



## VIA ELECTRONIC MAIL

November 12, 2021

All Advisory Board (BLET) and Board of Directors (SMART-TD) Members  
All General Committees of Adjustment  
All State Legislative Boards

Re: Update on COVID-19 Vaccine Mandates  
BLET Circular Letter Nos. AB-2021-04; GC-2021-26; SLBC-2021-11

Dear Brothers and Sisters:

This is to update you and your respective memberships on the joint steps that are being taken by the BLET and SMART-TD to prevent any member from being adversely affected by an employer COVID-19 vaccine mandate. That includes employee policies that flow from any given Presidential Executive Order, as well as those that are being required by a State or Local Municipality, or those being implemented as purely an employer policy. BLET and SMART-TD's Legal Counsel, working in concert with their IBT and other Rail Union counterparts, have been steadily reviewing all related vaccine policies, as well as the multiple legal challenges to every noted group of policies. Our circular today is to share with you what we know so far, and is also intended to dispel any notion that our Unions are not working to protect the interests of our members who are reluctant to get vaccinated. As things are moving rapidly, some of this information could have changed by the time you receive this, but we are committed to providing our membership with the latest information that we have, as well as the steps that we are taking.

As it stands today, there are two groups of employees impacted by Presidential Executive Orders: federal employees and federal contractors and their employees. In addition, there is also the Emergency Temporary Standard to Protect Workers from Coronavirus (ETS) issued by OSHA that applies to private employers with 100 employees or more. All three orders have their own unique application.

Federal employees currently have until November 22, 2021 to be vaccinated, with no weekly testing option available to those who are not vaccinated by the deadline. However, the American Federation of Government Employees urged the Biden administration on Tuesday, November 9, 2021 to delay the deadline for federal workers to get vaccinated against COVID-19 from November 22, 2021 to January 4, 2022. Regardless of its final deadline date, this order allows covered employees to apply for medical or religious exemptions.

Employees of companies identified as federal contractors currently have until January 4, 2022, to be vaccinated. There is no weekly testing option available to those who are not vaccinated by the

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deadline under this Order. However, it does allow covered employees to apply for medical or religious exemptions.

The most recent group to be impacted by federal government actions are those covered by the recent OSHA ETS applying to companies that employ more than 100 employees. That Standard was issued on November 5, 2021, but the United States Court of Appeals for the Fifth Circuit blocked those rules within days, pending further Court action. If allowed to go into effect, it also gives employees until January 4, 2022, to be vaccinated, but the OSHA ETS does allow weekly testing for those who are not vaccinated by the deadline. Like the other orders, the OSHA ETS also allows covered employees to apply for medical or religious exemptions.

There are additional mandates in place across the country that apply to those who are considered to be state, city or local employees. New York City issued such a mandate for all City employees, including employees of its school system, which was also challenged in court. On September 27, 2021, the U.S. Court of Appeals for the Second Circuit issued an order that lifted a block of the mandate.

Finally, several employers have adopted their own vaccination policies, without any government mandate requiring them to. That was the case when Houston Medical Systems implemented a vaccine requirement for its 26,000 plus employees earlier this year. In June, a court denied relief to a group of their employees who filed a lawsuit attempting to block the employer policy, and roughly 150 employees either resigned or were terminated for failure to get vaccinated.

United Airlines (“UA”), also implemented a company policy not required by any Government order, and that policy applied to certain Union represented employees who are covered by the Railway Labor Act. Just under 300 of UA’s 67,000 employees were ultimately terminated for not being vaccinated by the policy’s deadline. In a related action, a group of UA employees filed a lawsuit attempting to block the portion of the UA policy that placed those granted a medical or religious exemption on unpaid leave. Their request for relief was denied this week by the U.S. District for the Northern District of Texas, a Court well known for its conservative leanings. As such, those employees were granted the exemption they requested, but they are not allowed to work as it stands today.

As for rail employers, as of this writing, Union Pacific, Norfolk Southern, BNSF and Metra have all recently issued vaccination requirements, asserting that they are required to do so as they allegedly meet the definition of a federal contractor. As for other employers who consider themselves to be federal contractors, Southwest Airlines imposed a vaccination requirement for its employees based on the same Executive Order that the noted railroads rely on. The Southwest Airlines Pilots Association, which represents approximately 9,000 aviators, sought a temporary restraining order against the mandate. The union argued that the mandate, as well as other COVID-related company policies, needed to be negotiated with the union. On October 26, 2021, the U.S. District for the Northern District of Texas denied the union’s restraining order request and dismissed the case,

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stating, “Requiring Southwest employees to be vaccinated against COVID-19 will likewise improve the safety of air transportation, efficiency of Southwest’s operations, and further the [collective bargaining agreement’s] goal of safe and reasonable working conditions for pilots.”

