



MARK BRNOVICH
ATTORNEY GENERAL

OFFICE OF THE ARIZONA ATTORNEY GENERAL
SOLICITOR GENERAL'S OFFICE

MICHAEL S. CATLETT
DEPUTY SOLICITOR GENERAL

December 13, 2021

Samuel E. Brown
Chief Civil Deputy
Pima County Attorney's Office
32 N. Stone Ave
Tucson, AZ 85701
(520) 724-5600
sam.brown@pcao.pima.gov

VIA EMAIL and First Class Mail

Re: Legislator Request for Investigation regarding whether certain Pima County memoranda violate A.R.S. § 23-206 or Governor's Executive Order 2021-18

Dear Mr. Brown:

Enclosed with this letter is a complete copy of a Legislator Request for Investigation under A.R.S. § 41-194.01 (the "Request") regarding whether certain memoranda identified in the Request and issued by Pima County violate A.R.S. § 23-206 or Governor's Executive Order 2021-18. With the Request's filing, the Office will now conduct an investigation and prepare a report that, under the statute, must be completed in no later than 30 days. A.R.S. § 41-194.01(A), (B).

In the report, the Attorney General will reach one of three conclusions. *See id.*, § 41-194.01(B). If Pima County has not violated any provision of state law or the Arizona Constitution, the Office will take no further action. *Id.* § 41-194.01(B)(3). If Pima County may have violated a provision of state law or the Arizona Constitution, the Attorney General will file an action in the Arizona Supreme Court. *See id.* § 41-194.01(B)(2); *State ex rel. Brnovich v. City of Tucson*, 242 Ariz. 588 (2017). If Pima County has violated a provision of state law or the Arizona Constitution, the Office will notify Pima County in writing and state that Pima County has 30 days to resolve the identified violation. A.R.S. § 41-194.01(B)(1). If the Attorney General determines that Pima County failed to resolve the violation within 30 days, the Attorney General will

Letter to Samuel E. Brown
December 13, 2021
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notify the State Treasurer, who shall withhold and redistribute from Pima County state shared monies as provided by A.R.S. §§ 42-5029(L) and 43-206(F).

In light of the exigencies of the current circumstances, the Office hereby requests that Pima County voluntarily provide a written response to the Request by 5:00 p.m. on Tuesday, December 21, 2021.

Please feel free to contact me if you have any questions.

Sincerely,



Michael S. Catlett
Deputy Solicitor General
Government Accountability Unit

Enclosure



Office of Arizona Attorney General
Mark Brnovich

Legislator Request for Attorney General Investigation of
Alleged State-Law Violation by County, City, or Town



How to Submit a Request to Investigate

Under A.R.S. § 41-194.01, one or more members of the Legislature may ask the Attorney General to investigate whether an ordinance, regulation, order, or other official action adopted or taken by the governing body of a county, city, or town violates state law or the Arizona constitution. A request is made by submitting the form on pages 2-3 of this document to the Attorney General's Office (the "Office"). The physical address or email to submit the form is provided on the bottom of page 3.

Upon receiving a request, the Office will open an investigation. A request will not be deemed received, however, and therefore the 30-day investigation period will not start, until all required information is submitted. In addition, a separate request form must be submitted for each separate legal question. An attorney or staff member from the Office will reach out to the contact person identified in the request form to address any issues that prevent the Office from commencing an investigation.

How We Conduct Investigations

After a complete request is deemed received by the Office, the assigned attorney(s) and staff will conduct an investigation during a thirty-day period. The Office generally will contact the county, city, or town for a response to the allegations and any other relevant evidence. At the conclusion of this investigation period, the Attorney General will make a written report of findings and conclusions, including whether the complained-of action violates, may violate, or does not violate state law and the Arizona constitution. Copies of the report will be provided to the member(s) of the Legislature who made the request and other officials listed in A.R.S. § 41-194.01.

If the Attorney General determines the complained-of action violates state law, the Office will then provide notice to the county, city, or town that it has thirty days to resolve the violation. If the violation is not resolved within that timeframe, the Office will notify the Treasurer pursuant to A.R.S. § 41-194.01. If the Attorney General determines that the complained-of action may violate state law, the Office will take steps to obtain a judicial determination of the issue. If the Attorney General determines that the complained-of action does not violate state law, the Office will close the complaint file and take no further action.

