



Do You Have To Negotiate The Vaccine With Your Union?

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COVID-19 vaccination efforts continue around the country, and [many employers are mandating](#) or otherwise encouraging their employees to get vaccinated. While courts, at least so far, generally [have upheld an organization's right to require the vaccine](#), employers with union-represented workforces face an additional legal nuance: collective bargaining. In fact, [the Teamsters have just filed a federal lawsuit in Chicago](#) against a union health fund – the TeamCare fund – challenging the fund's mandate that its workers get vaccinated or face termination. The Teamsters represent workers at TeamCare.

In the complaint, the Teamsters allege the fund's vaccination policy required bargaining and that the fund failed to adequately negotiate over the requirement with the union. Under labor law, an employer dealing with a unionized workforce typically must bargain any changes with a union related to the terms and conditions of the workers' employment. These are known as "mandatory subjects of bargaining." This includes things such as wages, benefits, and work rules that can result in termination or discipline. Because TeamCare's vaccination mandate could result in the termination of workers, it likely is a mandatory subject requiring bargaining.

While employers generally have a duty to bargain over a mandatory subject, companies may be privileged to take unilateral action if they have a waiver argument under their labor agreement (e.g., a clause that permits them to

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take such action) or if they have an established past practice with regard to the action at issue. When it comes to vaccines, though, most organizations – especially those outside the healthcare sector – likely do not have either language or past practices directly addressing vaccines. In other words, vaccine policies likely are something that require bargaining with a union in most cases.

This lawsuit is notable because it is one of – if not– the first federal complaints filed by a union against a company challenging vaccine requirements. While other lawsuits against employers related to this issue so far have been unsuccessful, if this one carries the day and blocks these efforts, it could give rise to organizing efforts in workforces where contingents of employees are not willing to be vaccinated. Given its vast implications, this is one to watch.