

NFFE Forest Service Council

COVID Information for August 19, 2021

(NOTE: In a changing situation, this information may also change)

NFFE Forest Service Council Position on COVID Safety Precautions

It has been a long and difficult 17 months for the world, our country, the Forest Service, and the employees in the Forest Service. The COVID pandemic has radically changed how we do our work and how we interact with one another. The advent of vaccinations against the virus provided a glimmer of a hope that the pandemic would be coming to an end, but the recent advent of the Delta variant has put a damper on that. We are now in a situation where things are changing very quickly in response to changing knowledge about the virus.

A fundamental role of a union in a workplace is to ensure the safety and health of the workers that the union represents. In the COVID situation, the NFFE-FSC's response has focused on this fundamental role of a union. We have heard from many of you that you believe that requiring you disclose your vaccination status or be tested violates your rights, and many have expressed dismay at requirements to wear masks or to socially distance. Nevertheless, these are safety precautions to ensure the rights of workers not to be exposed to known hazards in the workplace. Vaccination and/or testing¹ help reduce the chance that people who are infectious with COVID come into our workplace and infect others; masks serve as personal protective equipment (PPE) to [prevent the spread of disease](#).

Facts about the current situation

COVID causes mild illness in many of the people who become infected, and vaccinations help protect from severe illness. However, COVID can cause serious long-term illness and death in others. A recent study indicates that as many as [23% of people](#) who come down with COVID may have long term effects, while according to Johns Hopkins, the US [death rate](#) for COVID infections is around 1.7%.

Over 2,400 Forest Service employees are known or presumed to have come down with COVID, and at least 4 employees are known to have died from it.

The requirement to attest to being vaccinated or be required to wear a mask, social distance, have regular testing (once or twice/week), and face travel restrictions is a governmentwide direction. [It was announced](#) on July 29, 2021 by President Biden.

Employees are not required to disclose their vaccination status, at this time. They may choose not to disclose.

[EEOC has determined](#) that it is not a violation of the Americans with Disabilities Act for employers to ask about someone's vaccination status, to test them for COVID, or to be vaccinated (as long as reasonable accommodations are available for those who cannot be vaccinated for health reasons or due to sincerely held religious beliefs.) Vaccinations have routinely been required by employers such as

¹ The current mandate is to perform regular testing on individuals who do not attest that they are vaccinated. In light of the spread of the Delta variant among both vaccinated and unvaccinated individuals, the NFFE-FSC recognizes that it may be prudent to also test vaccinated individuals, because they may also spread the infection.

hospitals and schools, and the Forest Service has required vaccinations for employees to do work for assignments such as Hurricane Katrina cleanup.

An employer asking about vaccination status is [not a violation of HIPAA](#).

Employers can [legally require vaccinations](#). The fact that we are employed by the government should not be confused with the government requiring vaccinations for the general public (although the Supreme Court has held that governments requiring vaccinations for public health reasons is legal).

USDA has informed unions that collecting information about vaccination status is an action being taken in response to a national emergency, and bargaining with the union prior to implementation is not required. Instead, post-implementation bargaining may take place. (Correspondence from USDA Acting Chief of Staff for the Assistant Secretary for Administration to NFFE National Office).

The latest governmentwide information on COVID policy for Federal agencies can be found at [Safer Federal Workforce](#).

The latest USDA COVID Safety Plan can be found here: [USDA COVID-19 Workplace Safety Plan](#). This plan was released last week with no union notification or input.

Union Negotiations over this situation

Given the facts above, the Union believes that some precautions to keep employees safe are appropriate. Furthermore, the legal landscape (EEOC and court decisions) does not favor us prevailing in a legal fight to overturn requirements to attest to vaccination status or follow precautions required for unvaccinated/undisclosed individuals. Thus, we are putting our energy into ensuring fairness, equity, and common sense. The Union will be submitting a proposal to management to negotiate on the following topics related to implementation of the requirement to attest to vaccination status or be tested and follow requirements for unvaccinated individuals:

- Ensuring testing is performed by trained individuals if done by the Agency;
- Ensure that employees don't have to pay for testing and get duty time to be tested (whether testing is done by the Agency or by public health or medical providers);
- Determining who will get the results from the testing and how the information will be safeguarded;
- Ensuring that employees who test positive, but are not too sick to work do not have to take leave because of the positive test;
- Implementing alternative means for keeping employees safe (including telework/remote work, performing work outdoors away from others, using POVs to reduce exposure in shared vehicles);
- Defining who are persons "with a need to know" about an individual's vaccination status;
- Mitigating the impacts of travel restrictions on workers who are unvaccinated/undisclosed; and
- Other impacts as we hear from employees and union officials.

We will continue to monitor the evolving situation, and post information on our Forest Service Council website at www.nffe-fsc.org.

Federal References

- Centers for Disease and Control (CDC) – COVID: <https://www.cdc.gov/coronavirus/2019-ncov/index.html>
- Department of Labor (DOL) – COVID: <https://www.dol.gov/coronavirus>
- Occupational Safety and Health Administration (OSHA) – COVID: <https://www.osha.gov/coronavirus/>
- Office of Workers' Compensation Programs (OWCP) – COVID: <https://www.dol.gov/agencies/owcp/coronavirus>
- Safer Federal Workforce: <https://www.saferfederalworkforce.gov/>

Other References

- Johns Hopkins School of Medicine Coronavirus Resource Center (JHU): <https://coronavirus.jhu.edu/>
- University of Washington Institute for Health Metrics and Evaluation – COVID: <http://www.healthdata.org/covid>
- Your Local Epidemiologist – COVID: <https://yourlocalepidemiologist.substack.com/>