How You Can Help Us

To expedite an investigation, please provide as much specific information as possible about the alleged violation, including the specific county, city, or town action that constitutes the violation; the specific state law or Arizona constitutional provision violated; the relevant facts, such as the dates of key events and names of persons with relevant knowledge; and all legal authority you are aware of regarding your allegations. Please also attach any documents or other evidence relevant to your allegations.

Rev. 8-2016



Office of Arizona Attorney General
Mark Brnovich



Legislator Request for Attorney General Investigation of
 Alleged State-Law Violation by County, City, or Town (Continued)

*Identify the member(s) of the Legislature submitting this request for investigation (attach additional sheet if necessary):

Senator Kelly Townsend

*Provide a contact person for communications from the Attorney General’s Office regarding this request (may be a Legislator listed above or an employee of the Legislature).

*Name: Senator Kelly Townsend

*Email address: ktownsend@azleg.gov

*Phone number: 602-926-4467

*Mailing address: 1700 W. Washington St

Phoenix, AZ 85007

State Senate Building

*The specific question for the Attorney General to investigate is:

Do Memorandums issued by Pima County titled “FAQ Regarding Mandatory Vaccinations for New Hires, Promotions and Employees Working with Vulnerable Populations” on November 8, 2021 and “Process for Off-Board Unvaccinated Staff who work with Vulnerable Populations” on December 7, 2021 violate ARS 23-206 or Governor’s Executive Order 2021-18.”

*The name of the county, city, or town that is the subject of this request: Pima County

*The specific ordinance, regulation, order, or other official action adopted or taken by the governing body of the county, city, or town and the date thereof:

1) “FAQ Regarding Mandatory Vaccinations for New Hires, Promotions and Employees Working with Vulnerable Populations” on November 8, 2021 (attached)

2) “Process for Off-Board Unvaccinated Staff who work with Vulnerable Populations” on December 7, 2021 (attached)

*The specific Arizona statute(s) and/or constitutional provision(s) with which the action conflicts :

ARS 23-206 and Governor’s Executive Order 2021-18

* required field
 Rev. 8-2016



Office of Arizona Attorney General
Mark Brnovich



Legislator Request for Attorney General Investigation of
Alleged State-Law Violation by County, City, or Town (Continued)

*All relevant facts of which you are aware (attach separate sheet if necessary):

See attachments

[Empty text boxes for facts]

*All relevant legal authority, including federal and state case law, of which you are aware (attach separate sheet if necessary):

[Empty text boxes for legal authority]

* Any litigation involving this issue of which you are aware (include case name, number, and court where filed) :

[Empty text boxes for litigation]

Check this box if you are attaching supporting documentation.

NOTE: This form and other information submitted to the Attorney General's Office is subject to the public records law, A.R.S. § 39-121 et seq.

I, a current member of the Legislature, verify that I and the other Legislators listed on the previous page (if any) are submitting this request for investigation under A.R.S. § 41-194.01.

*First Name: *Last Name:

*Signature: *Date:

Please submit the completed form to:
Arizona Attorney General's Office
Attn: Appeals and Constitutional Litigation/A.R.S. 41-194.01
2005 North Central Avenue
Phoenix, AZ 85004
governmentaccountability@azagov



MEMORANDUM

Date: November 8, 2021

To: The Honorable Chair and Members
Pima County Board of Supervisors
Presiding Judge, Superior Court
Elected Officials
Appointing Authorities

From: Jan Leshner 
Chief Deputy County Administrator

Re: **FAQs Regarding Mandatory Vaccinations for New Hires, Promotions and Employees Working with Vulnerable Populations**

Mandatory vaccinations are currently required for new hires and promoted employees, and will be required beginning January 1, 2022, for those employees who work with vulnerable populations. Please review the attached FAQs and share them with your employees so they are aware of implications and processes for failure to become fully vaccinated.

JL/anc

Attachment

c: Carmine DeBonis, Jr., Deputy County Administrator for Public Works
Francisco Garcia, MD, MPH, Deputy County Administrator & Chief Medical Officer,
Health and Community Services
Cathy Bohland, Director, Human Resources

Date: November 5, 2021

To: C.H. Huckelberry
County Administrator

From: Cathy Bohlan, Director
Human Resources

**Re: FAQs Regarding Mandatory Vaccinations for New Hires, Promotions and Employees
Working with Vulnerable Populations**

On November 2, 2021, the Board of Supervisors approved a plan to require COVID-19 vaccination of employees who work with vulnerable populations. These employees must be fully vaccinated against COVID-19 on or before December 31, 2021. In addition, all new hires, promoted employees, or employees who receive a change in status resulting in extra pay, are required to be fully vaccinated against COVID-19.

