

***STOBBS, SINCLAIR & LIVINGSTONE, LTD.***

Attorneys and Counselors at Law

**JAMES S. SINCLAIR  
DAVID K. LIVINGSTONE**

500 Bond Street  
Alton, IL 62002-6122  
618-465-6978  
618-465-7022 (Facsimile)  
jsinclair@sslalaw.com  
dlivingstone@sslalaw.com

12/18/2020

To: Fire Protection District Clients

Re: COVID-19 Vaccine: Mandatory or Voluntary?

We have recently received many questions about whether a fire protection district can require its members or employees to receive the COVID-19 vaccine, and we felt it prudent to send out information that we have at this time. In short, the answer to the question is not as clear as we would like it, however, there are likely two paths that can be taken.

We are all aware that the State of Illinois, and the modern world as a whole, has yet to experience or address a global pandemic like COVID-19. For those of you that have followed our memos this year, we have tackled new issues such as handling our public meetings and departmental operations in a COVID world, requiring employees to take COVID tests before returning to work if they were sick, addressing COVID positive cases in our own departments, seeking reimbursement for certain COVID-related expenditures, and more. Now the focus turns to COVID-19 vaccinations and, hopefully, this discussion will be one of the last as we round the corner towards recovery.

An employer-mandated COVID-19 vaccine has not been considered or addressed in any statute, rule, or regulation of which we are aware. Absent that guidance, we are left to reviewing comparable statutes, rules, and regulations as they may apply to or guide us with regard to COVID-19.

**MANDATORY VACCINATION**

At this point, nothing tells us that fire protection districts have express statutory or regulatory authority to mandate a COVID-19 vaccination. However, employers must ensure they are providing a safe and hazard free workplace. There is a parallel Illinois regulation (77 Ill. Adm. Code §956.30) that provides for mandatory influenza vaccination in health care settings, and employees can only decline that vaccine for certain reasons. Those reasons are that (a) the vaccination contradicts a religious belief, (b) the vaccination has a medical contraindication, or (c) the employee received the vaccination elsewhere.

If your district decides to mandate COVID-19 vaccination, the recommendation, at this point, would be to follow the same protocol as the influenza vaccination and to only allow the same declination exceptions. The member or employee should sign a declination form, and a sample form is attached.

On December 16, 2020, the Equal Employment Opportunity Commission (EEOC) released some guidance on employer mandated COVID-19 vaccines and it summarily stated that employers may mandate COVID-19 vaccinations subject to disability and religious concerns noted above. The EEOC's guidance provides additional and valuable detail on these issues, and a review of it would be worthwhile. The EEOC's guidance can be found under Section K at the following link:

[https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws?mkt\\_tok=eyJpIjoiWW1FMk5qaGpOMlZrTUdJNSIsInQiOiJhWXI4OXBHVIJDSGRcL1dMaVVUNzk2Rkl6ZFdkRnBKbkp3TG51M3R3OHlOWVJmcVdBQmtHN1ZoanFyNWs1Tk0xdHZ4QVF5ZDIwaDMzVIRBemJmaExGd3gxc2c3Zk1tYzQ5UEExXNHZZUE NVU3NCbG5yN3lsRWNvd240RFJqQVNqMFcifQ%3D%3D](https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws?mkt_tok=eyJpIjoiWW1FMk5qaGpOMlZrTUdJNSIsInQiOiJhWXI4OXBHVIJDSGRcL1dMaVVUNzk2Rkl6ZFdkRnBKbkp3TG51M3R3OHlOWVJmcVdBQmtHN1ZoanFyNWs1Tk0xdHZ4QVF5ZDIwaDMzVIRBemJmaExGd3gxc2c3Zk1tYzQ5UEExXNHZZUE NVU3NCbG5yN3lsRWNvd240RFJqQVNqMFcifQ%3D%3D)

If your District is subject to a collective bargaining agreement, it is likely that the subject of compulsory vaccination is subject to mandatory bargaining. We strongly urge you to engage in a dialogue with your District's union to come to an agreement on mandatory vaccination. Any agreement reached should be memorialized in a signed writing between the union and the District.

## **VOLUNTARY VACCINATION**

At present, the COVID-19 vaccine is only authorized by the Federal Drug Administration (FDA) to be administered to people under Emergency Use Authorization (EUA). Without getting into the specifics on EUA, this essentially means that although the rigorously tested vaccine has not received official FDA approval, the FDA has allowed the use of the unapproved vaccine to address COVID-19, which it has deemed an emergency. We are seeing that several Illinois hospitals have opted to not make the EUA COVID-19 vaccine mandatory, but, rather, will await FDA approval before doing so.

