



October 22, 2021

Update on COVID-19 Vaccination Procedures – as AFA sees it

AFA has received numerous comments and inquiries about Management's mandate that all Flight Attendants be vaccinated against the COVID-19 virus or face separation from the Company. After considering them all and conducting our own research into the matter, we respond. As new information, clarification and guidance become available from the AFA Legal Department, the MEC leadership will send updates.

The Law

The mandate to vaccinate was announced by President Joe Biden. As such it has the force of federal law. It is based on credible scientific medical evidence. The mandate was properly promulgated. It is an exercise of the state's police powers regarding public health, which have long been found to be a proper exercise of government.

As a federal law, it should be viewed in the same manner one would view Random Urinalysis or Breath Alcohol Testing. When these procedures were implemented and made mandatory, we heard many of the same protests and arguments. Nonetheless, both requirements survived challenges in the court systems based on invasion of privacy to the point that they have become accepted required procedures involving Flight Attendant employment. A Flight Attendant would not be able to declare that she/he would no longer be required to undergo random urinalysis. Rather, the inquiry is whether she/he wished to continue to work as a Flight Attendant under the then newly implemented job requirement.

Based on the credible scientific evidence, AFA concludes that vaccination against the COVID-19 virus provides the best protection against contracting as well as the spread of the disease. Nonetheless, the leadership also acknowledges that there exists a variety of opinions concerning anti-COVID vaccination. The remedy for those who oppose the vaccination requirement lies with those who have power to change the law. It is the Flight Attendant's Congressional representatives who have the power to overturn the law, not AFA. Contacting your representative at the local, state or federal level will get the ball rolling.

Hawaiian Airlines Authority to Implement Mandatory COVID-19 Vaccination

We have repeatedly stated that as a federal contractor and as an employer of more than 100 employees, Hawaiian Airlines is bound by the executive mandate. Consequently, Hawaiian Airlines is bound to implement the mandatory vaccination program. Filing a grievance will not end the process as it was implemented so that the Company would be in compliance with the law.

Reasonable Accommodation Exemption from Vaccination

As required by law, Hawaiian Airlines has implemented a procedure to receive, consider and either approve or reject requests for an exemption from the vaccination requirement. While the law requires that an interactive process be conducted between the Company and the individual applying for the exemption, it is not specific as to what the interactive process must contain.

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The Union is unable to advise regarding the applications for an exemption because the criteria to establish entitlement to an exemption are based on (1) personal religious beliefs and/or (2) personal medical conditions. Both are unique to the individual Flight Attendant. If AFA advised about what to state on the applications, the risk would be run that the answer(s) provided would no longer be based on the individual Flight Attendant's particular circumstance.

Some have expressed concern that they may not be accompanied by an AFA Representative if summoned for a meeting with the Company. Although the right to representation is very broad, it is not absolute. A Flight Attendant is entitled to representation in any meeting in which discipline may ultimately result, such as a meeting to review a Flight Attendant's job performance. Even if that specific meeting does not result in discipline, the fact that it could ultimately lead to discipline is sufficient to trigger the right. Here, a meeting to consider an exemption to the vaccination requirement is not a meeting which could lead to discipline. Although an unvaccinated Flight Attendant may stand to ultimately lose employment, that loss of employment would be the result of an administrative separation – not discipline.

Some Flight Attendants are concerned that their applications for an Exemption – whether medical or religious based, have been rejected absent an individual one on one interactive process.

As stated above, AFA is unable to evaluate whether a certain set of beliefs constitute a “bona fide personal religious belief” such that a Flight Attendant has sufficiently established entitlement to a religious exemption from the testing requirement. Similarly, AFA is unable to evaluate a Flight Attendant's medical condition as sufficient to establish a right to a medical exemption. If a Flight Attendant disagrees with the Company's decision, the proper channel to challenge that decision would be to contact the Equal Employment Opportunity Commission (eeoc.gov/filing-charge-discrimination) or the State of Hawaii Civil Rights Commission (labor.Hawaii.gov/hcrc/forms).

Leave of Absence as a Reasonable Accommodation Exemption

The law is silent concerning the type of reasonable accommodation that must be provided for a refusal to vaccinate against a communicable disease. It is apparent that the Company is treating a vaccination akin to a Bona Fide Occupational Qualification such that if one is not vaccinated, one does not present the required physical qualifications to be a Flight Attendant. As the requirement to be vaccinated is the result of federal mandate concerned with a communicable disease, we have found no basis to challenge the leave of absence per se as the reasonable accommodation. Any challenge a Flight Attendant may wish to file must be filed with either the EEOC or the State of Hawaii Civil Rights Commission.

In addition, although the Company has not yet confirmed this, it appears that a weekly testing schedule is being considered as an accommodation. We do not have the final word yet on this determination and cannot at this point provide an opinion on how such an accommodation would affect a Flight Attendant's ability to fly to destinations, such as Australia, which require proof of vaccination.

Advisable Course of Action

- Get vaccinated or continue with the application for an accommodation from the Vaccination requirement.
- Apply for the Transition Period Testing Program if you will not be vaccinated prior to the deadline.
- Advise the Company if you are not vaccinated but subsequently change your mind and decide to be vaccinated.
- Apply for the 12-month leave of absence if you will not be vaccinated prior to the deadline.
- File any challenges with the EEOC or Hawaii Civil Rights Commission.

The AFA-CWA Legal Department