In order to ensure that both Department heads and employees understand the implications that may result of an employee's failure to become fully vaccinated, please see the attached FAQs which provide guidance in this transition period. These FAQs will also be posted to the Employee Resource Page; however, Human Resources requests that Departments share these with their affected employees now.

c: Jan Leshner, Chief Deputy County Administrator

COVID -19 Vaccination Requirements for New Hires, Promotions, and Employees Working with Vulnerable Populations

1. I have been given a conditional job offer with the County as a new hire or promoted employee, and I am not vaccinated against COVID-19. What occurs if I fail to get fully vaccinated?

Any new hire or promoted employee who fails to be fully vaccinated by their effective start date will have their conditional offer of employment rescinded.

2. What if I have a medical condition or sincerely held religious belief which prevents me from getting vaccinated. What happens now?

You will need to request an accommodation related to the County's COVID-19 vaccination requirement for new hires and promotions.

The Department that has given you a job offer will consider if they are able to accommodate you by either:

- **OPTION #1: Allowing you to telecommute 100% of the time; or**
- **OPTION #2: Allowing you to be physically present at work with the following conditions:**
 - **Assigning you your own enclosed workspace (private office/isolated area)**
 - **You will not participate in-person meetings/settings; virtual meetings only**
 - **You will properly wear a mask 100% of the time while in a County building or County workspace, with the mask worn over your nose and mouth, when not actively eating or drinking**
 - **You will wash and sanitize your hands multiple times per day**
 - **You will sanitize/wipe down shared-touch surfaces immediately after your use**
 - **You will engage in no eating or drinking in any shared areas indoors at work**

- **You will comply with mandatory weekly testing for COVID-19; for religious accommodations, this will be at your own cost.**

Some jobs are not able to be done via telecommuting, and the County may not have an available office to assign due to space limitations.

3. What happens if the Department that offered me the job is unable to accommodate me in one of the above ways?

If the Department is unable to accommodate you as outlined above, your conditional job offer will be rescinded.

4. I am a current County employee. I was recently told by my Department that my position has been identified as working with **vulnerable populations** and I will need to become fully vaccinated against COVID-19 by December 31, 2021. What happens if I am not fully vaccinated?

On November 2, 2021, the Board of Supervisors approved a plan to require COVID-19 vaccination of employees who work with vulnerable populations. These employees must be fully vaccinated against COVID-19 on or before December 31, 2021. Your Department will notify you if you are subject to this requirement. If you are subject to this requirement, you will not be permitted to work January 1, 2022, and after if you remain unvaccinated.

5. What if I have either a medical condition or a sincerely-held religious belief and I absolutely will not get the COVID-19 vaccination. What happens now?

If you have been determined to work with vulnerable populations and are unable to be vaccinated due to a medical condition or sincerely-held religious belief, you are required to engage in the interactive process. Where it is determined that you would be within 6 feet for 15 or more cumulative minutes within a 24-hour period with vulnerable persons, your Department will not be able to accommodate you.

- **You will not be able to stay in your current position after December 31, 2021.**
- **You may request to be reappointed to a vacant position with the**

County for which you meet the minimum qualifications and not required to work with a vulnerable population.

- Where a reappointment position is not located, you will be terminated from employment.

For reappointments related to a medical condition, refer to [Administrative Procedure 23-29, Reasonable Accommodation of Applicants and Employees with Disabilities.](#)

[For reappointments related to a sincerely-held religious belief see questions 7 through 10 below.](#)

6. What is a reappointment?

Reappointments are only for employees who request a reasonable accommodation. A reappointment is a change in the assignment of an employee from one position to another of any classification having the same or lower starting salary.

7. Is a reappointment only for the Department in which I am currently employed?

No. A reappointment can be within your own Department or to any other County Department.

