

**DANE COUNTY PROFESSIONALS, EGR 1871
DANE COUNTY JOINT COUNCIL, EGR 720**

affiliated with
**American Federation of State, County and Municipal Employees
Wisconsin Council of State, County and Municipal Employees - Council 32**

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|---------------------------|--------------------------------------|
| Employer: Dane County | Date of alleged infraction: 1/5/2018 |
| Department: Public Health | Supervisor: Janel Heinrich |
| Employee: Multiple | Work Location: Department-wide |
| Date: January 12, 2018 | |

Step 3 Grievance

Section of Employee Benefit Handbook Violation

- EXISTING BENEFITS
- Any other provisions that may apply

Statement of Circumstances

In late September, 2017, Madison Dane County Public Health Department Head Janel Heinrich sent an e-mail to MDCPH employees regarding changes to departmental policy regarding influenza vaccinations. In the e-mail, Ms. Heinrich stated that the Department would now require all departmental staff to provide either:

1. annual proof of influenza vaccination, or
2. a signed declination form with an acknowledgement that non-vaccinated personnel would have to wear surgical masks when within 6 feet of a client.

In the past, only staff providing direct clinical or personal health services had to meet this requirement.

Individual employees began asking their supervisors questions about this change in policy immediately, and by late October, had asked their Employee Group Representatives for assistance. In response, represented Public Health staff and representatives from EGR 1871, EGR 720 and AFSCME Council 32 met with MDCPH management in an attempt to find a mutually agreeable resolution. At the EGRs' request, the deadline for compliance with either vaccination or a signed declination form was extended twice, to accommodate these discussions.

On January 5, 2018, Employee Group Representative 1871 Vice-President and Chief Steward Brian Standing met with Janel Heinrich. At that meeting, Mr. Standing told Ms. Heinrich that the employees and their representatives remained unsatisfied with management's response to date, and asked her to reconsider. When Ms. Heinrich refused, Mr. Standing informed her that the EGRs would file a formal grievance. Grievances regarding interpretation of the Employee Benefit Handbook may be started at Step 3.

Violations of the Employee Benefit Handbook

1. Relevant EBH language.

The “Existing Benefits” section of the [Employee Benefit Handbook](#) (p. 40) reads (emphasis added):

*“So long as the services of the Employee Group are continued by the County, the County shall continue existing benefits (including, **but not limited to** coffee breaks, car allowance and/or mileage payments), or **other amenities not mentioned herein** that are primarily related to wages, hours and **conditions of employment**, but established by practice with the knowledge and tacit consent of the County, for the life of this Handbook. Prior to effectuating any changes in the foregoing existing benefits and other amenities shall be that are primarily related to wages, hours and conditions of employment, **any proposed changes shall be subject to the process set forth in D.C.O. 18.24(3) and (4).**”*

2. Established past and current practice.

Current practice in MDCPH requires unvaccinated workers who have signed an immunization declination form to wear a mask “*while delivering health-related services within 6 feet of a client during times that influenza is present in the community.*” (See “Employee Influenza Immunization Policy” dated September 9, 2014, attached.) Masking is normally required only for unvaccinated workers in the “Acute Communicable Disease, Immunizations, Interpretation, Maternal-Child Health, Refugee, STI-HIV, TB, Well Woman and WIC” programs. Unvaccinated workers in other programs of MDCPH are not normally required to wear a mask.

Prior to 2017, MDCPH employees could sign a declination form (attached) for the influenza vaccine that indicated they would wear a mask when “*within 6 feet of a client to whom (they are) delivering personal health-related services.*” Staff who do not deliver “personal health-related services” were allowed to check “not applicable.”

3. Change in established past practice.

In her 9/26/2017 e-mail (attached) to staff discussing the proposed vaccination and masking policy, MDCPH Department Head Janel Heinrich states, “*The change with this proposal is that this policy applies to all staff, not just those in clinical settings which has been our previous practice.*”

The proposed 2017 declination form for influenza vaccination revises the language to indicate that signees would “*wear a mask within 6 feet of a client to whom (they are) delivering **public** health-related series.*” In a 12/28/17 e-mail to EGR 1817 Steward Brian Standing, Janel Heinrich confirmed that this change was meant to apply masking standards to all non-vaccinated MDCPH staff, not just those engaged in clinical or “personal health services”.

