



Frequently Asked Questions:

Question: Is it legal for my department to require me to complete a weekly COVID-19 test and provide them with the results?

Answer: Yes, this is legal as the U.S. Equal Employment Opportunity Commission (EEOC) has cited an employer can require COVID-19 testing of its employees because an individual with the virus will pose a direct threat to the health of others. The employer must follow the American Disability Act (ADA) requirements. If you have a medical issue or religious belief that prevents you from testing, you can request an exemption from your employer and seek reasonable accommodation(s). If your legitimate exemption request is denied file an EEOC complaint within your regional EEOC district.

If you have a complaint as to ***Disparate Treatment*** of the testing requirements, (Based on: *Age, Disability, Equal Pay/Compensation, Genetic Information, Harassment, National Origin, Pregnancy, Race/Color, Religion, Retaliation, Sex, Sexual Harassment or Sexual Orientation and Gender Identity*), you can file a Federal EEOC Complaint within your regional EEOC district. Please review our CBA Article XVIII, state and Federal laws prior to filing a complaint.

Further, EEOC resources say that ADA requires that any mandatory medical tests of employees be “job related and consistent with business necessity.” Ask your department how they are following this requirement and to put it in writing. Additional, if the job related and consistent with business necessity can’t be met or it is not being followed or you find your department is picking and choosing who gets tested (i.e., unvaccinated are being required to be tested, but the vaccinated are not being tested, knowing both can sometimes be carriers of COVID-19 and both can sometimes be infectious to others), you can file a Federal EEOC complaint within your proper EEOC district.

If warranted, file an online complaint at: [EEOC Field Offices | U.S. Equal Employment Opportunity Commission](#) (EEOC Reference: [What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws | U.S. Equal Employment Opportunity Commission \(eoc.gov\)](#))

(The deadline to file an EEOC claim is 300 calendar days, however, it is recommended to file your complaint immediately – Please copy all complaints to the Division of Human Resource Management Email them directly at: hrm@admin.nv.gov.) Please review our CBA Article XVIII prior to filing.

Question: How do I address COVID-19 related safety concerns in my workplace so I can help protect myself and other co-workers?

Answer: Always attempt to first report the safety issue to management. You may also report your COVID-19 related safety workplace concerns directly to OSHA (file report using the link below). Relevant safety concerns dealing with the Testing or Mask policy, the EEOC recommends that you file a complaint with OSHA using the following link: [Report Workplace Hazards \(nv.gov\)](#) - **OSHA COVID-19 guidance for employee safety in the workplace:** <https://www.osha.gov/coronavirus/safework#roles-employers-workers> & [Coronavirus Disease \(COVID-19\) | Occupational Safety and Health Administration \(osha.gov\)](#)

Question: Where do I file a grievance based on my concerns about the State's COVID-19 Testing, Mask and Leave policies (see reported concerns below)?

Answer: If you are in a Certified Unit a grievance can be filed under Article XX of the Collective Bargaining Agreement (CBA) by contacting, via email, a Union Steward or Labor Representative (see list on the tab ***"About Us"*** at: www.nvafscme.org). A union representative or steward will contact you to schedule an appointment in response to your email. An assessment on your situation will be completed to help determine if a grievance is warranted and should be filed. The grievance needs to be filed within **15 CALENDAR DAYS** after the incident or became aware of the incident. (See CBA for further details.) ***Don't wait until the last few days of the deadline requirements to contact us as we must schedule a date and time to do an assessment on your case.***

If you are not in a Certified Unit, you can file a grievance using the NEATS system within **20 working days** after the incident or you became aware of the incident. AFSCME Local 4041 members must contact a labor representative via email (see list at www.nvafscme.org). A representative will contact you to schedule an appointment in response to your email. An assessment on your situation will be completed to help determine if a grievance is warranted and should be filed. ***Don't wait until the last few days of the deadline requirements to contact us as we must schedule a date and time to do an assessment on your case.***

Click on: [understandingthegrievanceprocess05-13.pdf \(nv.gov\)](#) and [NEATSIncidentTrackingInstructions.pdf \(nv.gov\)](#)

Question: Is my department allowed to request I get the COVID-19 weekly test on my own time, either on my day off or before or after work?

