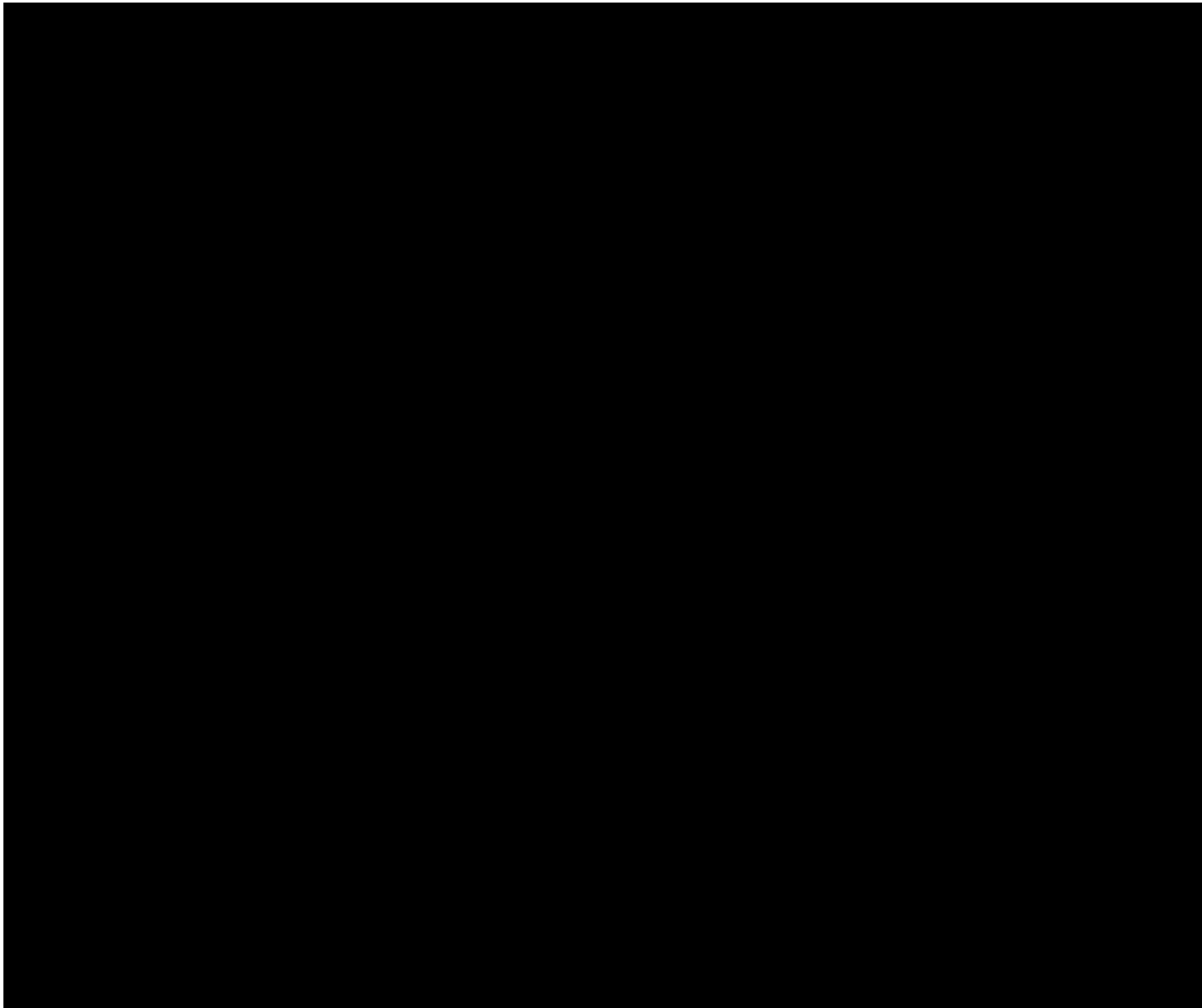


285,530

Missing Georgia mom found dead after sending daughter chilling message



107,873



Appendix#45

Index No. 85163/2022

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

GEORGE GARVEY, ADAM BIANCO,
ANTHONY FIGUEROA, CURTIS CUTLER
DALE NICHOLLS, DANNY HULKOWER,
FRANK CALAMANCO, JAMES GERMANO
KOLA SMITH, MANDEL BAILEY,
MITCHUM GREENE, PATRICIA BUCCELLATO
RALPH MARTINEZ, RUSSELL PIAZZA,
SEAN ABELL, TOMMY LIBRETTI,

Petitioners,

-against-

CITY OF NEW YORK, NEW YORK CITY
DEPARTMENT OF HEALTH AND MENTAL
HYGIENE, NEW YORK CITY DEPARTMENT OF
SANITATION, DAVID CHOKSHI in his official
capacity as the Commissioner of the Department of Health and
Mental Hygiene, and ERIC ADAMS in his official capacity as Mayor,

Respondents.

**RESPONDENTS' MEMORANDUM OF LAW IN
SUPPORT OF THEIR CROSS MOTION TO DISMISS**

HON. SYLVIA O. HINDS-RADIX
Corporation Counsel of the City of New York
Attorney for Defendant
100 Church Street - Room 2-109B
New York, NY 10007

Of Counsel: David V. Holmes
Tel: (212) 356-2549

terminated. Petitioners fail to make a showing regarding any violations of their procedural due process rights and recent case law refutes their stance.

Petitioners' specious procedural due process claim is premised on their suggestion that the being separated from service as the result of failing to maintain a qualification of employment (here, being vaccinated against COVID-19) implicates the DSNY's disciplinary procedures. Not so. Rather, by virtue of petitioners unwillingness to comply with the DOHMH Order, they is simply no longer qualified for their position and therefore not entitled to any process in advance of separation.

The City, as a government employer, has a duty to maintain a safe workplace. See generally N.Y. Labor Law § 27-a. The obligation of how best to do so is within the discretion of the employer. See New York State Inspection, Sec. & Law Enforcement Emples., Dist. Council 82 v. Cuomo, 64 N.Y.2d 233, 237-40 (1984).

The DSNY, consistent with its obligation to provide a safe workplace, and in compliance with the lawful DOHMH Order, cannot permit unvaccinated employees, absent exemption or accommodation required by law, to perform their job functions when they lack fitness to do so under the DOHMH Order. When employees are not fit to perform their duties under these circumstances, they are not being "disciplined"; rather, they are unable to work due to ineligibility caused by their lack of fitness, even where here the ineligibility may be temporary and curable. C.f. Matter of Brown v. Bd. of Educ. of City Sch. Dist. of City of N.Y., 2009 NY Slip Op 31687(U), ¶ 6 (Sup. Ct., N.Y. Co. 2009), (citing O'Connor v. Board of Education, 48 A.D.3d 1254 (4th Dept. 2008) lv. denied 10 N.Y.3d 928 (2008)) (teacher's termination due to failure to maintain residency was not a disciplinary matter and therefore was outside the scope of § 3020-a.). See also Subpoint F, infra (discussing petitioners' claims of regarding breach of collective bargaining agreement).

Recent decisions in the Southern and Eastern Districts of New York have upheld the Vaccine Mandate and rejected similar arguments to those in the instant Petition. For example, the most recent challenge to the DOE Order was brought before the Eastern District of New York in Broecker, et al. v. New York City Department of Education, et al., Docket No. 21-cv-6387. In Broecker, the plaintiffs alleged that their placement on Leave Without Pay (“LWOP”) and potential termination violated their procedural due process rights because they were placed on LWOP and may be subject to termination without the processes. Id. The Court denied the plaintiffs’ claims finding “[t]he NYC DOE, in compliance with the Vaccination Mandate and for compelling public health reasons, cannot permit noncompliant, unvaccinated employees, absent exemption or accommodation, to work at NYC DOE schools.” See Broecker v. N.Y.C. Dep’t of Educ., No. 21-CV-6387, 2021 U.S. Dist. LEXIS 226848, at *18-19 (E.D.N.Y. Nov. 24, 2021).

In addition, the Southern District dismissed similar claims brought in the Marciano v. de Blasio et. al., No. 21-cv-10752 (S.D.N.Y. March 2022). Plaintiffs there made similar arguments regarding separation of powers as well as substantive and procedural due process as the instant petitioners, and all the arguments were all dismissed by the Court.

Therefore, it is well-established that a State may mandate vaccinations without violating the due process rights secured by the New York State Constitution. Petitioners offer no legal authority to the contrary.

F. Vaccination is a Condition of Employment and Can Result in Being Kept Out of the Workplace.

Petitioners’ arguments regarding breach of the collective bargaining agreement and Respondents’ ability to keep them out of the workplace fail. It is well established that vaccination is a condition of employment upon which termination is proper.

The Court of Appeals has upheld the distinction between issues of “job performance, misconduct or competency,” which are subject to the applicable disciplinary procedures, and a “qualification of employment” which is not subject to such procedures. Matter of New York State Off. of Children & Family Servs. v. Lanterman, 14 N.Y.3d 275, 282 (2010); see also City School District v. McGraham, 17 N.Y.3d 917, 918 n.1 (2011). Indeed, the Second Circuit recently upheld vaccination as a “condition of employment” in the healthcare field. We the Patriots USA, Inc. v. Hochul, Nos. 21-2179, 21-2566, 2021 U.S. App. LEXIS 32880, at *52-53 (2d Cir. Nov. 4, 2021) opinion clarified, No. 21-2179, 2021 U.S. App. LEXIS 33691 (2d Cir. Nov. 12, 2021). Here, the DSNY enforcement of the Vaccine Mandate no less establishes that a COVID-19 vaccination is a “condition of employment” for DSNY employees.

Furthermore, on December 6, 2021, the Eastern District of New York determined the October 20, 2021 DOHMH Order, the same order being litigated here, which was issued by Commissioner Chokshi requiring all New York City employees to show proof of at least one dose of vaccination against COVID-19 by 5:00 p.m. by October 29, 2021 created a “condition of employment” for employees of the New York City Fire Department (“FDNY”). See Garland, et al. v. New York City Fire Department, et al., No. 21 CV 6586 (KAM)(CLP), 2021 U.S. Dist. LEXIS 233142 (E.D.N.Y. Dec. 6, 2021). Similarly, the enforcement of the same Vaccine Mandate by DSNY creates an unassailably clear and legally sound condition of employment for all DSNY employees.

In examining this issue in connection with the DOHMH Order, the Eastern District of New York held that “[g]iven the state of public health emergency that our nation finds itself in due to the Coronavirus, the more transmissible Delta and Omicron variants, and the nature of Plaintiffs’ job as firefighters and EMT employees, interacting with members of the public on an emergency basis, and living in close quarters during their shifts the [DOHMH] Commissioner was within his powers to require COVID-19 vaccination as a qualification of employment for FDNY employees.” See Garland, 2021 U.S. Dist. LEXIS 233142 at *14.

Here, the same analysis applies. The nature of petitioners’ job as DSNY employees necessarily entails contact with the NYC civilians—hundreds of thousands of whom are unvaccinated, and many of whom have underlying health conditions that make them more at risk of severe illness in the event of COVID-19 infection. Requiring DSNY employees to be vaccinated significantly decreases the risk of civilians getting sick and/or needing to quarantine. Moreover, requiring DSNY employees to be vaccinated reduces the risk of COVID-19 spreading throughout DSNY facilities and broader communities. Thus, just as the Citywide Order examined in Garland created a lawful condition of employment for FDNY employees, the DSNY enforcement of the Vaccine Mandate creates one for petitioners here.

As a result, caselaw supports Respondents actions in terminating petitioners and preventing their return to the work place.

G. Executive Order No. 62 Does Not Violate the Equal Protection Clause

Petitioners’ Equal Protection Claims fail because they present no legally protected class that Respondents treated differently than others. Petitioners identify no potential classes of people. Regardless, the fact of the matter is that the DSNY enforcement of the Vaccine Mandate and the accommodation process applied equally to all DSNY employees. As such, petitioners’ claim fails for this reason as well. Gagliardi v. Village of Pawling, 18 F.3d 188, 193 (2d Cir. 1994) (“[I]t is axiomatic that [to establish an equal protection violation] a plaintiff must allege that similarly situated persons have been treated differently.”).