By management’s own admission, the proposed policy is a significant change from well-established past practice directly related to the conditions of employment for MDCPH staff. As such, it is clearly subject to the “Existing Benefits” section of the EBH and should be addressed through the “Meet and Confer” process for amending the EBH, not enacted unilaterally by management.

Other Issues

In addition to the clear violation of the Existing Benefits section of the EBH, the proposed policy to require either influenza vaccination or wearing a mask for all MDCPH personnel raises a host of other problems and potential legal liabilities for the county.

1. Mandatory vaccination of health care workers or mandatory masking is not supported by Center for Disease Control guidance.

- The 2017 edition of the Center for Disease Control’s pamphlet “[Influenza Vaccination for Health Care Workers](#)” states that “...the CDC does not issue any requirements or mandates for state agencies, health systems, or health care workers regarding infection control practices, including influenza vaccination or the use of masks.”
- The 2017 CDC 2017 guidance also indicates that typical vaccination rates among health care personnel across the nation average 64.3%/ Note that this is considerably lower than that already achieved by MDCPH’s current rate of over 90%, achieved under current practice.
- The CDC’s more detailed report “[Immunization of Health-Care Personnel: Recommendations of the Advisory Committee on Immunization Practices](#) (2011),” which forms the basis for the annual guidelines, has this to say regarding influenza vaccinations for health care personnel (emphasis added): “*Factors demonstrated to increase vaccine acceptance include a desire for self-protection, previous receipt of influenza vaccine, a desire to protect patients, and perceived effectiveness of vaccine. Strategies that have demonstrated improvement in HCP vaccination rates have included campaigns to emphasize the benefits of HCP vaccination for staff and patients, vaccination of senior medical staff or opinion leaders, removing administrative barriers (e.g., costs), providing vaccine in locations and at times easily accessible by HCP, and monitoring and reporting HCP influenza vaccination rates. Intranasally administered live attenuated influenza vaccine (LAIV) is an option for healthy, nonpregnant adults aged <50 years who dislike needles. The practice of obtaining signed declinations from HCP offered influenza vaccination has been adopted by some institutions **but has not yet been demonstrated to exceed coverage rates of >70%--80%.***”
- The 2011 report goes on to say, “**Each health-care facility should develop a comprehensive influenza vaccination strategy** that includes targeted education about the disease, including disease risk among HCP and patients, and about the vaccine. In addition, the program should establish easily accessible vaccination sites and inform HCP about their locations and schedule. Facilities that employ HCP should provide influenza vaccine at no cost to personnel. The most effective combination of approaches for achieving high influenza vaccination coverage among HCP **likely varies by institution.**”
- CDC guidelines are clearly written with “health-care facilities,” such as hospitals or medical clinics, in mind. Even though the CDC definition of “health care workers” is relatively broad, it is clearly envisioned to encompass people who may routinely come within six feet of patients and at-risk populations in a clinical setting as part of their daily work. In contrast, MDCPH is a large and diverse public agency, that includes entire divisions, such as the Environmental Health, Animal Services, Planning & Evaluation and Operations & Policy divisions, where workers may **never** come into contact with populations at risk for severe influenza infection. For example, Environmental Health and Animal Service workers spend all of their day

either in the field, with the general public, or in an office setting. Planning & Evaluation and Operations & Policy staff work in a typical office setting at locations far removed from MDCPH clinics. Such positions are fundamentally different from hospital administrative or janitorial staff that routinely travel near, and work in close proximity to, patients being treated in a clinical setting. Clearly, workers in locations such as the City County Building or in the field, at restaurants or construction sites are not “health care workers” associated with “health care facilities” as envisioned in the CDC guidelines.

2. Changing the current practice will have a negligible impact on public health.

- In contrast with other vaccines, influenza vaccines must be administered every year, and are wildly variable in their effectiveness from year to year. In 2017, reports indicate that due to mutations in the influenza virus, the flu vaccine [may be only 10% effective](#) against the current strain. Even when vaccine producers correctly predict the predominant strain of influenza virus in a given year, vaccines are only 40-60% effective.
- Under current policies, MDCPH staff already have an extremely high rate of influenza vaccinations: 80-90% compared with the 60% seen in other health care settings. Further efforts to expand vaccinations to “get that last 10%” will not have a significant impact on influenza transmission.
- MDCPH management proposes extending mandatory vaccinations or masking to staff outside of clinical facilities, in general offices in the City County Building or the South Madison Office. Workers in these settings work side-by-side with employees of other Departments, non-County agencies or private businesses as well as areas frequented by the general public. None of these other entities have similar inoculation requirements, any one of which could be a potential vector for influenza infection. Mandating vaccination or masking for the relatively few currently unvaccinated MDCPH staff will offer little protection to the public, given the multiple other vectors, all uncontrolled, for influenza transmission in these settings.

