

Answers to Town Hall Q&A

The following represents a consolidation of the questions that we were unable to address during NTEU's Town Hall meeting held on March 28, 2022:

Leave

Q: Is there a way to get COVID-19 Emergency Paid Leave (EPL) extended? I realize it was part of the American Rescue Plan Act of 2021 (Section 4001) and only applied to leave during the period of March 11-September 30, 2021, but it would help employees with young children tremendously. My children's (age 4 and 1.5 years) child care sites have closed for 5-10 days at a time due to COVID exposure/cases. This leaves me to use the little leave I have left. My low leave balance is largely due to having to exhaust annual and sick leave while on maternity leave in June-October 2020 as well as keeping my children home when they're the slightest bit sick due to COVID concerns.

A: On February 9, 2022, NTEU sent a letter to House Speaker Nancy Pelosi and Senate Majority Leader Chuck Schumer on the urgent need for Congress to pass legislation to provide federal workers with additional emergency paid leave. Last year, as part of President Biden's American Rescue Plan, Congress authorized emergency paid leave for federal employees who tested positive for COVID-19, interacted with someone who was infected with the virus, or were caring for an infected loved one. As the question noted, this program expired on September 30, 2021. The current guidance requires employees to use their own leave. This causes employees, through no fault of their own, to have to exhaust their personal leave.

On March 28, 2022, NTEU filed a petition with OPM asking it to issue regulations and updated guidance allowing weather and safety leave for non-telework-eligible employees who must quarantine or isolate because of COVID-19 exposure or infection.

NTEU will continue to fight every day to ensure that federal employees are able to stay home when sick without having to worry about losing a paycheck and that those who report to the worksite are in a safe and clean environment.

Return to Office

Q: Beyond filing a medical accommodation to remote work, is FNS providing individuals who have chronic illnesses and are still high(er) risk of contracting severe COVID-19, long haul symptoms, or death from COVID-19 any alternative options for working in office?

A: As part of the ongoing Return to Office negotiations, NTEU has made a proposal to permit employees to request an extension of their return to office date if the employee or a family member has a high-risk condition.

Q: Will immune compromised employees or senior (elderly) employees be able to remain in fulltime telework status? Will they need a doctor's note to do so?

A: Article 20, Section 20.07 of the FNS-NTEU National Agreement allows employees to request full-time telework that will be approved on a case-by-case basis. Employees with high-risk medical conditions can also request telework through the reasonable accommodation process. Further, as part of the ongoing Return to Office negotiations, NTEU has made a proposal to permit employees to request an extension of their return to office date if the employee or a family member has a high-risk condition.

Q: Is FNS doing anything to update the air filtration system at National Office? Is FNS also planning to redo the cubicle arrangements in National Office?

A: As part of the ongoing Return to Office negotiations, NTEU has made a proposal to allow the local Chapter President to raise local issues prior to employees returning to the workplace.

COVID-19 Vaccine Mandate

Q: What happens if my religious accommodation from receiving the COVID-19 vaccine is denied?

A: First, in January, 2022, a federal district judge in Texas issued a nationwide injunction against the federal employee vaccine mandate, temporarily preventing its enforcement. The government immediately appealed that decision to the Fifth Circuit Court of Appeals.

On April 7, 2022, that appellate court vacated the nationwide injunction and sent the case back to the district judge with instructions to dismiss the plaintiffs' challenge to the mandate. As of this writing, the district judge has not yet dismissed the case, so the injunction remains in effect.

In the event the injunction is lifted and FNS begins enforcement of the vaccine mandate and your request not to get vaccinated due to religious reasons is denied, you will have the option of appealing that denial. However your appeal will not prevent the Agency from starting disciplinary procedures for failure to follow the requirement to be vaccinated against COVID-19. NTEU will consider representing a dues-paying member during the EEO process. The assessments of whether an employee is entitled to a reasonable accommodation are fact-specific and require individualized determinations. For religious reasons, the threshold question is whether the employee has a sincerely held religious belief, practice, or observance that prevents them from receiving the vaccine. The law differentiates religious beliefs from personal beliefs that are political, sociological, or philosophical.

Q: Why didn't NTEU file a lawsuit challenging the Administration's requirement that all employees be fully vaccinated against COVID-19 unless they have a medical or religious exemption?

A: While the Administration did not issue its order until September, 2021, NTEU's sizeable staff of attorneys began researching the issue of required vaccinations well before then. NTEU discussed it during the virtual Spring Training Conferences in 2021 during the Case Law Update class. Multiple courts, including the United States Supreme Court, have held since 1905 that mandatory vaccinations are generally constitutional. The federal government, as an employer, has the legal right to require vaccines as a condition of employment. Two prior decisions of the Federal Labor Relations Authority upheld agency mandates for certain vaccinations. Unions could only negotiate the "impact and implementation" of the agencies' decisions, which NTEU has requested to do at all of the agencies where we represent employees, including FNS.