Answer: The U.S. Department of Labor has provided guidance on this issue claiming under the Fair Labor Standards Act an employee should be compensated. This concern can be grieved under Article XX of the Collective Bargaining Agreement. The grievance needs to be filed within **15 CALENDAR DAYS** after you are denied the request for pay.

If you are not in a Certified Unit, you can file a grievance using the NEATS system within **20 working days** after being denied the request for pay.

Guidance: *The U.S. Department of Labor has cited that for many employees, undergoing COVID-19 testing may be compensable because the testing is necessary for them to perform their jobs safely and effectively during the pandemic. If the testing is required by the employer to undergo a COVID-19 test on your day off, such time is likely compensable because it is integral and indispensable to your work during the pandemic...etc. Reference: [COVID-19 and the Fair Labor Standards Act Questions and Answers | U.S. Department of Labor \(dol.gov\)](#) Fair Labor Standards Act (FLSA), being appropriately compensated for time worked).*

Furthermore, it has been reported that numerous state employees are being given the COVID-19 test at or near their job location during their working hours. If this occurs, request that you be provided an equitable option to get your test done, job site testing, be given release time during work to take the test/retrieve the test results or be compensated for your time to complete the test/retrieve the test results on your day off or before or after work.

We recommend you first put the exception (request for pay) on your time sheet and wait for it to be denied. This way if you are denied you will have been harmed and can file a grievance using the appropriate options cited above.

Question: Should I receive clear information from my employer and their approved vendors on the testing, types of testing, how to understand the results, etc.?

Answer: Based off the CDC guidelines the employees who undergo testing should receive clear information on the following:

- The manufacturer and name of the test, the type of test, the purpose of the test, the performance specifications of the test, any limitations associated with the test, who will pay for the test, how the test will be performed, how and when they will receive test results, and; how to understand what the results mean, actions associated with negative or positive results, the difference between testing for workplace screening versus for medical diagnosis, who will receive the results, how the results may be used, and any consequences for declining to be tested.

Question: What if my department asks me to get a COVID-19 test, but the health provider or vendor is requiring me to pay out of pocket (co-pay/deductible)?

Answer: All COVID-19 testing must be free of charge as it is required by your employer. The State of Nevada has accepted federal funds to cover the costs of the tests. *(Remember, you must exhaust all employer approved options to get tested.)* Request that your employer reimburse all costs associated with testing, if this is denied file a grievance as described above.

Question: What are my rights as a State of Nevada healthcare worker?

Answer: Please click on this link for rights and information: [Healthcare Workers: Information on COVID-19 | CDC](#)

Question: (For NON-HEALTHCARE EMPLOYEES) I want more information about my consent elements, required disclosures, results, privacy, etc. What should I ask my department management/HR personnel?

Answer: Click on the following link:

[Workplace SARS-CoV-2 Testing: Consent Elements and Disclosures | CDC](#)

[SARS-CoV-2 Testing Strategy: Considerations for Non-Healthcare Workplaces | COVID-19 | CDC](#)

Question: (For NON-HEALTHCARE EMPLOYEES) Is my department required to get consent from employees prior to the COVID-19 test?

Answer: Yes, based off CDC and ADA guidance employees must give their consent to be tested.

Question: (For NON-HEALTHCARE EMPLOYEES) What if I don't give my employer my consent to take COVID-19 test?

Answer: According to the ADA, "Workplace-based testing should not be conducted without the employees' consent. Employers who mandate workplace testing for COVID-19 infection should discuss further with employees who **DO NOT** consent to testing and consider providing alternatives as feasible and appropriate, such as reassignment to tasks that can be performed via telework." If you are an employee working in a **NON-HEALTHCARE workplace** and feel your alternative option is feasible and appropriate and it is denied you can file a grievance using the appropriate options cited above. Reference: Under "CDC's Considerations when testing"- Click on: [SARS-CoV-2 Testing Strategy: Considerations for Non-Healthcare Workplaces | COVID-19 | CDC](#)

Question: I have COVID-19 symptoms, or I have contracted COVID-19, I am unvaccinated and need to quarantine. My department is requiring me to use personal sick time and denying me the option to use Administrative Leave. However, a vaccinated employee who contracts COVID-19 is eligible to use Administrative Leave when faced with the same circumstances. What can I do to get equal treatment?