Moreover, it is improper to compare petitioners to athlete and performers because of categorical differences that exist between the positions. Neilson v. D’Angelis, 409 F.3d 100, 104 (2d Cir. 2005) (to satisfy the “similarly situated” element of an equal protection claim, “the level of similarity between plaintiffs and the persons with whom they compare themselves must be extremely high.”).

Petitioners' argument regarding professional athletes and performing artists is of no avail and misses the mark as petitioners are in a unique class of individuals, that being City employees. The justifications for the mandate for City employees remain today: the continued uninterrupted provision of City services which are essential to the residents of the City and the reduction of transmission or risk to employees and residents of the City of New York.

As noted above, the City has a duty to maintain a safe workplace. See generally N.Y. Labor Law § 27-a, and has discretion in terms of resolving how best to do so, Dist. Council 82, 64 N.Y.2d at 237-40. Federal, state and local law also confirm, in the context of the COVID-19 pandemic, that employers can refuse to allow employees to work who are not fit for work under the applicable medical standards set forth by the public health authorities. See e.g. EEOC Guidance, What You Should Know About Covid-19 and the ADA, the Rehabilitation Act, and Other EEO Laws, at K.1. (<https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>, last visited September 14, 2022). Based on all the above, petitioners' equal protection claims fail.

In fact, as recently as August 2022, in an analogous case, the Southern District of New York rejected plaintiffs' attempts to argue that Executive Order No. 62 changed the legal interpretation surrounding the Vaccine Mandate for City employees. See Kane v. De Blasio, 2022 U.S. Dist. LEXIS 154260, *1, *24-25 (S.D.N.Y. Aug. 26, 2022) (holding that "the number of vaccination mandates is plainly irrelevant"). In determining the general applicability of the Vaccine Mandate, the Kane Court stated that "[t]he fact that [the vaccine mandate] does not apply to professional athletes is of no significance here." Id. The Court held that the Vaccine Mandate still applied to the general class of DOE employees which included plaintiffs. Id. (comparing New

Yorkers' ability to choose whether or not to attend sporting events versus the inability to choose whether to interact with DOE employees).

H. The Issues In This Case Are Not Justiciable

In this proceeding, petitioners repeat arguments that have been denied and dismissed in numerous cases across various courts, including this Court. See Police Benevolent Association et. al. v. de Blasio et. al., No. 85229/2021 (Richmond Cnty 2022).

Petitioners demand that this Court infringe on the DOHMH's authority to suppress the control of communicable diseases and conditions hazardous to life and health, and substitute petitioners' own judgment for that of the Health Commissioner and the City's public health experts. Ironically – in light of petitioners' argument as discussed in Subpoint C -- to do so would be a blatant violation of the separation of powers. See New York State Inspection, Sec. & Law Enforcement Emples., Dist. Council 82 v. Cuomo, 64 N.Y.2d 233, 237-40 (1984) (“Cuomo”) (rejecting Article 78 challenge and motion for preliminary injunction relating to the safety of correctional facilities as nonjusticiable and violative of separation of powers principles, holding that “the manner by which the State addresses complex societal and governmental issues is a subject left to the discretion of the political branches of government” (citing Klostermann v. Cuomo, 61 N.Y.2d 525 (1984) and Abrams v. New York City Trans. Auth., 39 N.Y.2d 990 (1976))). Indeed, the Cuomo Court specifically rejected an Article 78 Petition premised on purported safety concerns in the workplace: “By seeking to vindicate their legally protected interest in a safe workplace, petitioners call for a remedy which would embroil the judiciary in the management and operation of the State correctional system.” Cuomo, 64 N.Y.2d at 239.

The Court of Appeals' decision in Cuomo has been repeatedly cited with approval to bar Article 78 challenges as nonjusticiable where petitioners have challenged agency determinations contended to pose a potential safety risk. See, e.g., Roberts v. Health & Hosps. Corp., 87 A.D.3d

311, 325-26 (1st Dep’t 2011); Civil Serv. Emps. Ass’n v. Cty. of Erie, 43 A.D.3d 1341, 1341-42 (4th Dep’t 2007) (reversing Supreme Court’s granting of Article 78 petition and permanent injunction on justiciability grounds where petitioners argued that agency staffing determination would pose a “severe exacerbation of the danger to the safety and health of the remaining staff”).

The First Department’s decision in Roberts is particularly instructive. In Roberts, petitioners brought an Article 78 proceeding challenging a City agency’s staffing determinations on the grounds that the safety of the employees had been put at risk because “HHC did not develop an adequate health and safety plan.” Roberts 87 A.D.3d at 317. The lower court granted an injunction, and the City appealed. Id. The First Department unanimously reversed the Supreme Court’s judgment, holding that

Petitioners’ claims that HHC’s decision to reduce maintenance staff would result in the creation of an unsafe workplace do not salvage their petitions. In addition to being far too speculative to rise to the level of an injury in fact, those claims clearly present a nonjusticiable controversy. [citing Cuomo, 64 N.Y.2d at 237].

Neither the petitioners nor the courts should be permitted to substitute their judgment for the discretionary management of public business by public officials, as neither have been lawfully charged with that responsibility.

Id. at 325-26 (emphasis added).

Here, as in Roberts, petitioners seek to embroil the judiciary in the management of the executive and political branches of government under the guise of legally deficient liberty interests, and here, as in Roberts, those claims are not justiciable.

As the case law amply demonstrates, the instant petition confronts the Court with a nonjusticiable controversy which it is ill-equipped to adjudicate. It is the DOHMH that is vested with the awesome and nondelegable duty to protect the human life and health of City inhabitants

who will regularly have contacted with the public servants comprising the largest workforce in the City. In the lawful exercise of this duty, and in accordance with federal, State, and local guidance, and pursuant to authority vested by the governing laws of the City of New York, DOHMH has determined that a system of vaccination for municipal employees will potentially save lives, protect public health, and promote public safety. As the DOHMH's determinations are rational, the determinations may not be second-guessed by the petitioners or this Court without infringing on the separation of powers.

CONCLUSION

WHEREFORE, Respondents respectfully request that the Petition be dismissed, with prejudice, and the claims for relief denied in their entirety, together with such other and further relief as the Court deems just and proper.

Dated: New York, New York
September 14, 2022

HON. SYLVIA O. HINDS-RADIX
Corporation Counsel of the
City of New York
Attorney for Respondents
100 Church Street, Room 2-109B
New York, New York 10007-2601
(212) 356-2549
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By: David Holmes
David V. Holmes
Assistant Corporation Counsel

APPENDIX #46

22-CV-02234

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

WOMEN OF COLOR FOR EQUAL JUSTICE, ET. AL.,

Plaintiffs,

-against-

THE CITY OF NEW YORK, MAYOR ERIC L. ADAMS,
COMMISSIONER ASHWIN VASAN, M.D. PH.D.,
DEPARTMENT OF HEALTH AND MENTAL
HYGIENE, DEPARTMENT OF EDUCATION, AND
DOES 1-20,

Defendants.

**CITY DEFENDANTS' MEMORANDUM OF LAW IN
SUPPORT OF CITY DEFENDANTS' MOTION TO
DISMISS THE THIRD AMENDED COMPLAINT**

HON. SYLVIA O. HINDS-RADIX

Corporation Counsel of the City of New York
Attorney for the City Defendants
100 Church Street, Room 2-316
New York, N.Y. 10007

Of Counsel: Elisheva L. Rosen
Tel: (212) 356-3522

Served December 22, 2022

Matter No. 2022-021670

2021 U.S. Dist. LEXIS 163860, at *9 (S.D.N.Y. 2021). Rather, WOC must allege that it “suffer[ed] some distinctive injury to itself.” Id. (citing Conn. Parents Union v. Russell-Tucker, 2021 U.S. App. LEXIS 23775 at *4 (2d Cir. 2021) (“An organization can satisfy the injury prong if it shows that the challenged action did not merely harm its abstract social interests but perceptibly impaired its activities.”)). Plaintiff WOC has failed to allege any facts supporting an inference that WOC itself has suffered or will suffer an injury. The only alleged injuries are those relating to the individually named plaintiffs as a result of the Vaccine Mandates. This does not suffice to establish organizational standing. See Massone, 2021 U.S. Dist. LEXIS 163860, at *10. Therefore, Plaintiff WOC should be dismissed.

POINT IV

**DEFENDANT CITY CANNOT BE HELD
LIABLE FOR THE ACTIONS OF THE DOE**

It is well-settled law that the City and the DOE are separate legal entities and so the City cannot be held liable for the alleged torts of DOE employees. See Sotomayor v. City of N.Y., 862 F. Supp. 2d 226, 248 (E.D.N.Y. 2012), aff’d, 713 F.3d 163 (2d Cir. 2013). Therefore, to the extent that Plaintiffs are suing Defendant City for the actions allegedly taken or not taken by the DOE, those claims must be dismissed.

POINT V

**THERE IS NO PRIVATE RIGHT OF ACTION
UNDER OCCUPATIONAL SAFETY HEALTH
ACT (“OSHA”) OR THE SUPREMACY
CLAUSE**

This Court recently held that Plaintiffs’ claims “premised on the theories that the Vaccine Orders violate . . . the Supremacy Clause of the U.S. Constitution and OSHA . . . are meritless.” See PI Order, ECF Dkt. No. 39 at pg. 4-5. This recent decision is law-of-the-case, and Plaintiffs cannot use their opposition to this motion to challenge the decision. It is well established

that there is no private right of action under OSHA and the Supremacy Clause. See 29 U.S.C. § 653(b)(4); Armstrong v. Exceptional Child Ctr., Inc., 575 U.S. 320, 324-325 (2015); Quirk v. DiFiore, 2022 U.S. Dist. LEXIS 16063, at *12 (S.D.N.Y. 2022). Furthermore, the operative law for City Defendants is New York State’s Public Employee Safety and Health Act (“PESHA”), N.Y. Labor Law § 27-a, and not OSHA. As such, Plaintiffs’ claims should be dismissed.

To the extent that Plaintiffs are trying to assert a cause of action under the Commerce Clause (see Compl. ¶¶ 72-73), such a claim fails because there is no private right of action under the Commerce Clause. See Washington v. United States Tennis Assn., 290 F. Supp. 2d 323, 329 (E.D.N.Y. 2003).

POINT VI

PLAINTIFFS FAILED TO FILE A TIMELY OR SUFFICIENT NOTICES OF CLAIM FOR THEIR CITY HUMAN RIGHTS LAW (“CHRL”) CLAIMS

A notice of claim is a statutory device that creates a condition precedent to the right to bring an action. A notice of claim must be filed within ninety (90) days of the claim’s accrual. Gen. Mun. Law § 50-e(1)(a). The notice of claim must include: “(1) the name and post-office address of each claimant, and of his attorney, if any; (2) the nature of the claim; (3) the time when, the place where and the manner in which the claim arose; and (4) the items of damage or injuries claimed to have been sustained so far as then practicable[.]” Gen. Mun. Law § 50-e (2).

New York Education Law § 3813(1) requires notices of claim against school districts be filed within ninety (90) days after the claim arises, including CHRL claims against the DOE. See N.Y. Educ. Law § 3813(1); Birkholz v. City of New York, 2012 U.S. Dist. LEXIS 22445 at *41 (E.D.N.Y. 2012); Santiago v. Newburgh Enlarged City Sch. Dist., 434 F. Supp. 2d 193, 196 (S.D.N.Y. 2006). In addition, Plaintiffs are required to plead in the complaint that they

filed a timely notice of claim. See Santiago, 434 F. Supp. 2d at 196; N.Y. Educ. Law § 3813(1). Here, DOE Plaintiffs provide nothing more than a conclusory statement that they have satisfied the notice of claim requirement, which is not sufficient support for the assertion that a notice of claim was timely filed. See Santiago, 434 F. Supp. 2d at 196; N.Y. Educ. Law § 3813(1).¹¹

Upon information and belief, Plaintiff Romeo filed a notice of claim against the DOE on or about May 2, 2022, and Plaintiff Ioio filed a notice of claim against the DOE on or about May 12, 2022. As noted, the City and DOE are separate legal entities and the City cannot be held liable for torts committed by DOE employees. See supra Point IV. As such, Romero and Ioio's notices of claim against the DOE cannot be imputed onto Defendant City. See, e.g., C.G. v. Bronx Learning Inst., 2019 N.Y. Misc. LEXIS 23886, at *6 (Sup Ct, Bronx County 2019).

