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Dear Brothers/Sisters,

On September 9, 2021, President Biden issued Executive Order 14042, which requires certain contracts with the Federal government to contain clauses regarding COVID-19 safety measures. The Executive Order itself does not mandate COVID vaccination but it does require Federal agencies to comply with Guidance to be issued by the “Safer Federal Workplace Task Force.” On September 24, 2021, that Task Force issued its Guidance. The Guidance requires Federal contractors to conform to requirements for COVID-19 vaccination of employees, and masking/physical distancing. The vaccination protocol requires that Federal contractors ensure that all covered employees are fully vaccinated by December 8, 2021, unless the employees are entitled to a medical or religious exemption. The masking/distancing requirements state that unvaccinated employees must wear masks indoors and, to the extent possible, maintain a distance of 6 feet from others. Vaccinated employees are required to wear masks indoors only if they are in “areas of high or substantial community transmission.” (Contractors are required to check a government website weekly to determine if their location falls into one of these transmission categories.)

In determining whether a Federal contractor is covered by the Executive Order and Guidance, two things must be examined. First, does the contract fall into one of the four categories enumerated in the Executive Order? One of the four designated contract categories is a “procurement contract ... for services.” Ameren has a contract with the Government Services Administration (“GSA”) which specifically states that it is for “electric, natural gas and energy management services.” Thus, according to our attorneys, this contract would fall within the coverage of the Executive Order.

The second question is whether a contract contains a clause requiring vaccination and masking. Our understanding is that Ameren does not have a contract with the Federal government containing such a clause. Further, the Executive Order states that it is intended to cover “new” contracts. The FAQs which accompany the Guidance state as follows at Question 12:

Q12: By when must the requirements of the order be reflected in the contracts?

A: Section 6 of the order lays out a phase-in of the requirements for covered contracts as follows:

- Contracts awarded prior to October 15 where performance is ongoing – the requirements must be incorporated at the point at which an option is exercised or an extension is made.

Since the GSA contract is for a 10-year term, and was entered in 2018, it should not be up for extension for several years. Thus, if Ameren does not have a contract with the Federal government which contains a COVID vaccine requirement clause, then it is our position that the Executive Order does not apply to Ameren's employees. (As discussed below, we are requesting information from Ameren to further explore this issue. Enclosed is a copy of the letter we have sent to Ameren.)

The other question that has been asked is whether the Executive Order is lawful. Our attorneys have told us that while legal challenges have been, and will continue to be, brought regarding the Executive Order, in all likelihood courts will conclude that the Executive Order is lawful. First, we are advised that in prior cases the U.S. Supreme Court has upheld government mandates for smallpox vaccination, which would serve as precedent for COVID vaccination requirements. Second, the Executive Order here is not a "mandate" in the usual sense of that term in that it does not require the public to be vaccinated. Rather, the government in its capacity as a purchaser has determined that it will only enter into contracts which contain the vaccine and masking clauses. The Executive Order states that it is issued in part under the authority of a law called the Federal Property and Administrative Services Act and this law has been interpreted by the courts as giving broad authority to the President to issue executive orders concerning procurement contracts, so long as the President determines that the Order promotes efficiency and economy. Here, the rationale set forth in the Executive Order states that the mandates will improve efficiency in procurement contracts by reducing absenteeism and labor costs. Previous presidents have relied on this law to issue Executive Orders for Federal contractors under a wide range of circumstances (e.g., increasing the minimum wage paid by Federal contractors, banning various forms of discrimination, promoting disabled veteran businesses.)

We are also advised that numerous challenges have been raised to vaccine requirements at all levels of government, and such challenges have almost all been rejected by the courts. Thus, our attorneys have advised us that a challenge to the Executive Order would likely not be successful.

Some members have expressed the view that any vaccine mandate by Ameren would violate the "Nuremberg Code." Our attorneys advise that this is not accurate. The Nuremberg Code resulted from war crime trials of Nazis after the end of World War II, some of whom were doctors who conducted forced medical experiments on concentration camp inmates. Legal experts have noted that COVID vaccinations are not medical experiments because they were developed through testing by willing volunteer participants, and when those trials met the required standards for safety and efficiency, they were given emergency use authorization by the FDA. (The Pfizer vaccine was given full authorization on August 23, 2021.) Furthermore, the Nuremberg Code is not a part of Federal or Missouri law.

Even if Ameren does become party to a contract with the Federal government containing the vaccination/masking requirement discussed above (and, again, this has not happened yet), Ameren is still required to bargain with its Unions about the effects of these requirements. This would include issues such as the procedure for, and requirements of, medical and religious exemptions; how any illness arising from the vaccine will be treated; whether vaccination will be offered onsite; how employees who do not comply will be treated, etc.)


At this point, the Union will be doing the following:

1. Stating its position to Ameren regarding the lack of a clause in its GSA contract requiring vaccination.
2. Requesting information and documentation from Ameren to determine whether the Executive Order is applicable.
3. Through its attorneys, monitoring any legal challenges to the Executive Order.
4. Pursuing bargaining about the effects of the vaccination/masking mandates if they do become applicable for Ameren.

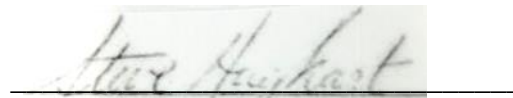
Finally, please note the following: we are not seeking to encourage you to forego vaccination. If it becomes apparent that Ameren is legitimately covered by the Executive Order, then you will have only a limited time to begin and complete the vaccination process. In this regard, it is our understanding that some members have been circulating information asserting that you have a legal right to refuse vaccination and maintain your employment. Our attorneys advise that this is not true. If the Executive Order is deemed to be applicable to Ameren, and you do not become fully vaccinated by the December 8 (deadline as of today).²¹, it is unlikely that you will remain in active employment status.

We will of course keep you informed of all developments in this matter.


Very truly yours,




Kenny Peebles
IBEW Local 2



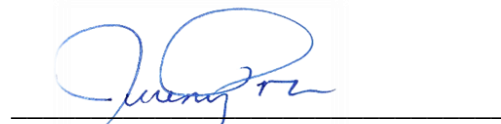
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