Local 328 AFSCME
Making OHSU Better For You

Thank you for reaching out to your union. We understand that these are very tumultuous times for everyone, especially our frontline workers. When the Oregon Health Authority issued a rule requiring all health-care personnel be vaccinated against COVID-19, OHSU issued its own mandate requiring all of its employees be vaccinated against COVID-19.

The OHA listed employees who were excluded from this mandate by defining "health-care staff," and specifically excluded certain classes of workers from the vaccine mandate that exists based upon the OHA rule. However, OHSU took the position that these employees were now no longer protected from vaccine mandates per ORS 433.416(3), as the OHA had reclassified them as non-health-care personnel. Local 328 does not agree with the OHA, but has no avenue for appeal to the OHA, unfortunately. Settling this difference of interpretation is left to the Oregon State Legislature and the Oregon Health Authority.

In response to the OHA's vaccine mandate and OHSU's subsequent policy mandating the COVID-19 vaccine, many of you requested religious or medical exceptions as reasonable accommodations. Because the Equal Employment Opportunity Commission is the regulatory agency responsible for enforcing federal laws that make it illegal to discriminate against employees based upon disability or against employees requesting accommodations under the Americans with Disabilities Act, we are directing our represented employees to the EEOC, if they feel OHSU's denial of an exception request is a violation of their rights under the ADA or Title VII of the Civil Rights Act of 1964.

Employees whose exception requests have been or are denied may file a complaint with the EEOC by following this link. Employees may also file a similar complaint with the State of Oregon's Bureau of Labor Industries by visiting this link.

Under normal circumstances, our union would file a grievance on behalf of any employee who receives an exception denial and wants to appeal OHSU's decision. **Local 328 is not recommending grievances to dispute these denials because the EEOC has already ruled, numerous times, on what an employer can and cannot include and or exclude when considering requests for religious and or medical exemptions/accommodations.** Cases such as U.S. EEOC v. Saint Vincent Health Center, Civil Action No. 1:16-cv-234 and EEOC v. Baystate Medical Center, Inc., d/b/a Baystate Health, Civil Action No. 3:16-cv-30086 have established that employers must

> "*adhere to the definition of 'religion' established by Title VII and controlling federal court decisions, a definition that forbids employers from rejecting accommodation requests based on their disagreement with an employee's belief; their opinion that the belief is unfounded, illogical, or inconsistent in some way; or their conclusion that an employee's belief is not an official tenet or endorsed teaching of any particular religion or denomination."*

Requests and decisions for religious or medical accommodations must be made on a case-by-case basis. OHSU has a responsibility to consider the facts of each individual case and issue a decision on a case-by-case basis. Therefore, grieving these decisions would also have to be done on a case-by-case basis. While an arbitrator could rule on whether an employer violated rights under the ADA or Title VII, **Local 328 holds the opinion that it is in employees' best interest to appeal OHSU's vaccine-exception denials to the agency that regulates these laws.**

OHSU has stated in its denial letters to employees that its decisions in this area are final, essentially signaling a denial of any future grievances and any internal appeals processes. When OHSU denies a grievance, our union then decides whether to take the case to arbitration and allow an arbitrator to decide whether OHSU violated an employee's rights. The problem with this is that, as of Friday, October 1, OHSU signaled that it had received more than 400 requests for vaccine exceptions. That means that potentially 400 grievances would need to be filed and, if denied at the grievance level, potentially 400 arbitration cases could go before different arbitrators, who would issue differing opinions and interpretations of EEOC law (Title VII and the ADA).

Again, it is Local 328's opinion that these decisions be best left to the EEOC, which will allow for clear application of the law. **As the union has consistently asserted throughout this process, our interest in this matter is to protect the employment and civil rights of our members under the law.**