

NYS Testing Requirements for Unvaccinated School Employees:

Medical/Religious Exemptions

If a member wishes to pursue a medical or religious exemption to either vaccination or testing (or both), the member should communicate directly with the employer. If the employer denies a requested exemption and the member wishes to pursue the matter please direct him/her to:

Equal Employment Opportunity Commission

(716) 551-4441

<https://www.eeoc.gov/>

Members should be advised that if they request and receive a medical or religious exemption for vaccination, they will still be required to test according to the employer's protocols.

Noncompliance Issues

If a member does not provide vaccination status, he/she will be subject to testing. No employee can be compelled to provide the information but should be advised that the consequence of not providing it is mandatory testing.

If a member refuses to be tested, he/she could face disciplinary consequences. Formal charges could be filed under the appropriate statutory or contractual mechanism: Education Law Section 3020a (tenured teachers, Civil Service Law Section 75 (covered non-teaching personnel) or a contractual just cause provision. If discipline occurs or is threatened, please notify your LRS immediately.

Some employers are taking the position that employees who refuse testing will be placed on unpaid leave; we know of at least one instance of this occurring. This issue has been referred to NYSUT's Office of General Counsel which will determine what, if any, legal action can be taken on behalf of such individuals. We will keep you informed as this issue is pursued.

Bargaining

The requirement to test originates with the State, not the employer so we cannot force negotiations on the issue of whether to test; districts must comply with that requirement. The Taylor Law does provide for the opportunity to bargain the impact of the new requirement. Please work with your LRS to determine whether impact bargaining is necessary and, if so, how to pursue it.

Recommended Steps:

Seek the following information from the district:

- what is the process for staff to opt out (how do they prove vaccination status and where will that information be maintained?)
- how many employees have not provided proof of vaccination
- who will administer the test
- when will the testing be conducted
- where will it be conducted
- which test will be used
- how will test results be communicated to the district
- will test results be maintained by the district (and if so, where, by whom and for how long?)

Based on the answers to the questions, you may wish to bargain the impact of the testing process including (but not limited to):

- whether the testing will be/ can be provided on-site
- whether it will occur during work hours
- if it is conducted outside of work hours will it be paid
- the consequences if an employee fails to comply

Please note that impact bargaining entitles you to negotiate these issues with the employer but does not require that you reach resolution. The employer is not required to delay the process while negotiations are pending.