Answer: This can be grieved using the appropriate grievance process described above. Demand that everyone be treated equitably when diagnosed with COVID-19 and request to have Administrative Leave provided during your quarantine period.

We recommend you first put the exception (request for Admin. Leave) on your time sheet and wait for it to be denied. This way if you are denied you will have been harmed and can file a grievance using the appropriate options cited above.

Question: While at work I was exposed to someone who had a confirmed case of COVID-19. Since I am unvaccinated, I am being asked to quarantine until I can get a negative test. As a result, I am being asked to use personal sick time and being denied Administrative Leave, what can I do?

Answer: This can be grieved using the appropriate grievance process described above. Demand that everyone be treated equitably when an exposure takes place and request to have Administrative Leave provided during your quarantine period while you wait for the test results and/or the quarantine period is over.

We recommend you first put the exception (request for Admin. Leave) on your time sheet and wait for it to be denied. This way if you are denied you will have been harmed and can file a grievance using the appropriate options cited above.

Question: Can I receive corrective or disciplinary action from my department for refusing to follow to the COVID-19 Testing or Mask requirements?

Answer: The state had placed a grace period on any corrective or disciplinary action through August 30, 2021.

As outlined above, If you do not give consent to testing, please request that your employer find alternatives, as feasible and appropriate, such as reassignment to tasks that can be performed via telework. Please document such requests and all communication around this topic via email.

The union is continually reviewing the state's specific disciplinary process to see if **Just Cause** can be met. We will continue to review the various department memos regarding corrective and disciplinary processes. Please email all related memos to info@nvafscme.org

If you receive discipline and you feel your department didn't provide EQUAL TREATMENT, then ask yourself this question, ***“Has the Employer applied its rules, orders, and penalties even-handedly and without discrimination to all employees?”*** If the answer is **NO**, then they cannot meet *Just Cause*. This is just one of seven tests of *Just Cause* that the employer must meet, prior to disciplining an employee. We will do an assessment on each case individually.

All grievances regarding discipline must go through a labor representative or a steward and be filed as described above.

Question: What position does AFSCME Local 4041 take on the State's Testing and Mask policy?

Answer: We have been getting a lot of calls, emails and survey results regarding our position and related concerns with the State's COVID-19 Testing and Mask policy. Like with any policy, our position hasn't changed. The union's representatives look to see if the policy is legal, does it violate laws or regulations, does it violate our CBA. Further, we look to see if an employee's rights will be violated, will it be applied fairly and whether the employer's policy is being disparate to its employee's when implementing the policy. We address these concerns on an individual basis.

We feel strongly that each state employee take a serious look at all the CDC recommendations to protect themselves, co-workers, friends and family. Remember, anyone can be carriers of COVID-19 and its variants, vaccinated or not. This is a serious disease and employees infecting other employees can lead to individuals taking the disease home to their family, friends and loved ones, some who might have underlying health conditions, in either case they may have serious medical complications or not survive their battle with COVID-19. Be safe, and take all COVID-19 precautions...

Question: By filing a grievance can AFSCME Local 4041 guarantee an outcome?

Answer: AFSCME Local 4041 cannot guarantee an outcome on any grievance filed. We do, however, ensure that the due process afforded to you by filing a grievance is provided, as outlined in the CBA, NRS's, NAC's and Union Constitution and Bylaws.

Important Information: In all cases described above, whenever possible, please try to resolve these concerns informally prior to filing a grievance or EEOC complaint. However, be cognizant of the deadlines laid out in the CBA and the Nevada NEAT'S grievance processes.

In all cases of using the CBA grievance process under Article XX, you must first contact a Union Steward or Union Representative via email prior to filing a grievance (www.nvafscme.org).

Additional Frequently Asked Questions (FAQ) will be added as we continue to gather more information. If you have information or additional concerns about the State's testing policy, please fill out our survey found at: www.nvafscme.org.