3. Changing the current practice will involve an unwarranted invasion of employees’ personal ethics, privacy and constitutional rights and will invite discrimination.

- Draft policy documents proposed by MDCPH management for the 2018-2019 flu season propose limiting declination of influenza vaccine to specific medical or religious reasons and allow for MDCPH management to overturn recommendations made by employee’s medical professionals or clergy. Untrained supervisory staff should never overrule recommendations made by medical professionals or religious officials. Employees should not have to identify the specific medical ailment or religious tenet that prevents them from receiving the influenza vaccination. Allowing supervisory staff to directly question or second-guess medical professionals or religious officials runs counter to processes designed to protect employee privacy, such as with FMLA requests.
- Some employees have other, equally legitimate, reasons for declining an influenza vaccine besides specific medical or religious exemptions. For example, many vegans object, on ethical or moral grounds, to inoculations made from animal products.
- Allowing the employer to inquire into an employee’s medical or religious background, with possible disciplinary implications, invites discrimination. Employees with certain medical conditions or belonging to certain religious or

personal beliefs will be subject to harsher discipline, and may likely be subject to ostracization or a hostile work environment. The Dane County Affirmative Action Ordinance explicitly prohibits discrimination on the basis of disability, creed or political belief.

- Requiring influenza vaccination or masking for MDCPH administrative, field and other non-clinical staff, while such rules do not apply to staff in other Departments who perform similar work and in a similar non-health-care specific environment will create an unfair and inequitable situation. Similarly, the proposed policy would apply only to MDCPH personnel, not to contracted staff working in the same facility, exacerbating differential treatment and further weakening already minimal additional public health benefit.
4. Requiring unvaccinated employees to wear masks outside of clinical settings will hinder the completion of their work, and, in some cases, put them in physical danger.
- In a clinical setting, people wearing masks is routine and generally expected. However, in non-clinical settings, requiring an employee to wear a mask could severely impair their ability to effectively discharge their responsibilities.
 - For example, most restaurant owners would not react well to an inspector arriving with a surgical mask. Animal Services workers attempting to control a violent dog may be putting themselves at great personal risk, if their face is concealed, as dogs may feel threatened if they cannot read facial cues.

Conclusion

Management proposes making significant changes to well-established and long-standing past practice that directly relate to conditions of employment for MDCPH staff. Current practices have been remarkably effective at encouraging influenza vaccination for staff, and strike an appropriate balance between the protection of public health and respecting employees' individual rights, convictions and privacy.

Proposed changes will:

- have minimal public benefit,
- are not supported by objective standards,
- will create or exacerbate unwarranted intrusions into employee privacy
- will threaten employee safety, and
- will invite discrimination on the basis of disability, creed or political belief.

Such changes to established past practice should properly be discussed in the "Meet and Confer" process described in the Dane County Civil Service Ordinance.

Request for Settlement of Corrective Action

EGRs 1871 and 720 request that MDCPH management immediately:

1. Rescind the policy directives dated 9/26/2017 and 9/27/2017 regarding influenza vaccination of MDCPH staff, and make it clear that **only** those staff providing direct clinical or personal health services to clients need wear masks if they are not vaccinated.
2. Restore the influenza vaccine declination form to the version that existed prior to 2017, including the language regarding “while providing personal health services.” Continue to allow employees to check “not applicable” if they do not provide personal health services, as in past practice.
3. Communicate all of these policies to all MDCPH staff, and allow staff a reasonable opportunity to sign updated declination forms, if they so choose.
4. Agree to meet and confer before proposing similar changes in the future, as required by the Existing Benefits section of the Employee Benefit Handbook.

Brian Standing
Vice-President / Chief Steward
EGR 1871

Date

Shannon Maier
President / Chief Steward
EGR 720

Date