Upon information and belief, on or about May 11, 2022, after Plaintiffs served the initial complaint but before Plaintiffs filed the First Amended Complaint, Plaintiffs' counsel sent a letter titled "notice of claim and offer to confess" to the New York City Comptroller and attached a list of the individuals for whom counsel was filing the letter. See Notice of Claim and Offer to Confess, ECF Dkt. No. 16-1, annexed to Plaintiff's Premotion Letter in Support of Plaintiffs' Motion for Summary Judgment, ECF Dkt. No. 16, filed July 29, 2022. Such a letter fails to satisfy the notice of claim requirement. See, e.g., Rosenbaum v. City of N.Y., 8 N.Y.3d 1, 11-12 (2006) ("the requirements of General Municipal Law § 50-e (2) are not fulfilled when a plaintiff or an attorney writes a letter to a city agency suggesting that unmet demands might lead to litigation.").

¹¹ Plaintiffs Ayne, Saviano, Moore, Hogan, Csepku, Mustadchia, Yulanda Smith, Paula Smith, Moody, Figaro, Odom, Trotman, Gratsley, Boyce, Wallen, Baker-Pascius, Wanser, Murillo, Shroeter, and Wiesel fail to allege which City agency they allegedly worked for and so it is unclear whether they are required to file a notice of claim.

Furthermore, the letter failed to identify (a) the claimants, (b) the agencies against whom the notice of claim is being filed, and (c) any facts sufficient to put the Defendants on notice as to the nature of the claims. See Gen. Mun.Law § 50-e; see also Martinez v. City of N.Y., 2021 U.S. Dist. LEXIS 189136, at *26 (E.D.N.Y. 2021) (“standard is ‘merely whether [the notice] includes information sufficient to enable the [C]ity to investigate.’”) (internal citation and quotation omitted). Plaintiffs failed to allege any facts specific to each Plaintiff, let alone the time, place, or manner of the alleged injuries, and instead submitted a thirteen page legal brief. See generally, Dkt. No. 16-1. Therefore, Plaintiffs failed to file a timely or sufficient notice of claim and their CHRL claims should be dismissed. See, e.g., Scruggs v. City of N.Y., 73 Misc. 3d 135[A], 2021 N.Y. Slip. Op. 51053[U] (1st Dep’t 2021) (dismissing the complaint where the notice of claim was “too vague to permit defendant to conduct a meaningful investigation into plaintiff’s claim and to assess the merits of that claim”); Foster v. City of N.Y., 112 A.D.3d 783 (2d Dep’t 2013).

POINT VII

THE VACCINE MANDATES ARE LAWFUL AND ENFORCEABLE

The City, as a government employer, has a duty to maintain a safe workplace. See generally N.Y. Labor Law § 27-a. As such, City Defendants have a compelling – indeed, overwhelming – public interest in limiting the spread of COVID-19 in the community at large. The Supreme Court has recognized that stemming the spread of COVID-19 is a compelling public interest. See Roman Catholic Diocese v. Cuomo, 141 S. Ct. 63, 67 (2020). This Court in Garland held that “[u]ltimately, it is up to local government, not the courts, to balance the competing public health and business interests, and here, the New York City government and the FDNY have done so in issuing and enforcing the vaccination requirement for employees of the FDNY.” See Garland v. N.Y. City Fire Dep’t., 2021 U.S. Dist. LEXIS 233142, at *26 (E.D.N.Y. 2021).

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erosen@law.nyc.gov

By:

/s/ Elisheva L. Rosen

Elisheva L. Rosen

Assistant Corporation Counsel

Appendix #47



VIA FILE UPLOAD

May 10, 2022

Brad Lander
Office of the New York City Comptroller
1 Centre Street
New York, NY 10007
Form Version: NYC-COMPT-BLA-LE-C4

Re: Notice of Claim Class Action - RULE 50

Dear Mr. Lander:

We represent the below list of New York City (the "City") employees who have been placed on "indeterminate involuntary leave without pay" for exercising their right to refuse to Covid-19 vaccine based on their First Amendment Right to refuse and based on the City's lack of authority to create the Covid-19 vaccine requirement because the authority is pre-empted by OSHA's authority to set workplace safety standards.

Therefore, this letter and the attached documents will serve as the Notice of Claims for Employment and Personal Injury Damages for City's Violations of the employees First Amendment Rights, various New York Civil Service Disciplinary Laws, Title VII Religious Harassment, the American's With Disability Act, and the New York City Human Rights Act, which provides punitive damages for the City's reckless disregard for the rights of its employees.

Attached find the following:

1. one (1) completed Employment and Personal Injury Claim form for all employees, and we have provided an Excel spreadsheet that contains all of the data required to be provided in the attached forms.
2. Spreadsheet list of employee information in support of the claim forms
3. Exhibit A – Memorandum of Legal Causes of Action - pages 1-94

List of Employees for which the Notice of Claim applies and is provided for "All similarly situated employees":

1. Curtis Boyce
2. Sara Coombs-Moreno
3. Elizabeth Loiacono
4. Jesus Coombs
5. Julia Harding
6. Angela Velez
7. Sancha Browne
8. Amoura Bryan
9. Ayse Ustares



10. Zena Wouadjou
11. Remo Dello Ioio
12. Charisse Ridulfo
13. Sancha Browne
14. Tracy-Ann Francis-Martin
15. Kareem Campbell
16. Michelle Hemmings Harrington
17. Mark Mayne
18. Carla Grant
19. Cassandra Chandler
20. Aura Moody
21. Suzanne Deegan
22. Evelyn Zapata
23. Christine O'Reilly
24. Edward Weber
25. Maritza Romero
26. Sean Milan
27. Sonia Hernandez
28. Jeffrey B. Hunter
29. Rasheen Odom
30. Maria Figaro
31. Sara Coombs-Moreno
32. Frankie Trotman
33. Yulonda Smith
34. Roseanna Mustacchia
35. Jessica Csepku
36. Natalya Hogan
37. Bruce Reid
38. Joseph Rullo
39. Cheryl Thompson
40. Dianne Baker-Pacius

If you have any questions or need additional information, please feel free to contact me on my cell number at 602-326-8663.

Sincerely,

Jo Saint-George, Esq.
Jo Saint-George, Esq.
Chief Legal Officer



New York City Comptroller
Brad Lander

Bates605
Office of the New York City Comptroller
1 Centre Street
New York, NY 10007
FormVersion: NYC-COMPT-BLA-LE-C4

City Employment Claim Form

For most claims, electronically filed claims must be filed within 90 days of the occurrence using the Office of the NYC Comptroller's website. If the claim is not resolved within one (1) year and 90 days of the occurrence, you must start a separate legal action in a court of law before the expiration of this time period to preserve your rights.

I am filing: On behalf of myself.

Attorney is filing.

On behalf of someone else. If on someone else's behalf, please provide the following information:

Attorney Information (if represented by attorney)

Last Name:

First Name:

Relationship to the claimant:

+ Firm or Last Name: WOMEN OF COLOR 4 EQUAL JUSTICE⁺

+ Firm or First Name: JO SAINT-GEORGE, ESQ.

+ Address: MAILING - 350 E. DIAMOND AVE.

Address 2: UNIT 4077

+ City: GIATHERSBURG

+ State: MARYLAND

+ Zip Code: 20877

Tax Id: 261289930

Phone: (602) 326-8663

Email Address: JO@WOC4EQUALJUSTICE.ORG

Phone Email: JO@WOC4EQUALJUSTICE.ORG

Claimant Information

*Last Name: USTARES

*First Name: AYSE

*Address:

Address 2:

*City:

*State:

*Zip Code:

*Country:

Date of Birth:

Soc. Sec #:

*Phone:

*Email Address:

*Retype Email:

Occupation:

Current City Employee? Yes No NA

Current Agency: DEPT. OF EDUCATION

Name and place where the claim arose

Event Date from: 09/09/2021 *Format: MM/DD/YYYY*

Event Date to: 05/11/2022 *Format: MM/DD/YYYY*

Event Location: ONGOING RELIGIOUS & DISABILITY HARASSMENT & DISTRESS

Address: PS 19 JUDITH K. WEISS

Address 2:

City: BRONX

State: NEW YORK

Borough: BRONX

Gender: Male Female Other

* Denotes required fields. Either a claimant or attorney email address is required.
+ Denotes field that is required if Attorney is filing.



New York City Comptroller
Brad Lander

Office of the New York City Comptroller
1 Centre Street
New York, NY 10007
FormVersion: NYC-COMPT-BLA-LE-C4

***Nature of Claim/Description of Claim**

THE WOMEN OF COLOR FOR EQUAL JUSTICE ARE REPRESENTING MULTIPLE CITY WORKERS AND IS SEEKING CLASS CERTIFICATION OF WHICH THIS EMPLOYEE HAS BEEN NAME AS PART OF THE PROPOSED CLASS. A LAWSUIT HAS BEEN FILED TO PRESERVE STATUTES OF LIMITATIONS. SEE DETAILS OF BELOW CLAIMS IN EXHIBIT A IN THE BELOW LINK - [HTTP://WWW.WOC4EQUALJUSTICE.ORG/LEGAL//NOTICE%20OF%20CLAIM%20-WITH-EXHIBITS-FINAL-V2.PDF](http://WWW.WOC4EQUALJUSTICE.ORG/LEGAL//NOTICE%20OF%20CLAIM%20-WITH-EXHIBITS-FINAL-V2.PDF) - CLAIMS:

#1. OSHA PRE-EMPTION OF NEW YORK CITY DEPARTMENT OF HEALTH ORDERS - THE CITY THROUGH THE DEPARTMENT OF HEALTH LACKED AUTHORITY TO ISSUE THE COVID-19 VACCINE ORDERS FROM AUGUST 2021 TO DECEMBER 2021 THAT ONLY APPLIED TO CITY EMPLOYEES. ONLY OSHA HAS AUTHORITY TO CREATE AND IMPLEMENT WORKPLACE SAFETY STANDARDS. THE ORDERS WERE NOT FOR THE GENERAL GOO, CITY FAILED TO TRAIN EMPLOYEES REGARDING ALL OSHA RISK MITIGATION CONTROLS FOR WORKPLACE SAFETY AGAINST COVID-19 - SPECIFICALLY THE RIGHT TO "REMOTE WORK" AND SAFETY EQUIPMENT - SPECIFICALLY RESPIRATORS AND POWERED AIR PURIFYING RESPIRATORS (PAPR) -

#2 - BECAUSE THE CITY LACKED AUTHORITY TO CREATE, IMPLEMENT, ENFORCE AND DISCIPLINE BASED ON UNAUTHORIZED ORDERS, THE CITY VIOLATED THE CLASSES FIRST AMENDMENT RIGHTS TO FREE EXERCISE AND VIOLATED THE ESTABLISHMENT CLAUSE FOR FAILING TO PROMOTE AND ALLOW EMPLOYEES TO CHOOSE ALTERNATIVE RELIGIOUS MEDICAL TREATMENTS TO DEAL WITH COVID-19 IN THEIR BODIES.

#3 THE CITY ENGAGED IN DISCRIMINATORY HARASSMENT AND COERCION IN VIOLATION OF: TITLE VII, THE ADA (THE EMPLOYEES IN THE PROTECTED CLASS OF THOSE WITH A "PERCEIVED DISABILITY" DUE TO THEIR "UNVACCINATED STATUS" OR "VACCINE DEFICIENCY) AND IN VIOLATION OF THE NEW YORK CITY HUMAN RIGHTS ACT FOR THE SAME REASONS ABOVE. #4 WRONGFUL DISCIPLINE - THE CITY WRONGLY PLACED EMPLOYEES ON INVOLUNTARY INDETERMANAT LEAVE WITHOUT PAY BUT CLAIMED TO TERMINATE THEM IN VIOLATION OF CIVIL SERVICE LAWS A. EDUCATION LAW §3020 FOR ALL TENURED TEACHERS IN THE DEPARTMENT OF EDUCATION;

If you need additional room, attach your description as an additional document.

What agency/employer are you making this claim against?

*Agency:	DEPT. OF EDUCATION
Address:	65 COURT ST.
Address 2:	#102
City:	BROOKLYN
State:	NEW YORK
Zip Code:	11201

Work days lost: 180



Were you employed by a City Contractor at the time of claimed occurrence? Yes No

++Contractor Name:

**Denotes required field*

++Denotes field that is required if you were employed by a City Contractor.



