

September 28, 2021

AFSCME Local 444 response to: East Bay Municipal District's Response to Local 444's COVID-19 Vaccinations, Testing and Reporting of Vaccination Status Proposals And Requests for Information September 27, 2021#2

Please refer to questions and responses posed in-line below in red.

Union Proposal 1:

- A. AFSCME local 444 asserts that the policy directive passed by motion of the EBMUD Board of Directors on Aug 10th impacts wages, hours and working conditions of all AFSCME 444 represented employees, by requiring vaccination as a condition of continued employment, and by requiring unvaccinated employees to pay for their own testing and to perform such testing on the employees' own time.

District Response: The District will implement a weekly COVID-19 testing protocol beginning September 13, 2021, which will be allowed on District time and at District expense through October 31, 2021. Beginning November 1, 2021, only employees who are receiving a reasonable accommodation, due to a sincerely held religious belief or disability, from the District will be allowed to continue the weekly testing protocol on District time and at District expense. The District will continue to meet and confer on any impacts identified by L444 related to weekly testing.

- B. AFSCME local 444 requests that, in the interest of good-faith bargaining, management agree to delay implementation of any mandatory COVID-19 vaccination policy until no sooner than 12 weeks after the publication of a labor and management agreed upon, Board of Directors adopted EBMUD Policy and associated Procedure(s); and that management commit to fully engaging in good-faith bargaining with AFSCME local 444 over the impacts, including and not limited to the implementation of the COVID-19 vaccination policy prior to adoption, and that management will fully conclude the bargaining process prior to adoption and implementation.

District Response:

District agrees to meet and confer with Local 44 over the impacts with the understanding that the District's vaccination policy shall take effect no later than November 1, 2021. The District and Local 444 agree that if effects bargaining has not concluded by November 1, they will continue to meet and confer over the impacts and strive for resolution no later than December 31, 2021.

AFSCME local 444 does not agree to this timeline.

District does not agree to delay implementation of the mandatory COVID-19 vaccination directive until no sooner than 12 weeks after the publication of a labor and management agreed upon, Board of Directors adopted EBMUD Policy and associated Procedure(s). District has developed and provided to L444 a document entitled District COVID-19 Vaccination Directive. This document contains the official directives related to the COVID-19 vaccination requirements for all District employees.

AFSCME local 444 does not consent that 'official directives' are authoritative to the extent that they may impact wages, hours and working conditions, which are mandatory subjects of bargaining, until conclusion of the meet-and-confer process.

Additionally, the District is obligated to provide safe working conditions for all employees. Due to the serious threat to health and human life the COVID-19 pandemic poses to the employees of EBMUD, the District is compelled to move forward with the mandatory COVID-19 vaccine requirements, and will continue to meet and confer on the impacts with L444 while implementation is occurring.

Please provide evidence supporting the statement: "serious threat to health and human life the COVID-19 pandemic poses to the employees of EBMUD"

- C. AFSCME local 444 further requests that EBMUD extend any unused supplemental COVID leave (SB95) beyond September 30th to all AFSCME 444 represented EBMUD employees; that EBMUD make available voluntary, free and regular COVID-19 testing to all AFSCME 444 represented EBMUD employees; that should any testing be required by EBMUD of its employees, it shall be on District time, at District expense; that management will engage the Union in an interactive process to find appropriate accommodations for those unwilling to be vaccinated, and that no discipline shall be sought for employees failure to be vaccinated at any time, or failure to follow any direction or instruction prior to such Policy adoption.

District Response:

District rejects the Union's proposal to extend any unused supplemental COVID leave (SB95) beyond September 30th to all AFSCME 444 represented EMBUD employees.

District rejects the Union's proposal to make available voluntary, free and regular COVID-19 testing to all AFSCME 444 represented EBMUD employees. However, District will implement a mandatory weekly COVID-19 testing protocol beginning September 13, 2021 for unvaccinated employees, which will be allowed on District time and at District expense through October 31, 2021. Beginning November 1, 2021, only employees who are receiving a reasonable accommodation, due to a sincerely held religious belief or disability, from the District will be allowed to continue the weekly testing protocol on District time and at District expense.

