

**Summary of Agreement  
between  
District Council 37, AFSCME and  
The City of New York**

*November 4, 2021*

1. The Commissioner of the Department of Health and Mental Hygiene is mandating all city employees be vaccinated by COVID-19 no later than 5pm on October 29, 2021.
  
2. **Exemption and Accommodations Requests & Appeal Process** – Requests must be submitted to the employee’s agency. The agency shall make a determination based on applicable law. An unvaccinated employee denied an exemption may appeal within three (3) business days of receipt by selecting one of two options:
  - A. Employees may choose to appeal to a City panel consisting of DCAS, Law and either the DOHMH for medical exemptions or the City Commission on Human Rights (CCHR) for religious exemptions.
    - i. The City panel will make appeal decisions based on medical and religious requests.
    - ii. The City panel will make decisions based on documentation submitted, there will be no live hearing.
    - iii. If the appeal is granted, the Panel will determine the nature of the reasonable accommodation to be provided based on the employee’s request and input from the employee’s organization.
    - iv. Employees who submit their reasonable accommodation request to their Agency by 11:59pm on November 2<sup>nd</sup>, will remain working and on payroll and subject to weekly COVID testing while the awaiting the initial determination from the agency or appeal decision by the City panel.
    - v. Employees who submit their request after November 2<sup>nd</sup> but by 11:59pm on November 5<sup>th</sup>, will remain working and on payroll and subject to weekly COVID tests after the request has been submitted and awaiting initial determination from the City but they may be placed on leave without pay pending appeal decision.
    - vi. Employees who submit their request after November 5<sup>th</sup> will be placed on leave without pay and will remain pending the determination of the employee’s request.
    - vii. Employees placed on leave without pay whose appeal is granted by the City panel shall be granted excused leave with pay retroactive to the date they were placed on leave without pay.
  
  - B. An employee seeking a medical or religious exemption may choose to appeal to Scheinman Arbitration and Mediation Services (SAMS).

- i. As a condition of filing an appeal to arbitration, employees must waive their rights to seek an accommodation through any other legal means or process, except the employee may bring an Article 75 appeal.
- ii. Employees who submit their reasonable accommodation request to their Agency by 11:59pm on November 2nd, will remain working and on payroll and subject to weekly COVID testing while the awaiting the initial determination from the agency or appeal decision by SAMS.
- iii. Employees who submit their request after November 2nd but by 11:59pm on November 5th, will remain working and on payroll and subject to weekly COVID tests after the request has been submitted and awaiting initial determination from SAMS but they may be placed on leave without pay pending appeal decision.
- iv. Employees placed on leave without pay whose appeal is granted by the SAMS shall be granted excused leave with pay retroactive to the date they were placed on leave without pay.
- v. Appeals decisions issued by SAMS will be final and binding and subject only to an Article 75 appeal.
- vi. SAMS will make appeal decisions on medical requests based on the following:
  1. Full Medical Exemption – Shall only be considered where an individual cannot receive any of the three (3) authorized vaccines – Pfizer, Moderna & J&J.
  2. Temporary Medical Exemption – Shall be based on the follow reasons to defer or delay COVID-19 vaccine for some period:
    - a. Within isolation period after COVID-19 infection;
    - b. Within 90 days of monoclonal antibody treatment of COVID-19;
    - c. Treatment for conditions as indicated in CDC clinical considerations or active therapy or treatment which would temporarily interfere with the patient’s ability to respond adequately to the vaccine;
    - d. Pericarditis or myocarditis that may or may not be associated with the COVID-19 vaccine.
    - e. Length of temporary medical exemption for these conditions may vary and employees must get vaccinated after that period unless satisfying criteria for a Full Medical Exemption.
  3. Religious Exemptions –Must be documented in writing by a religious official and must be from a recognized and established religious organization.
- vii. A panel of arbitrations identified by SAMS shall hear these appeals and may request additional documentation from the employee or the agency.

The assigned arbitrator may also request information from City doctors as part of the appeal review. The assigned arbitrator, at his/her discretion, will either issue on the appeal based on the documentation or hold an expedited (virtual) factual hearing. If the panel requests a factual hearing, the employee may request to have a union representative present but neither party shall be required to be represented by an attorney at the hearing. The City will be represented by attorneys from the Office of Labor Relations (OLR) and/or the NYC Law Department. The expedited hearing shall consist of brief opening statements, questions from the arbitrator and brief closing statements. Cross examinations will not be permitted. Any documents submitted at the Arbitrator's request must be provided to the agency at least one (1) business day before the hearing or the issuance of the written decision without the hearing.

