

AFT Michigan Guidance Regarding Mandatory COVID-19 Vaccination & Testing January 2021

As access to a vaccine to inoculate against COVID-19 becomes generally available in the near future, it is likely that many employers will want all employees to be vaccinated for their protection and the protection of other staff and students. We expect that many employers will make vaccination mandatory.

Is a Mandatory Vaccination Rule Permitted?

Yes. An employer may adopt a rule that generally requires employees to be vaccinated. It is not an invasion of privacy or a violation of state or federal law to adopt and enforce such a rule. The rule must be equally applicable to all employees.

Are there any Mandatory Exemptions?

Yes. Any vaccination rule will have to have two exemptions:

- First, employees with demonstrated medical conditions should be permitted to request an exemption if they can demonstrate that they are likely to have an adverse response to the vaccine. Employees making a request for an exemption should be expected to provide verification from a qualified professional confirming that they are likely to have a reaction to the vaccine.
- Second, employees should be permitted to request an exemption based on a sincerely held religious belief. The request should be accompanied by an explanation as to why administration of a vaccine is inconsistent with their beliefs. An employer may request further verification where appropriate.

What Is Subject to Collective Bargaining?

The decision to adopt a mandatory vaccination rule is not subject to collective bargaining. However, the impact of the adoption of the rule is subject to collective bargaining. That means that choosing to adopt a rule is within management discretion, but unions may negotiate a myriad of matters related to the adoption of the rule, including:

- when the rule takes effect,
- how notice is provided,
- how long individuals will have to comply with the rule,
- how they will provide verification of compliance,
- time off with pay to secure the vaccination, and/or
- time off with pay if an employee has a reaction to the vaccination.

What About COVID Testing?

Similarly, while an employer may adopt a rule requiring testing and contact tracing without bargaining, the impact of the decision is subject to bargaining, including topics such as:

- the location for testing,
- the type of testing to be used, and/or
- how individuals are designated for testing.