Grievance Process

Q: How can FNS be held accountable and/or the agreement be rewritten to ensure that managers are required to converse and speak with the employee during the first and second step without the agency attorney stating that "they are only there to listen"?

A: Article 50 of the FNS-NTEU National Agreement is the Grievance Procedure. Section 50.01(1) of Article 50 states: "The purpose of this Article is to provide a mutually acceptable method for prompt and equitable settlement of employee grievances. Most grievances arise from misunderstandings or disputes, which can be settled promptly and satisfactorily on an informal basis at the immediate supervisory level. Every appropriate effort shall be made to adjust grievances at the lowest level. Grievances shall be filed according to the procedures set forth in this Article and the Employer shall direct the grievance to the lowest level of authority at which relief can be granted." Further, the use of the word "meeting" at each of the steps of the grievance process means that the parties are coming together to attempt a resolution. If the Agency is refusing to speak during grievance meetings, then a grievance could be filed over that behavior to hold them accountable.

Q: What do we do when FNS does not resolve grievances at the lowest level possible?

A: The FNS-NTEU National Agreement provides for a three-step grievance process, with the grievance being heard by a higher-level management official at FNS at each step. If the grievance cannot be resolved during any of those three steps, NTEU National considers whether to invoke the grievance for arbitration. As the exclusive representative, only NTEU National can invoke arbitration. NTEU National takes grievances to arbitration in those instances where there is a reasonable likelihood of success on the merits. This means that NTEU believes we have a good chance of winning the case. Certain types of cases, such as suspensions of 15 days or more or discrimination complaints, can be challenged in other forums such as the Merit Systems Protection Board or the Equal Employment Opportunity Commission by the individual employee if NTEU does not agree to take the case to arbitration.

New Hires

Q: Please explain how it appears that new hires, reporting into National Office appear to be allowed to work in states that are not in the National office area, and the hiring announcement does not state "remote", but states as determined by the agency policy? Do the new hires, have a different policy, than current employees? Will this be resolved in the new CBA?

A: Article 12 in the FNS-NTEU National Agreement covers Merit Promotions and applies to all bargaining unit vacancies. Section 12.07 sets the criteria for what FNS is required to include in each vacancy announcement for bargaining unit positions, and that a copy of each vacancy announcement is to be provided to the corresponding Chapter President. If the vacancy announcements do not comply with this article, then a grievance would need to be filed within 60 days of the posting of the vacancy announcement.

Q: Are there any concerns regarding new hires coming in as remote or full time telework that could potentially have a negative impact on current FNS employees?

A: Article 12, Section 12.06 of the National Agreement requires FNS to consider internal candidates for positions before external candidates. In addition, Article 20, Section 20.06 provides "Where an employee's request for telework conflicts with the requests of other employees, to the extent that to grant approval would create a workload problem or insufficient office coverage as defined by Section 19.04(1)(ii), every effort will be made to reach an agreement among the affected employees. If these efforts fail, the employee with the most seniority (fixed by earliest entry on duty date with FNCS) would generally be given first priority, unless the Employer determines it is necessary to have certain skills or expertise available to meet work needs in the office at particular times."

Q: Is the union consulted beforehand if FNS decides to convert some positions to contractors or reduce manning?

A: Article 32, Section 32.06 of the FNS-NTEU National Agreement requires FNS to give NTEU, among other items, at least 60-days notice if it determines to contract out work traditionally performed by bargaining unit employees. The law under 5 USC §7106 gives management the right to make determinations with respect to contracting out work. Article 15 covers the procedures FNS is required to follow if there is a reduction in force.

Promotions and Discrimination

Q: There are still disparities in promotional opportunities with minorities. What can we do to change this? I know I've followed every step/request and I'm still seeing people strategically placed in positions over me and my peers.

A: It is against both merit system principles and discrimination laws for an agency to discriminate against an employee based on race, color, religion, sex, national origin, disability, age, or genetic information. A grievance or a complaint with the Equal Employment Opportunity Commission could be filed.

Telework

Q: *Since pilots usually have a defined start and end date with outcome measurements, will FNS be sharing any results of the full time telework "pilot" of FY17 anytime soon? If so, how will the results of the pilot impact MWRO staff?*

A: Article 20, Section 20.10 of the FNS-NTEU National Agreement covers the telework pilot.

Q: *How are some employees considered home based even though the department is dissolved and we have the same job title/work in the same branch? Please explain.*

A: Article 20, Section 20.09 of the FNS-NTEU National Agreement covers office closures and the allowance of those employees to work from home full-time.