This is not intended to be a complete history of the legal filings concerning vaccine mandates. The Attorney Generals of several states have also filed lawsuits against many if not all of the mandates issued under federal order. We continue to monitor those cases and will share more information as things develop.

This brings us to the steps that the BLET and SMART-TD have jointly taken. Shortly after Union Pacific announced its vaccine mandate, and after discussions with the affected General Chairpersons representing members on Union Pacific, the Unions jointly initiated lawsuits against Union Pacific in an effort to prevent unilateral implementation of the mandate. At almost the same time the Unions filed their lawsuits, Union Pacific filed its own lawsuit against BLET, SMART-TD and BMWED seeking to have our dispute ruled a minor dispute. Within days, Norfolk Southern announced its vaccine mandate, and filed a lawsuit against BLET, SMART-TD and BMWED similar to the Union Pacific filing. BLET and SMART-TD both then filed answers and counterclaim lawsuits against Norfolk Southern. As all of the involved filings were filed within the U.S. District Court for the Northern District of Illinois, a motion to consolidate the cases has now been filed.

Just this week on Monday, BNSF announced its vaccine mandate, and within hours it, too, filed a lawsuit similar to the Union Pacific and Norfolk Southern lawsuits, naming BLET, SMART-TD, BMWED and BRS, also in the Northern District of Illinois. BLET and SMART-TD will be filing an answer and counterclaim to the BNSF case in short order.

Also on Monday, Metra, the operator for commuter service in the greater Chicago area, filed a lawsuit in the Northern District of Illinois against BLET, SMART-TD, and BMWED in support of its vaccine mandate. BLET and SMART-TD will be filing an answer and counterclaim in this case as well.

BLET and SMART-TD will also be seeking a preliminary injunction against Union Pacific and Norfolk Southern that, if granted, would block the railroads from implementing the mandates until they have successfully negotiated all related issues with the Unions. When we say successful negotiations, we mean negotiating agreements with the Unions that the membership approves pursuant to each Organization’s respective internal rules.

Should the court reject our request for a preliminary injunction, it would more than likely render our dispute to be a minor dispute. In application, the Unions would then provide the representation found in its applicable Collective-Bargaining Agreements for any and all employees who may be adversely affected by the vaccine mandate.

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Should the Unions prevail in court, but the railroads refuse to come to agreements prior to implementing their mandate, it would be considered a strike-able major dispute. If that were to happen, we can assure you that we will initiate the internal processes required to obtain an affirmative strike vote. If strike authority is obtained through our respective internal rules, and the railroads have still not complied, we will also work with all involved General Chairpersons to set a strike date.


In the meantime, we must offer the following advice to all members, especially those who do not think their Union is doing enough to address vaccine mandates. BLET and SMART-TD were the first Unions to challenge any rail carrier's vaccine mandate in the court system. As noted above, there are presently 7 legal cases involving four (4) rail carriers, and by the time you read this, there could be more. We will not stop until these issues are resolved; not by the Unions saying "they can do that," but by having our Nation's court system resolve this issue. As many of our members have told us during other recent events, we are a land of laws, and it will be those laws that determine the outcome of this issue.

Until that happens, we would also caution all members to beware of the "free legal advice" and "free medical advice" being shared in social media on how to deal with the potential vaccine mandate. No one giving advice on-line, that could potentially cost you your income, intends to feed your family or take responsibility for how you are treated in the end.

Instead, we recommend that you make your decisions about vaccinations based upon consultation with your own physician. Through our joint efforts with our Legal Counsel, Officers and Staff, we will continue to do everything in our power to protect the careers, livelihoods, and health and safety of our members and their families. Feel free to distribute this information to your respective Local Chairpersons and Legislative Representatives for their distribution to the membership.

Trusting you will find this helpful, and with warmest personal regards, we remain

Fraternally yours,

  
National President, BLET

  
President, SMART Transportation Division