



MEMORANDUM

Date: October 4, 2021

To: Wardens
Chief Executive Officers
Superintendents
Hiring Authorities for Institution and Facility Staff

From:

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Subject: STAFF COVID 19 VACCINE – NON-COMPLIANCE ACCOUNTABILITY PROCESS FOR INSTITUTION AND FACILITY STAFF REGARDING PUBLIC HEALTH ORDER DATED AUGUST 19, 2021

As you are aware, Jon S. Tigar, District Judge for the United States District Court for the Northern District of California, issued an order *Re: Mandatory Vaccines* on September 27, 2021, in the *Plata vs. Newsom* class-action lawsuit. The application of the order and the timeline for compliance are currently under discussion with additional instructions forthcoming.

In the meantime, we continue to move forward with the expectations outlined in the August 23, 2021, memorandum entitled, [Mandatory COVID-19 Vaccines and Testing for Institution Staff](#) regarding the [public health order](#) dated August 19, 2021, issued by the California Department of Public Health (CDPH). This memorandum supplements the September 20, 2021, memorandum entitled, [Mandatory COVID-19 Vaccination and Non-Compliance Accountability for Institution and Facility Staff](#) by clarifying, for Hiring Authorities (HA), the expectations related to progressive discipline for staff non-compliance.

As outlined in the [September 20, 2021, memorandum](#):

1. Staff opting for Pfizer or Moderna's two-dose vaccine shall obtain their first dose by September 23, 2021, and receive their second dose within the required clinical timeframes.

Note: Staff opting for the Moderna vaccine will receive their second dose past the October 14, 2021, CDPH deadline. These staff will not be subject to progressive discipline unless they miss the due date for their second dose.

2. Staff opting for a single-dose Johnson and Johnson (J&J) vaccine shall obtain their full-dose by October 14, 2021.

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3. All staff subject to the [order](#), as determined by each HA, shall complete and submit the [CDCR/CCHCS COVID-19 Vaccination Requirement Form](#) by October 7, 2021.

Note: Staff refusing to sign the form shall be notated as “refusing to sign” on the form.

To ensure consistent application, the steps towards progressive discipline for failure to comply with mandatory COVID-19 vaccine requirements are as follows:

- On and after October 15, 2021, non-compliant staff who have neither requested nor been provided accommodation for a sincerely-held religious belief or qualifying medical reason(s) shall be subject to corrective and adverse action in accordance with the Department Operations Manual (DOM), Chapter 3, Article 22, *Employee Discipline*, Section 33030.8, et seq.
- Throughout the disciplinary process, staff shall not be subject to progressive discipline when staff members:
 - Have requested accommodation and are pending response on a request for a sincerely held religious belief or qualifying medical reason(s).
 - If progressive discipline is already in process and the employee submits a request for an accommodation for a sincerely held religious belief or qualifying medical reason(s), the process shall pause pending the completion of the review of the request.
 - If the staff’s request for accommodation is denied (and the staff still refuses to comply with the [order](#) within the compliance timeframe specified), HAs shall initiate or continue corrective or disciplinary action.
 - Have been provided an approved accommodation for a sincerely held religious belief or qualifying medical reason(s).
 - Have been continuously off work status from the date their position/post was identified as requiring a vaccination through October 14, 2021.
 - Upon returning to work on or after October 15, 2021, staff shall be provided written expectation to become compliant with the first dose of Moderna/Pfizer or a single dose of J&J vaccine by a set period of time. HA shall initiate corrective or disciplinary action for staff members who fail to comply by the required time period of 7 to 10 days.
- On and after October 15, 2021, a Letter of Instruction (LOI) shall be issued to non-compliant staff based on the specific vaccination requirements as outlined above:
 - A LOI template has been prepared to assist HAs in the issuance of the LOI, (Attachment A).
 - The LOI template indicates a 7-day compliance timeframe.
- Staff who fail to comply with the LOI, on the next workday, after the 7-day compliance period has expired, shall be subject to discipline for non-compliance.
 - The HA shall initiate and submit an electronic CDC Form 989, *Confidential Request for Internal Affairs Investigation/Notice of Direct Adverse Action*, to the Office of

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Internal Affairs within the Case Management System 4.0, consistent with DOM, Chapter 3, Article 14, *Internal Affairs Investigations*, and Article 22, *Employee Discipline*.

- Language for a standard request for the CDC Form 989 has been developed to assist HAs and to expedite processing, (Attachment B).
- When the 989 is submitted to OIA's Case Management System, the HA shall also provide written instruction to the employee to receive vaccination within a set time period, between 7 and 10 days. An example shall be provided before October 15, 2021.
- To ensure consistency of application, for the first offense, the base penalty is a level 4 resulting in a 10% pay reduction. Mitigating and aggravating factors shall be considered in accordance with policy.
- Employees failing to comply with the written instruction provided by the set time period, on the next workday (after the 7-10 day compliance period expires), shall be subject to further discipline for non-compliance. The same process shall be followed as outlined above.
 - The HA will initiate a 989 and also provide written instruction to the employee to receive a vaccination within a set time period, between 7 and 10 days.
 - To ensure consistency of application, the base penalty will remain level 4 but resulting penalties shall be adjusted in accordance with the policies regarding progressive discipline, in particular considering the number of instances of misconduct. For example:
 - 1st offense: 10% pay reduction (example 6 months)
 - 2nd offense: 10% pay reduction for longer period of time than first (example 9 or 12 months)
 - 3rd offense: unpaid suspension (example 18-24 working days)
 - 4th offense: subject to termination
 - Throughout the process, mitigating and aggravating factors shall be considered in accordance with policy.

Pending corrective and disciplinary action, staff shall continue to report to work and test twice-weekly for COVID-19. Additionally, effective October 15, 2021, non-compliant staff shall wear a N95 mask at all times while in the workplace and test twice weekly. Staff shall not be removed from their assigned posts or positions.

REQUIREMENTS FOR SUPERVISORS AND MANAGERS AND EMPLOYEE RELATIONS OFFICERS/HEALTH CARE EMPLOYEE RELATIONS OFFICERS

Supervisors and Managers shall utilize DOM, Chapter 3, Article 22, *Employee Discipline*, including Sections 33030.8, *Causes for Corrective Action*, and 33030.9, *Causes for Adverse Action*, as a guide in the application of progressive discipline and shall work with their assigned institution

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Employee Relations Officer (ERO)/Health Care Employee Relations Officer (HCERO) for additional support and guidance.

With the information provided by each supervisor and manager, tracking of LOIs and adverse action requests issued for COVID-19 vaccination non-compliance shall be maintained by ERO/HCEROs as follows:

- A new type of non-compliance drop-down menu option for COVID-19 vaccination has been added to the existing COVID Directives Non-Compliance Tracking Share Point site.
- The EROs/HCEROs shall enter LOI and adverse action requests information into the existing COVID Directives Non-Compliance Tracking SharePoint site.

To assist HAs and EROs with this process, a Microsoft Teams call will be scheduled to further explain this process and address any questions.

For any questions regarding this directive, please contact Amy Hurn, Chief, Performance Management Unit (PMU), CCHCS, at (916) 691-5836, or Ariana Tsukamoto, Staff Services Manager (SSM) II, Employment Advocacy & Prosecution Team (EAPT), CDCR, at (916) 255-4891.

Thank you for your attention and assistance with this very important matter.

Attachments: LOI Template for COVID-19 Vaccine Non-Compliance
CDC Form 989 Expedited Processing Guide for COVID-19 Vaccine Non-Compliance

cc: Cabinet Members
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