District rejects Union's proposal to engage the Union in an interactive process to find appropriate accommodations for those unwilling to be vaccinated. District has established a reasonable accommodation process which includes two forms. One form is for requests for religious exemption/accommodation related to COVID-19 vaccine, and the other is for requests for medical exemption/accommodation related to COVID-19 vaccine. Information about these forms will be shared through e-mail and Splashpad, and will be provided in the District's forms shop. Employees who are seeking an exemption from the COVID-19 vaccine requirement may complete one of the forms, which will be automatically sent to Human Resources for processing. Staff in Human Resources, or its designee, will engage in the interactive process with the employee requesting the exemption. Employees must participate in the interactive process by meeting with the District about proposed accommodations and providing information requested

by the District in a timely manner. Upon completion of that process, the District will provide a written response to the employee.

AFSCME local 444 proposes that weekly testing, mask wearing and social distancing consistent with OSHA 3205 constitutes a reasonable accommodation.

District rejects Union's proposal that no discipline shall be sought for employee's failure to be vaccinated at any time, or failure to follow any direction or instruction prior to such Policy adoption. The District's normal disciplinary procedure will be followed for employees who fail to comply with the COVID-19 vaccination requirements outlined in the District COVID-19 Vaccination Directive, up to and including termination from employment.

AFSCME local 444 proposes that any COVID vaccination policy related discipline be rescinded for an employee who becomes compliant with the COVID vaccination policy

Union Proposal 2:

Please provide:

1. a list of all known risks and potential side effects of each vaccine available in the U.S., and the degree of risk associated with each;
Please provide information responsive to this request
2. a list of all known or suspected adverse reactions to the COVID-19 vaccines available, including the number of individuals having experienced each reaction and to which vaccine, broken down by age group and gender;
Please provide information responsive to this request
3. the maximum liability that EBMUD carries for adverse reaction to an employer mandated vaccine;
4. Does the District provided employee life insurance cover adverse reaction to any available vaccine whether EUA or GUA?
5. the number of vaccinated and unvaccinated COVID-19 patients currently hospitalized in the U.S.,
Please provide information responsive to this request
6. Total number of confirmed COVID-19 cases at EBMUD listed by date, vaccination status and bargaining unit.
Please provide current information responsive to this request
7. and the number of known workplace COVID-19 transmissions at EBMUD and the date of such transmission(s) for both contractor and EBMUD employees.
Please provide current information responsive to this request
8. How will employees with religious or ideological exemptions be verified and how will the process work (i.e. who will certify and what documentation will be required)?

Please provide information responsive to this request specific to verification of legitimate religious exemption.

9. How will the vaccination policy adjust to the changing medical science regarding vaccine efficacy?
10. Will the District provide exemptions for women considering child bearing?

District's Response to Union Proposal 2:

1. District does not possess documents responsive to this request.
2. District does not possess documents responsible to this request.
3. District does not have liability for adverse reactions employees may have to the COVID-19 vaccine.
4. The District-provided life insurance does not have an exclusion for death related to COVID-19.
5. District does not possess documents responsive to this request.
6. See attached spreadsheet. Please note that the vaccinated status on the attached spreadsheet is based on the self-attestations (PE-157) forms on file, and not the new PE-159 forms that require proof of vaccines. The PE-159 forms are still to be collected and reviewed.
7. See attached spreadsheet. The District is not aware of any work transmissions from contractor to employee or vice versa.
8. District has established a reasonable accommodation process which includes two forms. One form is for requests for religious exemption/accommodation related to COVID-19 vaccine, and the other is for requests for medical exemption/accommodation related to COVID-19 vaccine. Information about these forms will be shared through e-mail and Splashpad, and will be provided in the District's forms shop. Employees who are seeking an exemption from the COVID-19 vaccine requirement may complete one of the forms, which will be automatically sent to Human Resources for processing. Staff in Human Resources, or its designee, will engage in the interactive process with the employee requesting the exemption. Employees must participate in the interactive process by meeting with the District about proposed accommodations and providing information requested by the District in a timely manner. Upon completion of that process, the District will provide a written response to the employee. If the exemption/accommodation is not granted, the employee will be provided 6 weeks from the date of the notice to get fully vaccinated for COVID-19 in compliance with the District's directive.