8. How is it determined whether I will be reappointed?

Employees desiring reappointment must notify Human Resources of their request to be reappointed. Positions are posted weekly at [Pima County Job Opportunities | Sorted by Job Title ascending | Current Job Opportunities \(governmentjobs.com\).](#)

For positions in which the employee deems themselves qualified:

- Employee must notify Human Resources of their request to be reappointed to the selected position;
- Human Resources will verify the employee meets the minimum requirements of the selected position;
- Human Resources will notify the Appointing Authority of the hiring Department of the reappointment request;
- The hiring Department may set up a time to meet with the

employee directly and make a determination of whether or not to reappoint the employee. This process can either be a competitive or non-competitive process as deemed by the Appointing Authority.

For an employee that meets the minimum qualifications, efforts will be made to reappoint the employee to the vacant position rather than recruiting from outside the County to fill the position; however, the Appointing Authority has the final discretion on whether to accept the employee as a reappointment or not.

9. How long will I be given to look for another position?

You will be given 30 days to search for a job for which you qualify; however, in no event will the job search go beyond January 31, 2022. Again, this only applies to employees who have been deemed working with vulnerable populations and that employee has requested a reasonable accommodation related to a COVID-19 vaccine mandate.

10. What happens between January 1, 2022 and January 31, 2022, if I am actively searching for a job?

During this time period you are not permitted to work. You will be required to use comp time, vacation accruals, or a leave without pay, in that order.

11. What is important to know as an employee who is being reappointed?

While every attempt will be made to reappoint an employee in the interactive process, the reappointment may end up in a lower salary if the selected position has a lower starting salary. Employees will not be permitted to retain their same salary unless the selected position is within the same salary grade as their current position. In addition, if the selected position is in a lower salary grade, this will not be deemed a demotion, but will reflect as a reappointment. Employees should also be mindful that a selected position may contribute to a different retirement system than they are currently contributing.

12. What happens if I am unable to be reappointed to another County position?

Employees who are unable to obtain a reappointment will be terminated from County employment after the 30-day search; however, in no event any later than January 31, 2022.



Board of Supervisors Memorandum

December 7, 2021

Process for Off-Boarding Unvaccinated Staff who work with Vulnerable Populations

Background

On November 2, 2021, the Board of Supervisors approved a plan to require COVID-19 vaccination of employees who work with vulnerable populations, with a deadline to become fully vaccinated against COVID-19 on or before December 31, 2021. "Vulnerable populations" were defined as those employees working in person with individuals confined either in a detention or correctional facility, as well as those that may be in a nursing home and/or assisted living facility, or who provide in-person direct services to children or the elderly on a regular or recurring basis.

A total of 2,168 employees¹ were identified by their Appointing Authorities as working with vulnerable populations. Of those 2,168 employees², 80 percent (1,741) have been verified by Human Resources as already fully vaccinated against COVID-19. The remaining **427 employees appear to be unvaccinated** as they have not yet been verified by Human Resources. Of those 427 employees, 414 are merit protected (classified) and 13 are unclassified. A total of 52 employees have requested a medical or religious accommodation.³

Off-Boarding Process

- *Merit Protected Employees*

Merit System Rules 11 and 12 cover the process for 414 employees who will be involuntarily terminated. Per Merit System Rule 11, the basis for the termination will be non-disciplinary:

An employee may be terminated for inability to meet the minimum qualifications, for failure to pass a required background check, or for failure to obtain and/or maintain licensing, certification or other requirements for the position currently held.

¹ No Courts staff are included in this count as we are awaiting the Supreme Court determination on current mandates and requirements as they apply to the Courts.

² Employee counts are as of November 18, 2021.

³ While there is no accommodation that can be made to permit unvaccinated employees to permit them to work with vulnerable populations, these employees can be eligible for reappointment as an accommodation, if they choose to request it, which is discussed in detail below.

The process requires:

1. **Notice of Intent to Involuntarily Terminate** – Written notification given to an employee identifying the Department’s *intent* to involuntarily terminate the employee on a future date and outlining the specific details/reasons for the involuntary termination.
2. **Pre-action Meeting** – A pre-identified meeting time for the employee to meet with the Department’s representative so they have an opportunity to give any facts/evidence as to why they should not be involuntarily terminated.
3. **Notice of Involuntary Termination** – Should the County determine that termination should proceed, written notification given to the employee of their involuntary termination, the specific reason(s) for the involuntary termination, and advisement of their right to appeal the action.

Each unvaccinated employee identified for involuntary termination must be given their own written notifications and Pre-Action Meeting, with sufficient time between the issuance of the Notice of Intent to Involuntarily Terminate and the Pre-Action Meeting. A period of three (3) days is typically given to allow the employee time to prepare a verbal and/or written response for the Pre-Action Meeting. Sufficient time must be given to allow Departments to draft the paperwork and conduct the meetings with employees. Employees will be permitted to continue to attend work until the process outlined above is completed.