If your district decides to make COVID-19 vaccination voluntary, rather than mandatory, then, an internal memorandum explaining that the District encourages its members to obtain the vaccine would be appropriate, and information describing where the vaccine may be obtained, at no cost to the member, should be included that correspondence. Members receiving the vaccination should supply be requested to supply proof of vaccination to the District, and that information should kept confidential. Members who do not intend to receive the vaccine should be requested to sign an appropriate form indicating that intent. If the member refuses to sign the form, they should not be *required* to do so, but District management should indicate that the member declined to sign, and a record of that fact should be included in the member's personnel file and kept confidential. Additionally, any internal memorandum should include language that the District reserves the right to require the COVID-19 vaccination at a later date should guidance, law, or circumstances change.

---

## **MOVING FORWARD**

Moving forward, the Governor's Executive Orders and Phases calling for smaller gatherings of people, social distancing, and the use of face coverings still apply. Although vaccines may be making their way into certain sectors of our communities, they are simply another layer of protection, and all other appropriate precautions, including the use of personal protective equipment, should continue for the foreseeable future.

Again, bear in mind that, as has been the case for all of 2020, guidance, circumstances, and recommendations may and likely will change as this develops. The EEOC Guidance noted above will very likely change, and, as history has shown, other federal and state agencies will likely weigh in the in coming days or weeks. If that occurs, we will be sure to notify all of our fire protection district clients in this manner.

If you have any questions, please do not hesitate to contact us.

---

**THE DECLINATION FORM ON THE FOLLOWING PAGE SHOULD BE USED BY  
DISTRICTS MANDATING COVID-19 VACCINATION**

\_\_\_\_\_ **FIRE PROTECTION DISTRICT (DISTRICT)**

**COVID-19 VACCINATION DECLINATION FORM**

I understand that due to my occupational exposure to bodily fluids or other potentially infectious materials I may be at risk of acquiring novel coronavirus, COVID-19, infection and that the District is requiring that I be vaccinated with COVID-19 vaccine. However, I decline COVID-19 vaccination at this time for one of the following reasons:

\_\_\_\_\_ (Initial) I have a medical contraindication that is verifiable upon request.

\_\_\_\_\_ (Initial) I have a religious belief that disallows COVID-19 vaccination.

\_\_\_\_\_ (Initial) I have already received the COVID-19 vaccination and can verify the same on request.

I understand that by declining this vaccine, I continue to be at risk of acquiring COVID-19, a serious disease. I further understand that by declining the COVID-19 vaccine, and without proof that it was received by me elsewhere, I may be subject to disciplinary action up to and including dismissal, or restriction in District operations, or some other accommodation, if available. If in the future I continue to have occupational exposure to bodily fluids or other potentially infectious materials and I desire to be vaccinated with COVID-19 vaccine, I may obtain the vaccination at no charge to me so long as a vaccine is available for administration at that time.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

Date: \_\_\_\_\_

\_\_\_\_\_  
Witness

Date: \_\_\_\_\_

**THE DECLINATION FORM ON THE FOLLOWING PAGE SHOULD BE USED BY  
DISTRICTS ENCOURAGING (NOT MANDATING) COVID-19 VACCINATION**

\_\_\_\_\_ **FIRE PROTECTION DISTRICT (DISTRICT)**

**COVID-19 VACCINATION INTENT FORM**

I understand that due to my occupational exposure to bodily fluids or other potentially infectious materials I may be at risk of acquiring novel coronavirus, COVID-19, infection. I acknowledge that the District has recommended that I be vaccinated with COVID-19 vaccine, however, I am declining COVID-19 vaccination at this time for one of the following reasons:

\_\_\_\_\_ (Initial) I have a medical contraindication that is verifiable upon request.

\_\_\_\_\_ (Initial) I have a religious belief that disallows COVID-19 vaccination.

\_\_\_\_\_ (Initial) I have already received the COVID-19 vaccination and can verify the same on request.

\_\_\_\_\_ (Initial) I decline COVID-19 vaccination for another reason(s) as follows:

\_\_\_\_\_  
\_\_\_\_\_

I understand that by declining to be vaccinated, I continue to be at risk of acquiring COVID-19, a serious disease. If, in the future, I continue to have occupational exposure to bodily fluids or other potentially infectious materials, and I want to be vaccinated with COVID-19 vaccine, I can undertake to obtain vaccination so long as a vaccine is available for administration at that time.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

Date: \_\_\_\_\_

\_\_\_\_\_  
Witness

Date: \_\_\_\_\_