New York City Comptroller
Brad Lander

Office of the New York City Comptroller
1 Centre Street
New York, NY 10007
FormVersion: NYC-COMPT-BLA-LE-C4

Salary/Benefit Claimed Damages

Date From: Date To: Amount:

Overtime:			
Compensatory time:			
Differential:			
Annual Leave/Vacation:			
Sick Leave:			
Salary:			
Total:			0.00

Additional Claimed Damages

Amount:

Specify:	MENTAL DISTRESS DAMAGES FOR HARASSMENT + COERCION = 2X SALARY	
Specify:	PUNITIVE DAMAGES FOR RECKLESS DISREGARD FOR MY MEDICAL FREEDOM	
Specify:	PUNITIVES CALCULATED BASED ON [REDACTED] SALARY	
Specify:	ATTORNEY FEES	
Specify:		
Total:		

****Total Claimed Amount:** [REDACTED]

I certify that all information contained in this notice is true, and correct to the best of my knowledge, and belief. I understand that the willful making of any false statement of material fact herein will subject me to criminal penalties, and civil liabilities.

*Denotes field that is required.
**Total Claimed Amount will be automatically calculated after all required fields are entered.



New York City Comptroller
Brad Lander

Office of the New York City Comptroller
1 Centre Street
New York, NY 10007
FormVersion: NYC-COMPT-BLA-LE-C4

City Employment Claim Form

For most claims, electronically filed claims must be filed within 90 days of the occurrence using the Office of the NYC Comptroller's website. If the claim is not resolved within one (1) year and 90 days of the occurrence, you must start a separate legal action in a court of law before the expiration of this time period to preserve your rights.

I am filing: On behalf of myself.

Attorney is filing.

On behalf of someone else. If on someone else's behalf, please provide the following information:

Attorney Information (if represented by attorney)

Last Name:

First Name:

Relationship to the claimant:

+ Firm or Last Name:

+ Firm or First Name:

+ Address:

Address 2:

+ City:

+ State:

+ Zip Code:

Tax Id:

+ Phone:

+ Email Address:

+ Retype Email:

Claimant Information

*Last Name:

*First Name:

*Address:

Address 2:

*City:

*State:

*Zip Code:

*Country:

Date of Birth:

Soc. Sec #:

*Phone:

*Email Address:

*Retype Email:

Occupation:

Current City Employee? Yes No NA

Current Agency:

The time and place where the claim arose

*Incident Date from: *Format: MM/DD/YYYY*

*Incident Date to: *Format: MM/DD/YYYY*

*Incident Location:

Address:

Address 2:

City:

State:

Borough:

Gender: Male Female Other

* Denotes required fields. Either a claimant or attorney email address is required.
+ Denotes field that is required if Attorney is filing.



New York City Comptroller
Brad Lander

Office of the New York City Comptroller
1 Centre Street
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#1. OSHA PRE-EMPTION OF NEW YORK CITY DEPARTMENT OF HEALTH ORDERS - THE CITY THROUGH THE DEPARTMENT OF HEALTH LACKED AUTHORITY TO ISSUE THE COVID-19 VACCINE ORDERS FROM AUGUST 2021 TO DECEMBER 2021 THAT ONLY APPLIED TO CITY EMPLOYEES. ONLY OSHA HAS AUTHORITY TO CREATE AND IMPLEMENT WORKPLACE SAFETY STANDARDS. THE ORDERS WERE NOT FOR THE GENERAL GOO, CITY FAILED TO TRAIN EMPLOYEES REGARDING ALL OSHA RISK MITIGATION CONTROLS FOR WORKPLACE SAFETY AGAINST COVID-19 - SPECIFICALLY THE RIGHT TO "REMOTE WORK" AND SAFETY EQUIPMENT - SPECIFICALLY RESPIRATORS AND POWERED AIR PURIFYING RESPIRATORS (PAPR) -

#2 - BECAUSE THE CITY LACKED AUTHORITY TO CREATE, IMPLEMENT, ENFORCE AND DISCIPLINE BASED ON UNAUTHORIZED ORDERS, THE CITY VIOLATED THE CLASSES FIRST AMENDMENT RIGHTS TO FREE EXERCISE AND VIOLATED THE ESTABLISHMENT CLAUSE FOR FAILING TO PROMOTE AND ALLOW EMPLOYEES TO CHOOSE ALTERNATIVE RELIGIOUS MEDICAL TREATMENTS TO DEAL WITH COVID-19 IN THEIR BODIES.

#3 THE CITY ENGAGED IN DISCRIMINATORY HARASSMENT AND COERCION IN VIOLATION OF: TITLE VII, THE ADA (THE EMPLOYEES IN THE PROTECTED CLASS OF THOSE WITH A "PERCEIVED DISABILITY" DUE TO THEIR "UNVACCINATED STATUS" OR "VACCINE DEFICIENCY) AND IN VIOLATION OF THE NEW YORK CITY HUMAN RIGHTS ACT FOR THE SAME REASONS ABOVE. #4 WRONGFUL DISCIPLINE - THE CITY WRONGLY PLACED EMPLOYEES ON INVOLUNTARY INDETERMANAT LEAVE WITHOUT PAY BUT CLAIMED TO TERMINATE THEM IN VIOLATION OF CIVIL SERVICE LAWS A. EDUCATION LAW §3020 FOR ALL TENURED TEACHERS IN THE DEPARTMENT OF EDUCATION;

If you need additional room, attach your description as an additional document.

What agency/employer are you making this claim against?

*Agency:	DEPT. OF EDUCATION
Address:	65 COURT ST.
Address 2:	#102
City:	BROOKLYN
State:	NEW YORK
Zip Code:	11201

Work days lost:



Were you employed by a City Contractor at the time of claimed occurrence? Yes No

++Contractor Name:

**Denotes required field*

++Denotes field that is required if you were employed by a City Contractor.



New York City Comptroller
Brad Lander

Office of the New York City Comptroller
1 Centre Street
New York, NY 10007
FormVersion: NYC-COMPT-BLA-LE-C4

Salary/Benefit Claimed Damages

Date From: Date To: Amount:

Overtime:			
Compensatory time:			
Differential:			
Annual Leave/Vacation:			
Sick Leave:			
Salary:			
Total:			0.00

Additional Claimed Damages

Amount:

Specify:	MENTAL DISTRESS DAMAGES FOR HARASSMENT + COERCION = 2X SALARY	
Specify:	PUNITIVE DAMAGES FOR RECKLESS DISREGARD FOR MY MEDICAL FREEDOM	
Specify:	PUNITIVES CALCULATED BASED [REDACTED]	
Specify:	ATTORNEY FEES	
Specify:		
Total:		

****Total Claimed Amount:** [REDACTED]

I certify that all information contained in this notice is true, and correct to the best of my knowledge, and belief. I understand that the willful making of any false statement of material fact herein will subject me to criminal penalties, and civil liabilities.

*Denotes field that is required.

**Total Claimed Amount will be automatically calculated after all required fields are entered.



New York City Comptroller
Brad Lander

Bates611
Office of the New York City Comptroller
1 Centre Street
New York, NY 10007
FormVersion: NYC-COMPT-BLA-LE-C4

City Employment Claim Form

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I am filing: On behalf of myself.

Attorney is filing.

On behalf of someone else. If on someone else's behalf, please provide the following information:

Attorney Information (if represented by attorney)

Last Name:
First Name:
Relationship to the claimant:

+ Firm or Last Name: WOMEN OF COLOR 4 EQUAL JUSTICE+
+ Firm or First Name: JO SAINT-GEORGE, ESQ.
+ Address: MAILING - 350 E. DIAMOND AVE.
Address 2: UNIT 4077
+ City: GIATHERSBURG
+ State: MARYLAND
+ Zip Code: 20877
Tax Id: 261289930
+ Phone: (602) 326-8663
+ Email Address: JO@WOC4EQUALJUSTICE.ORG
+ Retype Email: JO@WOC4EQUALJUSTICE.ORG

Claimant Information

*Last Name: BOYCE
*First Name: CURTIS
*Address:
Address 2:
*City:
*State:
*Zip Code:
*Country:
Date of Birth:
Soc. Sec #:
*Phone:
*Email Address:
*Retype Email:
Occupation:

The time and place where the claim arose

*Incident Date from: 09/09/2021 *Format: MM/DD/YYYY*
*Incident Date to: 05/11/2022 *Format: MM/DD/YYYY*
*Incident Location: ONGOING RELIGIOUS & DISABILITY HARASSMENT & DISTRESS
Address: 11625 GUY R. BREWER RD
Address 2:
City: JAMAICA
State: NEW YORK
Borough: QUEENS

Current City Employee? Yes No NA

Current Agency: DEPT. OF EDUCATION

Gender: Male Female Other

* Denotes required fields. Either a claimant or attorney email address is required.
+ Denotes field that is required if Attorney is filing.



New York City Comptroller
Brad Lander

Office of the New York City Comptroller
1 Centre Street
New York, NY 10007
FormVersion: NYC-COMPT-BLA-LE-C4

***Nature of Claim/Description of Claim**

THE WOMEN OF COLOR FOR EQUAL JUSTICE ARE REPRESENTING MULTIPLE CITY WORKERS AND IS SEEKING CLASS CERTIFICATION OF WHICH THIS EMPLOYEE HAS BEEN NAME AS PART OF THE PROPOSED CLASS. A LAWSUIT HAS BEEN FILED TO PRESERVE STATUTES OF LIMITATIONS. SEE DETAILS OF BELOW CLAIMS IN EXHIBIT A IN THE BELOW LINK - [HTTP://WWW.WOC4EQUALJUSTICE.ORG/LEGAL//NOTICE%20OF%20CLAIM%20-WITH-EXHIBITS-FINAL-V2.PDF](http://www.woc4equaljustice.org/legal/notice%20of%20claim%20-with-exhibits-final-v2.pdf) - CLAIMS:

#1. OSHA PRE-EMPTION OF NEW YORK CITY DEPARTMENT OF HEALTH ORDERS - THE CITY THROUGH THE DEPARTMENT OF HEALTH LACKED AUTHORITY TO ISSUE THE COVID-19 VACCINE ORDERS FROM AUGUST 2021 TO DECEMBER 2021 THAT ONLY APPLIED TO CITY EMPLOYEES. ONLY OSHA HAS AUTHORITY TO CREATE AND IMPLEMENT WORKPLACE SAFETY STANDARDS. THE ORDERS WERE NOT FOR THE GENERAL GOO, CITY FAILED TO TRAIN EMPLOYEES REGARDING ALL OSHA RISK MITIGATION CONTROLS FOR WORKPLACE SAFETY AGAINST COVID-19 - SPECIFICALLY THE RIGHT TO "REMOTE WORK" AND SAFETY EQUIPMENT - SPECIFICALLY RESPIRATORS AND POWERED AIR PURIFYING RESPIRATORS (PAPR) -

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If you need additional room, attach your description as an additional document.

What agency/employer are you making this claim against?

*Agency:	DEPT. OF EDUCATION
Address:	65 COURT ST.
Address 2:	#102
City:	BROOKLYN
State:	NEW YORK
Zip Code:	11201

Work days lost:	210
Amount Earned Weekly:	[REDACTED]
Amount Earned Yearly:	[REDACTED]

Were you employed by a City Contractor at the time of claimed occurrence? Yes No

++Contractor Name:

**Denotes required field*

++Denotes field that is required if you were employed by a City Contractor.



New York City Comptroller
Brad Lander

Office of the New York City Comptroller
1 Centre Street
New York, NY 10007
FormVersion: NYC-COMPT-BLA-LE-C4

Salary/Benefit Claimed Damages

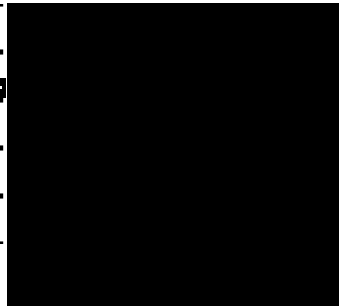
Date From: Date To: Amount:

Overtime:			
Compensatory time:			
Differential:			
Annual Leave/Vacation:			
Sick Leave:			
Salary:			
Total:			0.00

Additional Claimed Damages

Amount:

Specify:	MENTAL DISTRESS DAMAGES FOR HARASSMENT + COERCION = 2X SALARY
Specify:	PUNITIVE DAMAGES FOR RECKLESS DISREGARD FOR MY MEDICAL FREEDOM*
Specify:	PUNITIVES CALCULATED BASED ON [REDACTED]
Specify:	ATTORNEY FEES
Specify:	
Total:	



****Total Claimed Amount:** [REDACTED]

I certify that all information contained in this notice is true, and correct to the best of my knowledge, and belief. I understand that the willful making of any false statement of material fact herein will subject me to criminal penalties, and civil liabilities.

