

**Summary of Agreement**  
**between**  
**District Council 37, AFSCME and**  
**The City of New York and the Board of Education**  
*October 3, 2021*

1. The term of the agreement covers the 2021-2022 school year and shall only be extended by mutual agreement of DC 37 and the City of NY.
2. **Exemption and Accommodations Requests & Appeal Process** – Requests must be submitted via the SOLAS system (DOE employees), or to DOHMH’s EEO office (DOHMH employees) no later than 5pm on October 5, 2021.
  - a. **Full Medical Exemption** – Shall be considered where an individual cannot receive any of the three (3) authorized vaccines – Pfizer, Moderna & J&J.
  - b. **Temporary Medical Exemption** – Shall be based on the follow reasons to defer or delay COVID-19 vaccine for some period:
    - i. Within isolation period after COVID-19 infection;
    - ii. Within 90 days of monoclonal antibody treatment of COVID-19;
    - iii. Treatment for conditions as indicated in CDC clinical considerations or active therapy or treatment which would temporarily interfere with the patient’s ability to respond adequately to the vaccine;
    - iv. Pericarditis or myocarditis that may or may not be associated with the COVID-19 vaccine.
  - c. **Religious Exemptions** – Must be documented in writing by a religious official and must be from a recognized and established religious organization.
  - d. If an individual has received the COVID-19 vaccine and unable to amount an immune response due to a pre-existing immune condition.
  - e. Determinations for eligibility for DOE employees will be made by the Division of Human Capital in the Office of Medical Leaves and Benefits; the Office of Equal Opportunity; and Office of Employee Relations. Determinations of eligibility for DOHMH employees will be made by the DOHMH’s EEO office. Determinations shall be made in writing no later than Friday, October 8<sup>th</sup> and if denied will include a reason.
  - f. Appeals to determinations must be made within 48 hours from when the determination is issued. DOE employee appeals shall be made in SOLAS and DOHMH employees must appeal to the EEO office. Appeals should include reasons for the appeal and ay additional documents. After an employee files and appeal any supplemental documentation must be submitted by the employee to the Scheinman Arbitration and Mediation Services (“SAMS”) within 48 hours of filing the appeal.
  - g. A panel of arbitrators identified by SAMS shall hear the appeals and may request additional documentation from the employee, the City and/or DOE doctors. The

arbitrator may also hold an expedited virtual hearing. Employees may elect to have a union representative present at the virtual hearing.

- h. Appeal decisions are final and binding.
- i. During the appeal process employees who are vaccinated may use their sick and/or annual leave. If the appeal is granted the employee's sick and annual leave will be reimbursed. Employees who are not vaccinated will be placed on leave without pay with health benefits.
- j. The DOE and DOHMH shall cover all arbitration costs from SAMS under this process.
- k. Employees granted a medical or religious exemption shall be permitted to remain on payroll but will not be required or permitted to enter a school building while unvaccinated as long as the vaccine mandate is in effect. The agency at their discretion may keep the employee on payroll as follows:
  - i. Assign employee to work outside of a school building (DOE employees) or at other DOHMH locations (DOHMH employees) to perform functions as determined by the agency.
  - ii. Assign employees to work on alternative shifts with no payment of shift differentials.
  - iii. Temporarily assign the employee to another City agency which is not subject to a vaccination mandate.
  - iv. Assign the employee to continue to their non-school based assignment and work location.
- l. The agency will make best efforts to ensure employees with medical accommodations will have appropriate alternate work settings. DOE employees assigned to alternative work assignments must submit to COVID testing twice per week. DOHMH employees shall be required to comply with DOHMH's testing policy.
- m. A 12-month employee granted a full medical or religious exemption that is not extended past the school year can elect to be placed on leave without pay with health benefits through September 5, 2022. Such request must be made within two (2) weeks the accommodation ceases.

### **3. Leave**

- a. Unvaccinated employees who have not requested a leave, have a pending exemption request or requested an exemption but was denied will be placed on leave without pay effective October 4, 2021 through November 30, 2021. The employee may request an extension of this leave. Placement on leave shall not be considered as disciplinary action.
- b. During leave without pay, employees shall continue to be eligible for health benefits a prohibited from engaging in gainful employment during the leave period.
- c. Employees on leave who become vaccinated and provide documentation to the agency by November 30, 2021 may return to work as soon as practicable.

d. **Pregnancy/Parental Leave**

- i. Any soon-to-be birth mother starting their third trimester of pregnancy on or before October 1, 2021 may use their sick, annual or comp time prior to the child's birth. Upon giving birth, they shall be eligible for Paid Family Leave or FMLA in accordance with existing laws and rules.
- ii. Employee may submit a note from their doctor asserting they are in their third trimester as of October 1, 2021.
- iii. If an employee exhausts their accrued leave prior to giving birth they will be placed on unpaid leave with health benefits until the birth of their child.
- iv. If not covered by FMLA or leave eligibility, an employee who exhausts their accrued leave before the birth of their child will be eligible to be in an unpaid leave with medical benefits for the duration of the maternity recovery period.
- v. An employee placed on leave without pay pursuant to this agreement may not return to another leave status after going on leave without pay.

**4. Separation**

- a. During the period of October 4, 2021 through October 29, 2021 unvaccinated employees on leave without pay may opt to separate from the agency. Employees opting to separate must file a form and waiver with their respective agency. Employees may be reimbursed for unused sick leave on a 1:1 basis, up to 100 days. Employees shall continue to be eligible for health benefits through September 5, 2022.
- b. During the period of November 1, 2021 through November 30, 2021, unvaccinated employees may extend their leave through September 5, 2022. Such employees shall continue to be eligible for health benefits through September 5, 2022. If an employee chooses to get vaccinated they may return to active duty as soon as practicable. Employees who do not return by September 5, 2022 will be deemed voluntarily resigned.
- c. Beginning December 1, 2021, the City will unilaterally separate employees who have not opted into separation as mentioned above.