- ***Unclassified Employees***

For the thirteen (13) unclassified employees and forty (40) probationary employees that work with vulnerable populations, they can be issued a letter notifying them that are in an “At Will” position, serving at the pleasure of the Department Head, and that their employment is being terminated as of a specific date. No formal process is required and the termination is effective as of the date specified.

- ***Reappointment Period for Employees Who Requested an Accommodation***

Fifty-two (52) of the 427 unvaccinated, vulnerable population-serving employees have requested a religious accommodation or an accommodation/exemption due to a disabling condition or medical contraindication. Employees who requested a religious accommodation or experience a medical contraindication will be permitted to request a reappointment as an accommodation.⁴ While the County is not required to provide this option, given the employee’s inability to become vaccinated due to a sincerely held religious

⁴ Those who have requested an accommodation due to a medical disability fall under Administrative Procedure 23-29, *Reasonable Accommodation of Applicants and Employees with Disabilities*, which affords its own reappointment process which will be applied to these employees.

belief or a medical contraindication, permitting a reappointment for this select group is an act of good faith by the County, before concluding the required interactive process.

To elect this option, an employee who requested a religious accommodation or provided documentation of a medical contraindication must submit their request for a reappointment **on or before December 31, 2021**. When requested, the employee will be given thirty (30) days as a reappointment period, a period of time during which they can locate and request another County position.⁵ *Employees will not be permitted to work during any part of their reappointment period that occurs from January 1, 2022 to January 30, 2022, but may use any available compensatory time or vacation accruals, or take leave without pay – leave must be taken in that order.*

A reappointment will only occur where all apply:

- The selected position does not serve vulnerable populations in person;
- The employee meets the minimum qualifications of the selected position;
- The selected position is the same salary grade or lower than the employee's current position; and,
- The Appointing Authority of the destination Department agrees to the reappointment.

The onus is on the unvaccinated employee to identify positions for which they qualify and to notify Human Resources. Human Resources will notify the Appointing Authority who can determine whether they would like to meet with the employee to see if the employee is a good fit for the position or whether they wish to retain their competitive hiring process. All reappointments are at the discretion of the Appointing Authority; however, should a Department decline a reappointment, it is recommended that Appointing Authorities document a business case as to why the reappointment is not provided. Where both the Appointing Authority and employee agree to the reappointment, Human Resources will ensure that any necessary approvals are obtained to effectuate the reappointment. An employee who is not successfully reappointed during the stated period will be terminated at the end of the reappointment period, or in this case, no later than January 30, 2022.

Timing of the Involuntary Terminations⁶

Allowing sufficient time to conduct the terminations is imperative. Our rules require notice of the involuntary termination and an opportunity to be heard by the employee. Currently there are 414 potential involuntary terminations to implement.

⁵ Reappointment, per Merit System Rule 1.52, is a competitive or non-competitive change in the assignment of an employee from one position to another of any classification having the same or lower salary grade.

⁶ All affected unvaccinated employees were formally notified by Human Resources on November 18, 2021, that they were in a position that worked with vulnerable populations and that they were required to be fully vaccinated against COVID-19 by January 1, 2022. This provides the employee six (6) weeks in which to become fully vaccinated by either the two-dose series or single-dose series.

The Honorable Chair and Members, Pima County Board of Supervisors
Re: **Process for Off-Boarding Unvaccinated Staff who work with Vulnerable Populations**
December 7, 2021
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Recommendation

Direct all Appointing Authorities to draft their Notices of Intent to Involuntarily Terminate and issue them to employees **no later than December 20, 2021**. Departments schedule Pre-Action Meetings with each employee, allowing a minimum of 30 minutes for each meeting, or longer if warranted. A final Notice of Involuntary Termination to be issued **no later than December 31, 2021**. Employees are permitted to work during the Pre-Action process; however, in no event later than December 31, 2021.

Sincerely,



Jan Lesher
Chief Deputy County Administrator

JL/dym – November 29, 2021

c: Carmine DeBonis, Jr., Deputy County Administrator for Public Works
Francisco García, MD, MPH, Deputy County Administrator & Chief Medical Officer,
Health and Community Services
Cathy Bohland, Director, Human Resources