*Denotes field that is required.
**Total Claimed Amount will be automatically calculated after all required fields are entered.



New York City Comptroller
Brad Lander

Bates614
Office of the New York City Comptroller
1 Centre Street
New York, NY 10007
FormVersion: NYC-COMPT-BLA-LE-C4

City Employment Claim Form

For most claims, electronically filed claims must be filed within 90 days of the occurrence using the Office of the NYC Comptroller's website. If the claim is not resolved within one (1) year and 90 days of the occurrence, you must start a separate legal action in a court of law before the expiration of this time period to preserve your rights.

I am filing: On behalf of myself.

Attorney is filing.

On behalf of someone else. If on someone else's behalf, please provide the following information:

Attorney Information (if represented by attorney)

Last Name:
First Name:
Relationship to the claimant:

+ Firm or Last Name: WOMEN OF COLOR 4 EQUAL JUSTICE+
+ Firm or First Name: JO SAINT-GEORGE, ESQ.
+ Address: MAILING - 350 E. DIAMOND AVE.
Address 2: UNIT 4077
+ City: GIATHERSBURG
+ State: MARYLAND
+ Zip Code: 20877
Tax Id: 261289930
+ Phone: (602) 326-8663
+ Email Address: JO@WOC4EQUALJUSTICE.ORG
+ Retype Email: JO@WOC4EQUALJUSTICE.ORG

Claimant Information

*Last Name: BRYAN
*First Name: AMOURA
*Address:
Address 2:
*City:
*State:
*Zip Code:
*Country:
Date of Birth:
Soc. Sec #:
*Phone:
*Email Address:
*Retype Email:
Occupation: TEACHER REMOTE HOME
Current City Employee? Yes No NA
Current Agency: DEPT. OF EDUCATION

The time and place where the claim arose

*Incident Date from: 09/09/2021 *Format: MM/DD/YYYY*
*Incident Date to: 05/11/2022 *Format: MM/DD/YYYY*
*Incident Location: ONGOING RELIGIOUS & DISABILITY HARASSMENT & DISTRESS
Address: 65 COURT STREET
Address 2:
City: BROOKLYN
State: NEW YORK
Borough: BROOKLYN (KINGS)

Gender: Male Female Other

* Denotes required fields. Either a claimant or attorney email address is required.
+ Denotes field that is required if Attorney is filing.



New York City Comptroller
Brad Lander

Office of the New York City Comptroller
1 Centre Street
New York, NY 10007
FormVersion: NYC-COMPT-BLA-LE-C4

***Nature of Claim/Description of Claim**

THE WOMEN OF COLOR FOR EQUAL JUSTICE ARE REPRESENTING MULTIPLE CITY WORKERS AND IS SEEKING CLASS CERTIFICATION OF WHICH THIS EMPLOYEE HAS BEEN NAME AS PART OF THE PROPOSED CLASS. A LAWSUIT HAS BEEN FILED TO PRESERVE STATUTES OF LIMITATIONS. SEE DETAILS OF BELOW CLAIMS IN EXHIBIT A IN THE BELOW LINK - [HTTP://WWW.WOC4EQUALJUSTICE.ORG/LEGAL//NOTICE%20OF%20CLAIM%20-WITH-EXHIBITS-FINAL-V2.PDF](http://www.woc4equaljustice.org/legal//notice%20of%20claim%20-with-exhibits-final-v2.pdf) - CLAIMS:

#1. OSHA PRE-EMPTION OF NEW YORK CITY DEPARTMENT OF HEALTH ORDERS - THE CITY THROUGH THE DEPARTMENT OF HEALTH LACKED AUTHORITY TO ISSUE THE COVID-19 VACCINE ORDERS FROM AUGUST 2021 TO DECEMBER 2021 THAT ONLY APPLIED TO CITY EMPLOYEES. ONLY OSHA HAS AUTHORITY TO CREATE AND IMPLEMENT WORKPLACE SAFETY STANDARDS. THE ORDERS WERE NOT FOR THE GENERAL GOO, CITY FAILED TO TRAIN EMPLOYEES REGARDING ALL OSHA RISK MITIGATION CONTROLS FOR WORKPLACE SAFETY AGAINST COVID-19 - SPECIFICALLY THE RIGHT TO "REMOTE WORK" AND SAFETY EQUIPMENT - SPECIFICALLY RESPIRATORS AND POWERED AIR PURIFYING RESPIRATORS (PAPR) -

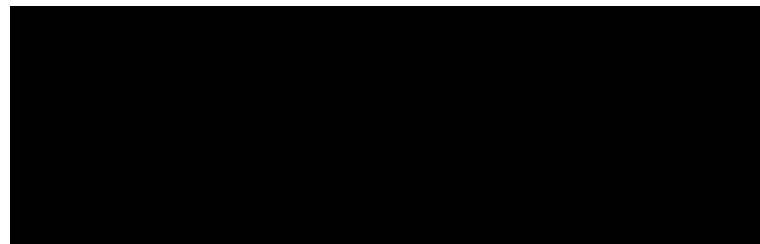
#2 - BECAUSE THE CITY LACKED AUTHORITY TO CREATE, IMPLEMENT, ENFORCE AND DISCIPLINE BASED ON UNAUTHORIZED ORDERS, THE CITY VIOLATED THE CLASSES FIRST AMENDMENT RIGHTS TO FREE EXERCISE AND VIOLATED THE ESTABLISHMENT CLAUSE FOR FAILING TO PROMOTE AND ALLOW EMPLOYEES TO CHOOSE ALTERNATIVE RELIGIOUS MEDICAL TREATMENTS TO DEAL WITH COVID-19 IN THEIR BODIES.

#3 THE CITY ENGAGED IN DISCRIMINATORY HARASSMENT AND COERCION IN VIOLATION OF: TITLE VII, THE ADA (THE EMPLOYEES IN THE PROTECTED CLASS OF THOSE WITH A "PERCEIVED DISABILITY" DUE TO THEIR "UNVACCINATED STATUS" OR "VACCINE DEFICIENCY) AND IN VIOLATION OF THE NEW YORK CITY HUMAN RIGHTS ACT FOR THE SAME REASONS ABOVE. #4 WRONGFUL DISCIPLINE - THE CITY WRONGLY PLACED EMPLOYEES ON INVOLUNTARY INDETERMANAT LEAVE WITHOUT PAY BUT CLAIMED TO TERMINATE THEM IN VIOLATION OF CIVIL SERVICE LAWS A. EDUCATION LAW §3020 FOR ALL TENURED TEACHERS IN THE DEPARTMENT OF EDUCATION;

If you need additional room, attach your description as an additional document.

What agency/employer are you making this claim against?

*Agency:	DEPT. OF EDUCATION
Address:	65 COURT ST.
Address 2:	#102
City:	BROOKLYN
State:	NEW YORK
Zip Code:	11201



Were you employed by a City Contractor at the time of claimed occurrence? Yes No

++Contractor Name:

**Denotes required field*

++Denotes field that is required if you were employed by a City Contractor.



New York City Comptroller
Brad Lander

Office of the New York City Comptroller
1 Centre Street
New York, NY 10007
FormVersion: NYC-COMPT-BLA-LE-C4

Salary/Benefit Claimed Damages

Date From: Date To: Amount:

Overtime:			
Compensatory time:			
Differential:			
Annual Leave/Vacation:			
Sick Leave:			
Salary:			
Total:			0.00

Additional Claimed Damages

Specify:	MENTAL DISTRESS DAMAGES FOR HARASSMENT + COERCION = 2X SALARY
Specify:	PUNITIVE DAMAGES FOR RECKLESS DISREGARD FOR MY MEDICAL FREED
Specify:	PUNITIVES CALCULATED BASED ON 3 X GROSS SALARY
Specify:	ATTORNEY FEES
Specify:	

Total:

****Total Claimed Amount:**

I certify that all information contained in this notice is true, and correct to the best of my knowledge, and belief. I understand that the willful making of any false statement of material fact herein will subject me to criminal penalties, and civil liabilities.

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**Total Claimed Amount will be automatically calculated after all required fields are entered.



New York City Comptroller
Brad Lander

Office of the New York City Comptroller
1 Centre Street
New York, NY 10007
FormVersion: NYC-COMPT-BLA-LE-C4

City Employment Claim Form

For most claims, electronically filed claims must be filed within 90 days of the occurrence using the Office of the NYC Comptroller's website. If the claim is not resolved within one (1) year and 90 days of the occurrence, you must start a separate legal action in a court of law before the expiration of this time period to preserve your rights.

I am filing: On behalf of myself.

Attorney is filing.

On behalf of someone else. If on someone else's behalf, please provide the following information:

Attorney Information (if represented by attorney)

Last Name:

First Name:

Relationship to the claimant:

+ Firm or Last Name:

+ Firm or First Name:

+ Address:

Address 2:

+ City:

+ State:

+ Zip Code:

Tax Id:

+ Phone:

+ Email Address:

+ Retype Email:

Claimant Information

*Last Name:

*First Name:

*Address:

Address 2:

*City:

*State:

*Zip Code:

*Country:

Date of Birth:

Soc. Sec #:

*Phone:

*Email Address:

*Retype Email:

Occupation:

Current City Employee? Yes No NA

Current Agency:

The time and place where the claim arose

*Incident Date from: *Format: MM/DD/YYYY*

*Incident Date to: *Format: MM/DD/YYYY*

*Incident Location:

Address:

Address 2:

City:

State:

Borough:

Gender: Male Female Other

* Denotes required fields. Either a claimant or attorney email address is required.
+ Denotes field that is required if Attorney is filing.



New York City Comptroller
Brad Lander

Office of the New York City Comptroller
1 Centre Street
New York, NY 10007
FormVersion: NYC-COMPT-BLA-LE-C4

***Nature of Claim/Description of Claim**

THE WOMEN OF COLOR FOR EQUAL JUSTICE ARE REPRESENTING MULTIPLE CITY WORKERS AND IS SEEKING CLASS CERTIFICATION OF WHICH THIS EMPLOYEE HAS BEEN NAME AS PART OF THE PROPOSED CLASS. A LAWSUIT HAS BEEN FILED TO PRESERVE STATUTES OF LIMITATIONS. SEE DETAILS OF BELOW CLAIMS IN EXHIBIT A IN THE BELOW LINK - [HTTP://WWW.WOC4EQUALJUSTICE.ORG/LEGAL//NOTICE%20OF%20CLAIM%20-WITH-EXHIBITS-FINAL-V2.PDF](http://www.woc4equaljustice.org/legal//notice%20of%20claim%20-with-exhibits-final-v2.pdf) - CLAIMS:

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If you need additional room, attach your description as an additional document.

What agency/employer are you making this claim against?

*Agency:

Address:

Address 2:

City:

State:

Zip Code:

Work days lost:

Amount Earned Weekly:

Amount Earned Yearly:

Were you employed by a City Contractor at the time of claimed occurrence? Yes No

++Contractor Name:

**Denotes required field*

++Denotes field that is required if you were employed by a City Contractor.



New York City Comptroller
Brad Lander

Office of the New York City Comptroller
1 Centre Street
New York, NY 10007
FormVersion: NYC-COMPT-BLA-LE-C4

Salary/Benefit Claimed Damages

Date From: Date To: Amount:

Overtime:			
Compensatory time:			
Differential:			
Annual Leave/Vacation:			
Sick Leave:			
Salary:			
Total:			0.00

Additional Claimed Damages

Amount:

Specify:	MENTAL DISTRESS DAMAGES FOR HARASSMENT + COERCION = 2X SALARY	
Specify:	PUNITIVE DAMAGES FOR RECKLESS DISREGARD FOR MY MEDICAL FREEDOM	
Specify:	PUNITIVES CALCULATED BASED ON 3 X GROSS SALARY	
Specify:	ATTORNEY FEES	
Specify:		
Total:		

****Total Claimed Amount:**

I certify that all information contained in this notice is true, and correct to the best of my knowledge, and belief. I understand that the willful making of any false statement of material fact herein will subject me to criminal penalties, and civil liabilities.