AFSCME 444 objects to "fully vaccinated for COVID-19" within six (6) weeks of notice of denial and proposes that the employee *shall begin* the vaccination process within six (6) weeks of notice of denial.

9. The District continues to stay abreast of the changing health orders and CDC guidance related to COVID-19 and will adjust the policy as it deems necessary.

AFSCME local 444 objects to the District 'adjusting the policy as it deems necessary' without first meeting and conferring with the Union.

10. All employees who have or may have health considerations that could be impacted by the COVID-19 vaccination may consult with their physician and request a medical accommodation based on their physician's recommendation. The form for requesting a medical accommodation can be found on the Splashpad and through the link provided in the EOT message dated 9/2/2021.

Union Proposal 3:

AFSCME 444 objects to the Districts position that failure to follow the vaccine policy constitutes gross misconduct. This is excessive, beyond the standard of vaccination requirements that other agencies are instituting, which allow for weekly testing as an alternative, and it is beyond what the Board of Directors stated as a policy directive. AFSCME 444 requests that regular (weekly) testing be made available as an accommodation for any employee who are not vaccinated. AFSCME 444 further requests that the District revise the September 13th dead line to no sooner than two weeks after the next Board meeting (Sept 14th).

AFSCME 444 further refuses to revise our agreement #2 from July 30, 2020.

District's Response to Union Proposal 3:

District rejects Union's proposal to revise the September 13th deadline to submit proof of vaccination, and begin weekly testing. The District is obligated to provide a safe work environment. Since the COVID-19 pandemic is a direct threat to safe working conditions, it is imperative that the District employ weekly testing for unvaccinated employees as soon as possible.

Additionally, the District will follow normal procedures prior to seeking disciplinary action where an employee is not in compliance with the mandatory vaccination requirements, including but not limited to failure to get vaccinated, failure to provide weekly test results, and submitting false documentation. Failure to comply with the mandatory vaccination requirements will be considered gross misconduct under Procedure 223.

With respect to the July 30, 2020 agreement to provide paid leave to employees due to close contact in the workplace, this agreement was made prior to availability of the COVID-19 vaccination. Now that the vaccines are readily available for all District employees, the District will only offer paid leave to employees directed by the District to quarantine due to close contact in the workplace if said employee is fully vaccinated.

AFSCME local 444 disagrees that a change in conditions (i.e. availability of the COVID-19 vaccine) negates a standing agreement without the due process of bargaining with the affected Union.

1. What definition will the District use in determining metrics establishing a direct threat to health and safety in relation to COVID-19 (AFSCME 444 recommends the District refer to OSHA 3205);

District Response: The District's policy is based on the science and guidance from the Centers for Disease Control and Prevention (CDC), and State and Local County Health Departments. The District is committed to taking all reasonable efforts to protect the safety of its employees, their families, and the community.

Please provide the guidance which the District's policy is based upon. Please also inform ASFCME local 444 how the District will incorporate OSHA 3205 in mitigating direct threat to health and safety in relation to COVID-19 where there are mixed vaccinated and unvaccinated workers.

2. What liability will the District accept for adverse reaction to the COVID vaccine that results in a disability?

District Response: Please consult with your own attorney for legal advice. The District does not provide employees with legal advice.

Please provide information responsive to this request

3. Please provide an updated COVID-19 Isolation & Quarantine Decision Matrix if and when it is updated to include vaccinated/unvaccinated as a decision factor.

District Response: District agrees to provide updates to the COVID-19 Isolation & Quarantine Decision Matrix if and when it is updated.