



DATE: September 28, 2009
TO: All CWA 1168 Health Care Members
FROM : CWA 1168 Executive Board
RE: New York State Department of Health
Mandatory Seasonal Flu Vaccine Update

The current status of the *NYS Mandatory Flu Vaccine* is as follows:

CWA has been working with other local and state unions (NYCOSH - see below) to see what recourse might be taken in regards to the State Health Departments *Emergency Declaration* for mandating health care workers to be vaccinated. Please understand this is not a law set forth by the state legislators, but implemented by the NYSDOH (New York State Department of Health). State Health Commissioner Richard F. Daines, M.D is responsible for the emergency mandate. (Read his open letter to health care workers) http://www.health.state.ny.us/press/releases/2009/2009-09-24_health_care_worker_vaccine_daines_oped.htm

The Union groups health and safety leaders under the umbrella of NYCOSH (New York Committee for Occupational Safety and Health) met with the DOH in August to discuss a mandatory program, but Daines had already signed the emergency declaration, stating "That train has already left the station." The union groups are currently seeking counsel in filing an injunction in the courts; we are still awaiting a response. The group is coordinating efforts for any actions that might take place in the near future.

This is not a Union/Employer issue, this is a mandate from the Health Department

- The state has forced the employers to participate in this non - funded program, meaning the employers must offer the vaccine at no cost to the employees and bear the cost of any problems associated with the vaccination programs.
- The state has made the vaccine a condition of employment, "unless medically contraindicated, for health care workers in hospitals, outpatient clinics and home care services."¹
- We have requested that all the Employers bargain the Effects of the DOH mandate, not the mandate it self; they have no jurisdiction with it. Bargaining topics may include PTU, Suspension, Termination, etc... as put forth in updates from the employers.

The Attorney General's office is unable to advise those of us mandated of recourse due to a conflict of interest and the possibility of representing the DOH in this matter.

The only avenue to stop this mandate is through Governor Patterson who is showing no indication of stepping in.

The State is not clarifying the ramifications of the possible lack of availability and/or limited supply of the seasonal flu vaccine at this time. To address questions regarding mandating H1N1, Daine's letter states (September 24, 2009):

"The new regulation will apply first to the routine annual seasonal influenza vaccine now available. With the recent FDA approval of the vaccine for novel H1N1 flu ("swine flu"), the regulation will also apply to that vaccine, just in time for the second wave of novel H1N1 influenza already returning this fall."²

In other words, once available, the swine flu vaccine will also be mandated.

Check the web site frequently for updates and we will post information as soon as it becomes available. An exemption form is available from the department of health web site, www.cwa1168.org and kaleidoscope to be completed by your health care provider.

Call Governor Patterson 1- 518-474-8390
Call Commissioner Daines 1- 518-474-8390

(Footnote 1 & 2 - http://www.health.state.ny.us/press/releases/2009/2009-09-24_health_care_worker_vaccine_daines_oped.htm)

