

INTERNATIONAL UNION OF OPERATING ENGINEERS

Craft-Maintenance Division State of California Unit 12
Locals 3, 39 & 501, AFL-CIO

COVID 19 Update – December 2, 2021

IOUE Members,

Since early 2020, employers have attempted to address the concerns of COVID-19 within the workforce via various means including but not limited to, mandated testing and mandated vaccination of employees. Your Union has been in constant communication with our in-house legal teams and our retained labor law firms. In addition, we continue to work with multiple labor federations, labor counsels, union coalitions, and the AFL-CIO in efforts to challenge the legality of any mandate implemented by any employer which employs members of IOUE.

To date, these mandates have been deemed legal, no member of IOUE is working under an illegal mandate as defined by the Courts. At this time, multiple courts have entertained arguments against these mandates; however, they have refused to deem the mandates illegal. Your Union will continue to challenge current and/or future mandates.

COVID-19 Testing Mandate

The California Department of Public Health (CDPH) has ordered that all State employees be vaccinated against COVID-19 or submit to at least once per week testing. This Order mirrors similar current mandates across the U.S. by employers in the private sector, as well as the public sector. A number of these mandates have been challenged in various courts, however, to date courts have sided with employers concerning these mandates under the guise of safety during the COVID-19 pandemic. Each Department has been ordered to develop and implement a plan which allows for compliance with the testing mandate. Some facilities have already begun weekly testing while other facilities will begin soon. At this time testing is required for all non-vaccinated employees per the CDPH Order. Currently there is no medical or religious exemption to the required weekly COVID-19 testing. This testing will largely be self-administered by the employee via a swab of both nostrils using a provided sterile Q-tip which is to be inserted into the nostril about $\frac{1}{2}$ - $\frac{3}{4}$ inch, the swab is no longer required to be inserted deep into the nostril. The testing locations may be on or off the worksite depending on the Department. There is also the possibility that some employees may be given an at home test kit if it is determined their facility qualifies to do so.

COVID-19 Vaccination Mandate

The California Department of Public Health (CDPH) has ordered that all State employees who are regularly assigned to medical facilities which bear the responsibility of care for adults and/or juvenile personnel must be fully vaccinated against COVID-19 as a condition of employment. This Order includes but is not limited to State Hospitals, Developmental Centers, Veteran's Homes, and various facilities or portions of facilities within the Department of Corrections. The CDPH Order affects the mentioned type of facilities within the public sector, as well as the private sector across the State of California. As of the date of this communication the Courts have not found this Order to be unjust, therefore, the Order is currently in effect.

In addition to the above CDPH order, the District Court has ordered that all employees assigned to perform work in a California, State prison shall be fully vaccinated against COVID-19 as a condition of employment. **HOWEVER**, On November 26, 2021, the United States Court of Appeals for the Ninth Circuit granted a stay of the District Court's September 27, 2021, and October 27, 2021, orders pending appeal by the Governor and CDCR. With the stay granted, the implementation plans of these court orders as outlined in the October 26, 2021, and November 1, 2021, memoranda are **postponed until further notice**.

If you have any additional questions or concerns, please contact your Local Union Representative.

In Solidarity,

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