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1 Centre Street
New York, NY 10007
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I am filing: On behalf of myself.

Attorney is filing.

On behalf of someone else. If on someone else's behalf, please provide the following information:

Attorney Information (if represented by attorney)

Last Name:

First Name:

Relationship to the claimant:

+ Firm or Last Name:

+ Firm or First Name:

+ Address:

Address 2:

+ City:

+ State:

+ Zip Code:

Tax Id:

+ Phone:

+ Email Address:

+ Retype Email:

Claimant Information

*Last Name:

*First Name:

*Address:

Address 2:

*City:

*State:

*Zip Code:

*Country:

Date of Birth:

Soc. Sec #:

*Phone:

*Email Address:

*Retype Email:

Occupation:

Current City Employee? Yes No NA

Current Agency:

The time and place where the claim arose

*Incident Date from: *Format: MM/DD/YYYY*

*Incident Date to: *Format: MM/DD/YYYY*

*Incident Location:

Address:

Address 2:

City:

State:

Borough:

Gender: Male Female Other

* Denotes required fields. Either a claimant or attorney email address is required.
+ Denotes field that is required if Attorney is filing.



New York City Comptroller
Brad Lander

Office of the New York City Comptroller
1 Centre Street
New York, NY 10007
FormVersion: NYC-COMPT-BLA-LE-C4

***Nature of Claim/Description of Claim**

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If you need additional room, attach your description as an additional document.

What agency/employer are you making this claim against?

*Agency:	ADMINISTRATION FOR CHILDREN'S SE
Address:	66 JOHN STREET
Address 2:	#400
City:	NEW YORK
State:	NEW YORK
Zip Code:	10038

Work days lost:

Were you employed by a City Contractor at the time of claimed occurrence? Yes No

++Contractor Name:

**Denotes required field
++Denotes field that is required if you were employed by a City Contractor.*



New York City Comptroller
Brad Lander

Office of the New York City Comptroller
1 Centre Street
New York, NY 10007
FormVersion: NYC-COMPT-BLA-LE-C4

Salary/Benefit Claimed Damages

Date From: Date To: Amount:

Overtime:			
Compensatory time:			
Differential:			
Annual Leave/Vacation:			
Sick Leave:			
Salary:			
Total:			0.00

Additional Claimed Damages

Amount:

Specify:	MENTAL DISTRESS DAMAGES FOR HARASSMENT + COERCION = 2X SALARY	2	
Specify:	PUNITIVE DAMAGES FOR RECKLESS DISREGARD FOR MY MEDICAL FREEDOM	4	
Specify:	PUNITIVES CALCULATED BASED ON 3 X GROSS SALARY	3	
Specify:	ATTORNEY FEES	5	
Specify:			
Total:		6	

****Total Claimed Amount:**

I certify that all information contained in this notice is true, and correct to the best of my knowledge, and belief. I understand that the willful making of any false statement of material fact herein will subject me to criminal penalties, and civil liabilities.

*Denotes field that is required.

**Total Claimed Amount will be automatically calculated after all required fields are entered.



New York City Comptroller
Brad Lander

Bates623
Office of the New York City Comptroller
1 Centre Street
New York, NY 10007
FormVersion: NYC-COMPT-BLA-LE-C4

City Employment Claim Form

For most claims, electronically filed claims must be filed within 90 days of the occurrence using the Office of the NYC Comptroller's website. If the claim is not resolved within one (1) year and 90 days of the occurrence, you must start a separate legal action in a court of law before the expiration of this time period to preserve your rights.

I am filing: On behalf of myself.

On behalf of someone else. If on someone else's behalf, please provide the following information:

Last Name:

First Name:

Relationship to the claimant:

Claimant Information

*Last Name:

*First Name:

*Address:

Address 2:

*City:

*State:

*Zip Code:

*Country:

Date of Birth:

Soc. Sec #:

*Phone:

*Email Address:

*Retype Email:

Occupation:

Current City Employee? Yes No NA

Current Agency:

Gender: Male Female Other

Attorney is filing.

Attorney Information (if represented by attorney)

+ Firm or Last Name:

+ Firm or First Name:

+ Address:

Address 2:

+ City:

+ State:

+ Zip Code:

Tax Id:

+ Phone:

+ Email Address:

+ Retype Email:

The time and place where the claim arose

*Incident Date from: *Format: MM/DD/YYYY*

*Incident Date to: *Format: MM/DD/YYYY*

*Incident Location:

Address:

Address 2:

City:

State:

Borough:

* Denotes required fields. Either a claimant or attorney email address is required.
+ Denotes field that is required if Attorney is filing.



New York City Comptroller
Brad Lander

Office of the New York City Comptroller
1 Centre Street
New York, NY 10007
FormVersion: NYC-COMPT-BLA-LE-C4

***Nature of Claim/Description of Claim**

THE WOMEN OF COLOR FOR EQUAL JUSTICE ARE REPRESENTING MULTIPLE CITY WORKERS AND IS SEEKING CLASS CERTIFICATION OF WHICH THIS EMPLOYEE HAS BEEN NAME AS PART OF THE PROPOSED CLASS. A LAWSUIT HAS BEEN FILED TO PRESERVE STATUTES OF LIMITATIONS. SEE DETAILS OF BELOW CLAIMS IN EXHIBIT A IN THE BELOW LINK - [HTTP://WWW.WOC4EQUALJUSTICE.ORG/LEGAL//NOTICE%20OF%20CLAIM%20-WITH-EXHIBITS-FINAL-V2.PDF](http://www.woc4equaljustice.org/legal//notice%20of%20claim%20-with-exhibits-final-v2.pdf) - CLAIMS:

#1. OSHA PRE-EMPTION OF NEW YORK CITY DEPARTMENT OF HEALTH ORDERS - THE CITY THROUGH THE DEPARTMENT OF HEALTH LACKED AUTHORITY TO ISSUE THE COVID-19 VACCINE ORDERS FROM AUGUST 2021 TO DECEMBER 2021 THAT ONLY APPLIED TO CITY EMPLOYEES. ONLY OSHA HAS AUTHORITY TO CREATE AND IMPLEMENT WORKPLACE SAFETY STANDARDS. THE ORDERS WERE NOT FOR THE GENERAL GOO, CITY FAILED TO TRAIN EMPLOYEES REGARDING ALL OSHA RISK MITIGATION CONTROLS FOR WORKPLACE SAFETY AGAINST COVID-19 - SPECIFICALLY THE RIGHT TO "REMOTE WORK" AND SAFETY EQUIPMENT - SPECIFICALLY RESPIRATORS AND POWERED AIR PURIFYING RESPIRATORS (PAPR) -

#2 - BECAUSE THE CITY LACKED AUTHORITY TO CREATE, IMPLEMENT, ENFORCE AND DISCIPLINE BASED ON UNAUTHORIZED ORDERS, THE CITY VIOLATED THE CLASSES FIRST AMENDMENT RIGHTS TO FREE EXERCISE AND VIOLATED THE ESTABLISHMENT CLAUSE FOR FAILING TO PROMOTE AND ALLOW EMPLOYEES TO CHOOSE ALTERNATIVE RELIGIOUS MEDICAL TREATMENTS TO DEAL WITH COVID-19 IN THEIR BODIES.

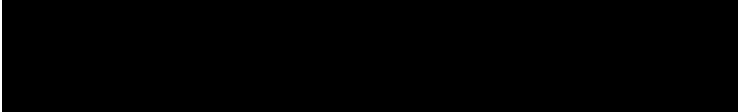
#3 THE CITY ENGAGED IN DISCRIMINATORY HARASSMENT AND COERCION IN VIOLATION OF: TITLE VII, THE ADA (THE EMPLOYEES IN THE PROTECTED CLASS OF THOSE WITH A "PERCEIVED DISABILITY" DUE TO THEIR "UNVACCINATED STATUS" OR "VACCINE DEFICIENCY) AND IN VIOLATION OF THE NEW YORK CITY HUMAN RIGHTS ACT FOR THE SAME REASONS ABOVE. #4 WRONGFUL DISCIPLINE - THE CITY WRONGLY PLACED EMPLOYEES ON INVOLUNTARY INDETERMANAT LEAVE WITHOUT PAY BUT CLAIMED TO TERMINATE THEM IN VIOLATION OF CIVIL SERVICE LAWS A. EDUCATION LAW §3020 FOR ALL TENURED TEACHERS IN THE DEPARTMENT OF EDUCATION;

If you need additional room, attach your description as an additional document.

What agency/employer are you making this claim against?

*Agency:	DEPT. OF EDUCATION
Address:	65 COURT ST.
Address 2:	#102
City:	BROOKLYN
State:	NEW YORK
Zip Code:	11201

Work days lost:



Were you employed by a City Contractor at the time of claimed occurrence? Yes No

++Contractor Name:

**Denotes required field
++Denotes field that is required if you were employed by a City Contractor.*



New York City Comptroller
Brad Lander

Office of the New York City Comptroller
1 Centre Street
New York, NY 10007
FormVersion: NYC-COMPT-BLA-LE-C4

Salary/Benefit Claimed Damages

Date From: Date To: Amount:

Overtime:			
Compensatory time:			
Differential:			
Annual Leave/Vacation:			
Sick Leave:			
Salary:			
Total:			0.00

Additional Claimed Damages

Amount:

Specify:	MENTAL DISTRESS DAMAGES FOR HARASSMENT + COERCION = 2X SALARY	
Specify:	PUNITIVE DAMAGES FOR RECKLESS DISREGARD FOR MY MEDICAL FREEDOM	
Specify:	PUNITIVES CALCULATED BASED O [REDACTED]	
Specify:	ATTORNEY FEES	
Specify:		
Total:		

****Total Claimed Amount:** [REDACTED]

I certify that all information contained in this notice is true, and correct to the best of my knowledge, and belief. I understand that the willful making of any false statement of material fact herein will subject me to criminal penalties, and civil liabilities.

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**Total Claimed Amount will be automatically calculated after all required fields are entered.



New York City Comptroller
Brad Lander

Bates626
Office of the New York City Comptroller
1 Centre Street
New York, NY 10007
FormVersion: NYC-COMPT-BLA-LE-C4

City Employment Claim Form

For most claims, electronically filed claims must be filed within 90 days of the occurrence using the Office of the NYC Comptroller's website. If the claim is not resolved within one (1) year and 90 days of the occurrence, you must start a separate legal action in a court of law before the expiration of this time period to preserve your rights.

I am filing: On behalf of myself.

On behalf of someone else. If on someone else's behalf, please provide the following information:

Last Name:

First Name:

Relationship to the claimant:

Claimant Information

*Last Name:

*First Name:

*Address:

Address 2:

*City:

*State:

*Zip Code:

*Country:

Date of Birth:

Soc. Sec #:

*Phone:

*Email Address:

*Retype Email:

Occupation:

Current City Employee? Yes No NA

Current Agency:

Gender: Male Female Other

Attorney is filing.

Attorney Information (if represented by attorney)

+ Firm or Last Name:

+ Firm or First Name:

+ Address:

Address 2:

+ City:

+ State:

+ Zip Code:

Tax Id:

+ Phone:

+ Email Address:

+ Retype Email:

The time and place where the claim arose

*Incident Date from: *Format: MM/DD/YYYY*

*Incident Date to: *Format: MM/DD/YYYY*

*Incident Location:

Address:

Address 2:

City:

State:

Borough:

* Denotes required fields. Either a claimant or attorney email address is required.
+ Denotes field that is required if Attorney is filing.