- viii. Appeal decisions shall be expedited without full Opinion.
- ix. The City shall cover all arbitration costs from SAMS under this process. If the arbitrator requests additional medical documentation, information from the agency or consultation with City doctors, the City will be responsible for paying.
- x. An employee granted a medical or religious exemption or medical accommodation by SAMS shall be allowed to continue working and remain on payroll, subject to weekly COVID testing. No other exemption or reasonable accommodation alternatives shall be permitted.

### **3. Leave**

- A. Unvaccinated employees who have not requested a leave, or requested an exemption but was denied will be placed by the agency on leave without pay effective November 1, 2021 through November 30, 2021. The employee may request an extension of this leave. Placement on leave shall not be considered as disciplinary action.
- B. This unpaid leave shall be treated consistent with other unpaid leaves within the City for all purposes.
- C. During leave without pay, employees shall continue to be eligible for health benefits and prohibited from engaging in gainful employment during the leave period.
- D. Employees on leave who become vaccinated and provide documentation to the agency by November 30, 2021, may return to work as soon as practicable but in no case more than one (1) week. In the case where an employee becomes

vaccinated while on leave without pay and provides documentation of a first dose between November 1<sup>st</sup> and November 5<sup>th</sup>, the parties will meet and confer under the jurisdiction of Mediator Martin F. Scheinman to address how to deal with the leave of absence of November 1 through the employee's vaccination date.

E. Pregnancy/Parental Leave

- i. Any soon-to-be birth mother starting their third trimester of pregnancy on or before October 29, 2021 may use their sick, annual or comp time prior to the child's birth. Upon giving birth, they shall be eligible for Paid Family Leave or FMLA in accordance with existing laws and rules.
- ii. Employee may submit a note from their doctor asserting they are in their third trimester as of October 29, 2021.
- iii. If an employee exhausts their accrued leave prior to giving birth they will be placed on unpaid leave with health benefits until the birth of their child.
- iv. If not covered by FMLA or leave eligibility, an employee who exhausts their accrued leave before the birth of their child will be eligible to be in an unpaid leave with medical benefits for the duration of the maternity recovery period.
- v. All other eligibility and use rules regarding use of sick leave, annual leave, comp time, paid family leave and FMLA remain in effect.

F. If an employee has a pre-scheduled use of annual leave scheduled after November 1<sup>st</sup> and the employee is on leave without pay due to the vaccine mandate through that period, the annual leave will be restored for future use if the employee becomes vaccinated and returns to work. If an employee has a leave request approved prior to October 20<sup>th</sup> and covers November 1<sup>st</sup> and any consecutive days thereafter, the employee must ensure vaccination information is submitted before their first day back at work to ensure they are not placed on leave without pay.

#### **4. Separation**

- A. During the period of November 2, 2021 through November 16, 2021 unvaccinated employees on leave without pay may opt to separate from the agency. Employees opting to separate must file a form and waiver with their respective agency. Employees will be deemed to have resigned involuntarily for non-disciplinary reasons. Employees may be reimbursed for unused sick leave on a 1:1 basis, up to 100 days. Employees shall continue to be eligible for health benefits through June 30, 2022.
- B. During the period of November 17, 2021 through November 30, 2021, unvaccinated employees may extend their leave through June 30, 2022. Such

employees shall continue to be eligible for health benefits through June 30, 2022. If an employee chooses to get vaccinated they may return to active duty as soon as practicable, but no more than two (2) weeks following notice to the agency. Employees who do not return by June 30, 2022 will be deemed to have voluntarily resigned.

- C. If an employee submits a reasonable accommodation and an appeal and it is pending on or after November 10<sup>th</sup>, the applicable “opt-in” period shall be one week after conclusion of the appeal.
- D. Beginning December 1, 2021, the City will unilaterally separate employees who have not opted into separation as mentioned above.
- E. Employees may not use accrued time to cover periods of leave without pay due to the vaccination mandate. However, if an employee files an application for retirement and the employee signs a waiver that they are irrevocably resigning from employment, the employee shall be permitted to exhaust applicable leave balances.

*Prepared by the Department of Research & Negotiations, District Council 37, AFSCME, November 2021.*