New York City Comptroller
Brad Lander

Office of the New York City Comptroller
1 Centre Street
New York, NY 10007
FormVersion: NYC-COMPT-BLA-LE-C4

***Nature of Claim/Description of Claim**

THE WOMEN OF COLOR FOR EQUAL JUSTICE ARE REPRESENTING MULTIPLE CITY WORKERS AND IS SEEKING CLASS CERTIFICATION OF WHICH THIS EMPLOYEE HAS BEEN NAME AS PART OF THE PROPOSED CLASS. A LAWSUIT HAS BEEN FILED TO PRESERVE STATUTES OF LIMITATIONS. SEE DETAILS OF BELOW CLAIMS IN EXHIBIT A IN THE BELOW LINK - [HTTP://WWW.WOC4EQUALJUSTICE.ORG/LEGAL//NOTICE%20OF%20CLAIM%20-WITH-EXHIBITS-FINAL-V2.PDF](http://WWW.WOC4EQUALJUSTICE.ORG/LEGAL//NOTICE%20OF%20CLAIM%20-WITH-EXHIBITS-FINAL-V2.PDF) - CLAIMS:

#1. OSHA PRE-EMPTION OF NEW YORK CITY DEPARTMENT OF HEALTH ORDERS - THE CITY THROUGH THE DEPARTMENT OF HEALTH LACKED AUTHORITY TO ISSUE THE COVID-19 VACCINE ORDERS FROM AUGUST 2021 TO DECEMBER 2021 THAT ONLY APPLIED TO CITY EMPLOYEES. ONLY OSHA HAS AUTHORITY TO CREATE AND IMPLEMENT WORKPLACE SAFETY STANDARDS. THE ORDERS WERE NOT FOR THE GENERAL GOO, CITY FAILED TO TRAIN EMPLOYEES REGARDING ALL OSHA RISK MITIGATION CONTROLS FOR WORKPLACE SAFETY AGAINST COVID-19 - SPECIFICALLY THE RIGHT TO "REMOTE WORK" AND SAFETY EQUIPMENT - SPECIFICALLY RESPIRATORS AND POWERED AIR PURIFYING RESPIRATORS (PAPR) -

#2 - BECAUSE THE CITY LACKED AUTHORITY TO CREATE, IMPLEMENT, ENFORCE AND DISCIPLINE BASED ON UNAUTHORIZED ORDERS, THE CITY VIOLATED THE CLASSES FIRST AMENDMENT RIGHTS TO FREE EXERCISE AND VIOLATED THE ESTABLISHMENT CLAUSE FOR FAILING TO PROMOTE AND ALLOW EMPLOYEES TO CHOOSE ALTERNATIVE RELIGIOUS MEDICAL TREATMENTS TO DEAL WITH COVID-19 IN THEIR BODIES.

#3 THE CITY ENGAGED IN DISCRIMINATORY HARASSMENT AND COERCION IN VIOLATION OF: TITLE VII, THE ADA (THE EMPLOYEES IN THE PROTECTED CLASS OF THOSE WITH A "PERCEIVED DISABILITY" DUE TO THEIR "UNVACCINATED STATUS" OR "VACCINE DEFICIENCY) AND IN VIOLATION OF THE NEW YORK CITY HUMAN RIGHTS ACT FOR THE SAME REASONS ABOVE. #4 WRONGFUL DISCIPLINE - THE CITY WRONGLY PLACED EMPLOYEES ON INVOLUNTARY INDETERMANAT LEAVE WITHOUT PAY BUT CLAIMED TO TERMINATE THEM IN VIOLATION OF CIVIL SERVICE LAWS A. EDUCATION LAW §3020 FOR ALL TENURED TEACHERS IN THE DEPARTMENT OF EDUCATION;

If you need additional room, attach your description as an additional document.

What agency/employer are you making this claim against?

*Agency:

Address:

Address 2:

City:

State:

Zip Code:

Work days lost:

Amount Earned Weekly:

Amount Earned Yearly:

Were you employed by a City Contractor at the time of claimed occurrence? Yes No

++Contractor Name:

**Denotes required field*

++Denotes field that is required if you were employed by a City Contractor.



New York City Comptroller
Brad Lander

Office of the New York City Comptroller
1 Centre Street
New York, NY 10007
FormVersion: NYC-COMPT-BLA-LE-C4

Salary/Benefit Claimed Damages

Date From: Date To: Amount:

Overtime:			
Compensatory time:			
Differential:			
Annual Leave/Vacation:			
Sick Leave:			
Salary:			
Total:			0.00

Additional Claimed Damages

Amount:

Specify:	MENTAL DISTRESS DAMAGES FOR HARASSMENT + COERCION = 2X SALARY	
Specify:	PUNITIVE DAMAGES FOR RECKLESS DISREGARD FOR MY MEDICAL FREEDOM	
Specify:	PUNITIVES CALCULATED BASED ON 3 X GROSS SALARY	
Specify:	ATTORNEY FEES	
Specify:		
Total:		

****Total Claimed Amount:**

I certify that all information contained in this notice is true, and correct to the best of my knowledge, and belief. I understand that the willful making of any false statement of material fact herein will subject me to criminal penalties, and civil liabilities.

*Denotes field that is required.

**Total Claimed Amount will be automatically calculated after all required fields are entered.

eCLAIM Receipt

You have successfully filed your claim.

By successfully filing your claim, you have certified that all information provided is true and correct to the best of your knowledge and belief. You also understand that the willful making of any false statement of material fact herein may subject you to criminal penalties and civil liabilities.

Please allow up to 30 days to receive an email acknowledging your claim.

If you have any questions please contact 212-669-4729.

Your Receipt Number is the following:

202200101216

You uploaded:

Claim Form: 1

Supporting Documents:1

5/11/2022 12:00 AM

Claimant Last Name:BRYAN

Claimant First Name:AMOURA

eCLAIM Receipt

You have successfully filed your claim.

By successfully filing your claim, you have certified that all information provided is true and correct to the best of your knowledge and belief. You also understand that the willful making of any false statement of material fact herein may subject you to criminal penalties and civil liabilities.

Please allow up to 30 days to receive an email acknowledging your claim.

If you have any questions please contact 212-669-4729.

Your Receipt Number is the following:

202200101211

You uploaded:

Claim Form: 1

Supporting Documents:1

5/11/2022 12:00 AM

Claimant Last Name:VELEZ

Claimant First Name:ANGELA

eCLAIM Receipt

You have successfully filed your claim.

By successfully filing your claim, you have certified that all information provided is true and correct to the best of your knowledge and belief. You also understand that the willful making of any false statement of material fact herein may subject you to criminal penalties and civil liabilities.

Please allow up to 30 days to receive an email acknowledging your claim.

If you have any questions please contact 212-669-4729.

Your Receipt Number is the following:

202200101279

You uploaded:

Claim Form: 1

Supporting Documents:1

5/11/2022 12:00 AM

Claimant Last Name:MOODY

Claimant First Name:AURA

eCLAIM Receipt

You have successfully filed your claim.

By successfully filing your claim, you have certified that all information provided is true and correct to the best of your knowledge and belief. You also understand that the willful making of any false statement of material fact herein may subject you to criminal penalties and civil liabilities.

Please allow up to 30 days to receive an email acknowledging your claim.

If you have any questions please contact 212-669-4729.

Your Receipt Number is the following:

202200101218

You uploaded:

Claim Form: 1

Supporting Documents:1

5/11/2022 12:00 AM

Claimant Last Name:USTARES

Claimant First Name:AYSE

eCLAIM Receipt

You have successfully filed your claim.

By successfully filing your claim, you have certified that all information provided is true and correct to the best of your knowledge and belief. You also understand that the willful making of any false statement of material fact herein may subject you to criminal penalties and civil liabilities.

Please allow up to 30 days to receive an email acknowledging your claim.

If you have any questions please contact 212-669-4729.

Your Receipt Number is the following:

202200101236

You uploaded:

Claim Form: 1

Supporting Documents:1

5/11/2022 12:00 AM

Claimant Last Name:REID

Claimant First Name:BRUCE

eCLAIM Receipt

You have successfully filed your claim.

By successfully filing your claim, you have certified that all information provided is true and correct to the best of your knowledge and belief. You also understand that the willful making of any false statement of material fact herein may subject you to criminal penalties and civil liabilities.

Please allow up to 30 days to receive an email acknowledging your claim.

If you have any questions please contact 212-669-4729.

Your Receipt Number is the following:

202200101199

You uploaded:

Claim Form: 1

Supporting Documents:0

5/11/2022 12:00 AM

Claimant Last Name:GRANT

Claimant First Name:CARLA

eCLAIM Receipt

You have successfully filed your claim.

By successfully filing your claim, you have certified that all information provided is true and correct to the best of your knowledge and belief. You also understand that the willful making of any false statement of material fact herein may subject you to criminal penalties and civil liabilities.

Please allow up to 30 days to receive an email acknowledging your claim.

If you have any questions please contact 212-669-4729.

Your Receipt Number is the following:

202200101231

You uploaded:

Claim Form: 1

Supporting Documents:1

5/11/2022 12:00 AM

Claimant Last Name:CHANDLER

Claimant First Name:CASSANDRA

eCLAIM Receipt

You have successfully filed your claim.

By successfully filing your claim, you have certified that all information provided is true and correct to the best of your knowledge and belief. You also understand that the willful making of any false statement of material fact herein may subject you to criminal penalties and civil liabilities.

Please allow up to 30 days to receive an email acknowledging your claim.

If you have any questions please contact 212-669-4729.

Your Receipt Number is the following:

202200101225

You uploaded:

Claim Form: 1

Supporting Documents:1

5/11/2022 12:00 AM

Claimant Last Name:RIDULFO

Claimant First Name:CHARISSE

eCLAIM Receipt

You have successfully filed your claim.

By successfully filing your claim, you have certified that all information provided is true and correct to the best of your knowledge and belief. You also understand that the willful making of any false statement of material fact herein may subject you to criminal penalties and civil liabilities.

Please allow up to 30 days to receive an email acknowledging your claim.

If you have any questions please contact 212-669-4729.

Your Receipt Number is the following:

202200101270

You uploaded:

Claim Form: 1

Supporting Documents:1

5/11/2022 12:00 AM

Claimant Last Name:OREILLY

Claimant First Name:CHRISTINE

eCLAIM Receipt

You have successfully filed your claim.

By successfully filing your claim, you have certified that all information provided is true and correct to the best of your knowledge and belief. You also understand that the willful making of any false statement of material fact herein may subject you to criminal penalties and civil liabilities.

Please allow up to 30 days to receive an email acknowledging your claim.

If you have any questions please contact 212-669-4729.

Your Receipt Number is the following:

202200101230

You uploaded:

Claim Form: 1

Supporting Documents:1

5/11/2022 12:00 AM

Claimant Last Name:BOYCE

Claimant First Name:CURTIS

eCLAIM Receipt

You have successfully filed your claim.

By successfully filing your claim, you have certified that all information provided is true and correct to the best of your knowledge and belief. You also understand that the willful making of any false statement of material fact herein may subject you to criminal penalties and civil liabilities.

Please allow up to 30 days to receive an email acknowledging your claim.

If you have any questions please contact 212-669-4729.

Your Receipt Number is the following:

202200101281

You uploaded:

Claim Form: 1

Supporting Documents:1

5/11/2022 12:00 AM

Claimant Last Name:BAKER-PACIUS

Claimant First Name:DIANNE

eCLAIM Receipt

You have successfully filed your claim.

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Please allow up to 30 days to receive an email acknowledging your claim.

If you have any questions please contact 212-669-4729.

Your Receipt Number is the following:

202200101282

You uploaded:

Claim Form: 1

Supporting Documents:1

5/11/2022 12:00 AM

Claimant Last Name:WEBER

Claimant First Name:EDWARD

eCLAIM Receipt

You have successfully filed your claim.

By successfully filing your claim, you have certified that all information provided is true and correct to the best of your knowledge and belief. You also understand that the willful making of any false statement of material fact herein may subject you to criminal penalties and civil liabilities.

Please allow up to 30 days to receive an email acknowledging your claim.

If you have any questions please contact 212-669-4729.

Your Receipt Number is the following:

202200101284

You uploaded:

Claim Form: 1

Supporting Documents:1

5/11/2022 12:00 AM

Claimant Last Name:LOIACONO

Claimant First Name:ELIZABETH

eCLAIM Receipt

You have successfully filed your claim.

By successfully filing your claim, you have certified that all information provided is true and correct to the best of your knowledge and belief. You also understand that the willful making of any false statement of material fact herein may subject you to criminal penalties and civil liabilities.

Please allow up to 30 days to receive an email acknowledging your claim.

If you have any questions please contact 212-669-4729.

Your Receipt Number is the following:

202200101269

You uploaded:

Claim Form: 1

Supporting Documents:1

5/11/2022 12:00 AM

Claimant Last Name:ZAPATA

Claimant First Name:EVELYN

eCLAIM Receipt

You have successfully filed your claim.

By successfully filing your claim, you have certified that all information provided is true and correct to the best of your knowledge and belief. You also understand that the willful making of any false statement of material fact herein may subject you to criminal penalties and civil liabilities.

Please allow up to 30 days to receive an email acknowledging your claim.

If you have any questions please contact 212-669-4729.

Your Receipt Number is the following:

202200101237

You uploaded:

Claim Form: 1

Supporting Documents:1

5/11/2022 12:00 AM

Claimant Last Name:TROTMAN

Claimant First Name:FRANKIE

eCLAIM Receipt

You have successfully filed your claim.

By successfully filing your claim, you have certified that all information provided is true and correct to the best of your knowledge and belief. You also understand that the willful making of any false statement of material fact herein may subject you to criminal penalties and civil liabilities.

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If you have any questions please contact 212-669-4729.

Your Receipt Number is the following:

202200101247

You uploaded:

Claim Form: 1

Supporting Documents:1

5/11/2022 12:00 AM

Claimant Last Name:HUNTER

Claimant First Name:JEFFEREY B.

eCLAIM Receipt

You have successfully filed your claim.

By successfully filing your claim, you have certified that all information provided is true and correct to the best of your knowledge and belief. You also understand that the willful making of any false statement of material fact herein may subject you to criminal penalties and civil liabilities.

Please allow up to 30 days to receive an email acknowledging your claim.

If you have any questions please contact 212-669-4729.

Your Receipt Number is the following:

202200101275

You uploaded:

Claim Form: 1

Supporting Documents:1

5/11/2022 12:00 AM

Claimant Last Name:CSEPKU

Claimant First Name:JESSICA

eCLAIM Receipt

You have successfully filed your claim.

By successfully filing your claim, you have certified that all information provided is true and correct to the best of your knowledge and belief. You also understand that the willful making of any false statement of material fact herein may subject you to criminal penalties and civil liabilities.

Please allow up to 30 days to receive an email acknowledging your claim.

If you have any questions please contact 212-669-4729.

Your Receipt Number is the following:

202200101195

You uploaded:

Claim Form: 1

Supporting Documents:1

5/11/2022 12:00 AM

Claimant Last Name:COMBS

Claimant First Name:JESUS

eCLAIM Receipt

You have successfully filed your claim.

By successfully filing your claim, you have certified that all information provided is true and correct to the best of your knowledge and belief. You also understand that the willful making of any false statement of material fact herein may subject you to criminal penalties and civil liabilities.

Please allow up to 30 days to receive an email acknowledging your claim.

If you have any questions please contact 212-669-4729.

Your Receipt Number is the following:

202200101234

You uploaded:

Claim Form: 1

Supporting Documents:1

5/11/2022 12:00 AM

Claimant Last Name:RULLO

Claimant First Name:JOSEPH

eCLAIM Receipt

You have successfully filed your claim.

By successfully filing your claim, you have certified that all information provided is true and correct to the best of your knowledge and belief. You also understand that the willful making of any false statement of material fact herein may subject you to criminal penalties and civil liabilities.

Please allow up to 30 days to receive an email acknowledging your claim.

If you have any questions please contact 212-669-4729.

Your Receipt Number is the following:

202200101208

You uploaded:

Claim Form: 1

Supporting Documents:1

5/11/2022 12:00 AM

Claimant Last Name:HARDING

Claimant First Name:JULIA

eCLAIM Receipt

You have successfully filed your claim.

By successfully filing your claim, you have certified that all information provided is true and correct to the best of your knowledge and belief. You also understand that the willful making of any false statement of material fact herein may subject you to criminal penalties and civil liabilities.

Please allow up to 30 days to receive an email acknowledging your claim.

If you have any questions please contact 212-669-4729.

Your Receipt Number is the following:

202200101205

You uploaded:

Claim Form: 1

Supporting Documents:1

5/11/2022 12:00 AM

Claimant Last Name:CAMPELL

Claimant First Name:KAREEM

eCLAIM Receipt

You have successfully filed your claim.

By successfully filing your claim, you have certified that all information provided is true and correct to the best of your knowledge and belief. You also understand that the willful making of any false statement of material fact herein may subject you to criminal penalties and civil liabilities.

Please allow up to 30 days to receive an email acknowledging your claim.

If you have any questions please contact 212-669-4729.

Your Receipt Number is the following:

202200101252

You uploaded:

Claim Form: 1

Supporting Documents:1

5/11/2022 12:00 AM

Claimant Last Name:FIGARO

Claimant First Name:MARIA

eCLAIM Receipt

You have successfully filed your claim.

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If you have any questions please contact 212-669-4729.

Your Receipt Number is the following:

202200101271

You uploaded:

Claim Form: 1

Supporting Documents:1

5/11/2022 12:00 AM

Claimant Last Name:ROMERO

Claimant First Name:MARITZA

eCLAIM Receipt

You have successfully filed your claim.

By successfully filing your claim, you have certified that all information provided is true and correct to the best of your knowledge and belief. You also understand that the willful making of any false statement of material fact herein may subject you to criminal penalties and civil liabilities.

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If you have any questions please contact 212-669-4729.

Your Receipt Number is the following:

202200101227

You uploaded:

Claim Form: 1

Supporting Documents:1

5/11/2022 12:00 AM

Claimant Last Name:MAYNE

Claimant First Name:MARK

eCLAIM Receipt

You have successfully filed your claim.

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If you have any questions please contact 212-669-4729.

Your Receipt Number is the following:

202200101203

You uploaded:

Claim Form: 1

Supporting Documents:1

5/11/2022 12:00 AM

Claimant Last Name:HEMMINGS-HARRINGTON

Claimant First Name:MICHELLE

eCLAIM Receipt

You have successfully filed your claim.

By successfully filing your claim, you have certified that all information provided is true and correct to the best of your knowledge and belief. You also understand that the willful making of any false statement of material fact herein may subject you to criminal penalties and civil liabilities.

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If you have any questions please contact 212-669-4729.

Your Receipt Number is the following:

202200101277

You uploaded:

Claim Form: 1

Supporting Documents:1

5/11/2022 12:00 AM

Claimant Last Name:HOGAN

Claimant First Name:NATALYA

eCLAIM Receipt

You have successfully filed your claim.

By successfully filing your claim, you have certified that all information provided is true and correct to the best of your knowledge and belief. You also understand that the willful making of any false statement of material fact herein may subject you to criminal penalties and civil liabilities.

Please allow up to 30 days to receive an email acknowledging your claim.

If you have any questions please contact 212-669-4729.

Your Receipt Number is the following:

202200101250

You uploaded:

Claim Form: 1

Supporting Documents:1

5/11/2022 12:00 AM

Claimant Last Name:ODOM

Claimant First Name:RASHEEN

eCLAIM Receipt

You have successfully filed your claim.

By successfully filing your claim, you have certified that all information provided is true and correct to the best of your knowledge and belief. You also understand that the willful making of any false statement of material fact herein may subject you to criminal penalties and civil liabilities.

Please allow up to 30 days to receive an email acknowledging your claim.

If you have any questions please contact 212-669-4729.

Your Receipt Number is the following:

202200101221

You uploaded:

Claim Form: 1

Supporting Documents:1

5/11/2022 12:00 AM

Claimant Last Name:DELLO IOIO

Claimant First Name:REMO

eCLAIM Receipt

You have successfully filed your claim.

By successfully filing your claim, you have certified that all information provided is true and correct to the best of your knowledge and belief. You also understand that the willful making of any false statement of material fact herein may subject you to criminal penalties and civil liabilities.

Please allow up to 30 days to receive an email acknowledging your claim.

If you have any questions please contact 212-669-4729.

Your Receipt Number is the following:

202200101276

You uploaded:

Claim Form: 1

Supporting Documents:1

5/11/2022 12:00 AM

Claimant Last Name:MUSTACCHIA

Claimant First Name:ROSEANNA

eCLAIM Receipt

You have successfully filed your claim.

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Your Receipt Number is the following:

202200101215

You uploaded:

Claim Form: 1

Supporting Documents:1

5/11/2022 12:00 AM

Claimant Last Name:BROWNE

Claimant First Name:SANCHA

eCLAIM Receipt

You have successfully filed your claim.

By successfully filing your claim, you have certified that all information provided is true and correct to the best of your knowledge and belief. You also understand that the willful making of any false statement of material fact herein may subject you to criminal penalties and civil liabilities.

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If you have any questions please contact 212-669-4729.

Your Receipt Number is the following:

202200101207

You uploaded:

Claim Form: 1

Supporting Documents:1

5/11/2022 12:00 AM

Claimant Last Name:COOMBS - MORENO

Claimant First Name:SARA

eCLAIM Receipt

You have successfully filed your claim.

By successfully filing your claim, you have certified that all information provided is true and correct to the best of your knowledge and belief. You also understand that the willful making of any false statement of material fact herein may subject you to criminal penalties and civil liabilities.

Please allow up to 30 days to receive an email acknowledging your claim.

If you have any questions please contact 212-669-4729.

Your Receipt Number is the following:

202200101240

You uploaded:

Claim Form: 1

Supporting Documents:1

5/11/2022 12:00 AM

Claimant Last Name:MILAN

Claimant First Name:SEAN

eCLAIM Receipt

You have successfully filed your claim.

By successfully filing your claim, you have certified that all information provided is true and correct to the best of your knowledge and belief. You also understand that the willful making of any false statement of material fact herein may subject you to criminal penalties and civil liabilities.

Please allow up to 30 days to receive an email acknowledging your claim.

If you have any questions please contact 212-669-4729.

Your Receipt Number is the following:

202200101273

You uploaded:

Claim Form: 1

Supporting Documents:1

5/11/2022 12:00 AM

Claimant Last Name:HERNANDEZ

Claimant First Name:SONIA

eCLAIM Receipt

You have successfully filed your claim.

By successfully filing your claim, you have certified that all information provided is true and correct to the best of your knowledge and belief. You also understand that the willful making of any false statement of material fact herein may subject you to criminal penalties and civil liabilities.

Please allow up to 30 days to receive an email acknowledging your claim.

If you have any questions please contact 212-669-4729.

Your Receipt Number is the following:

202200101268

You uploaded:

Claim Form: 1

Supporting Documents:1

5/11/2022 12:00 AM

Claimant Last Name:DEEGAN

Claimant First Name:SUZANNE

eCLAIM Receipt

You have successfully filed your claim.

By successfully filing your claim, you have certified that all information provided is true and correct to the best of your knowledge and belief. You also understand that the willful making of any false statement of material fact herein may subject you to criminal penalties and civil liabilities.

Please allow up to 30 days to receive an email acknowledging your claim.

If you have any questions please contact 212-669-4729.

Your Receipt Number is the following:

202200101197

You uploaded:

Claim Form: 1

Supporting Documents:1

5/11/2022 12:00 AM

Claimant Last Name:TRACY-ANN

Claimant First Name:FRANCIS MARTIN

eCLAIM Receipt

You have successfully filed your claim.

By successfully filing your claim, you have certified that all information provided is true and correct to the best of your knowledge and belief. You also understand that the willful making of any false statement of material fact herein may subject you to criminal penalties and civil liabilities.

Please allow up to 30 days to receive an email acknowledging your claim.

If you have any questions please contact 212-669-4729.

Your Receipt Number is the following:

202200101274

You uploaded:

Claim Form: 1

Supporting Documents:1

5/11/2022 12:00 AM

Claimant Last Name:SMITH

Claimant First Name:YULANDA

eCLAIM Receipt

You have successfully filed your claim.

By successfully filing your claim, you have certified that all information provided is true and correct to the best of your knowledge and belief. You also understand that the willful making of any false statement of material fact herein may subject you to criminal penalties and civil liabilities.

Please allow up to 30 days to receive an email acknowledging your claim.

If you have any questions please contact 212-669-4729.

Your Receipt Number is the following:

202200101219

You uploaded:

Claim Form: 1

Supporting Documents:1

5/11/2022 12:00 AM

Claimant Last Name:WOUADJOU

Claimant First Name:ZENA