

Hearing date: N/A
Hearing time: N/A
Judge/Calendar:

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF THURSTON

TEAMSTERS JOINT COUNCIL 28, on
behalf of its constituent local unions and
members,

Plaintiff,

v.

JAY INSLEE, in his official capacity as
Governor of the State of Washington and
WASHINGTON STATE, OFFICE of
FINANCIAL MANAGEMENT,

Defendants.

No.

**COMPLAINT FOR INJUNCTIVE
RELIEF**

COMES NOW Plaintiff Teamsters Joint Council 28, on behalf of its members, and by
and through its attorneys of record, Barnard Iglitzin & Lavitt, and complains and alleges as
follows:

I. NATURE OF THE ACTION

1.1 This action by Teamsters Joint Council 28 (Joint Council 28) is brought under its
associational standing as the representative of its constituent local unions, who are the collective
bargaining representatives of some 51,000 working people in the State of Washington. Joint
Council 28 brings this action for injunctive relief under RCW 41.80 and RCW 41.56.

1 1.2 Proclamations issued by Defendant Washington Governor Jay Inslee establishing
2 employment-based vaccine mandates will result in terminations of public employees represented
3 by Joint Council 28, who have not met the requirements of those Proclamations to be fully
4 vaccinated against COVID-19 by a date certain.

5 1.3 Joint Council 28 is concerned that those terminations will have a discriminatory
6 disparate impact on its local unions' Black, Indigenous, and other people of color (BIPOC)
7 Workers employed by State Agencies and employed in Educational Settings as those terms are
8 defined in Governor Jay Inslee's Proclamation 21-14.1. Communities of color have been
9 especially hard-hit by COVID-19, and racial minorities are at greater risk of getting sick and
10 being hospitalized with COVID-19 than are White individuals. Even so, COVID-19 vaccine
11 uptake has been slower in Black and Hispanic/Latinx communities than in other racial and ethnic
12 groups.

13 1.4 The Joint Council 28 seeks injunctive relief a) ordering Defendants to produce to
14 the Joint Council information it has requested so that the Joint Council can evaluate whether the
15 terminations resulting from implementation of Governor Inslee's Proclamations will have a
16 disparate impact on BIPOC workers represented by the Joint Council's constituent unions and b)
17 enjoining implementation of terminations under the Proclamations of Teamsters-represented
18 employees covered by the Proclamations until Defendants produce the requested information and
19 the Joint Council can evaluate the disparate impacts of the terminations on BIPOC workers to
20 determine if it needs to take further legal action to permanently enjoin the terminations of
21 unvaccinated employees.

22 **II. PARTIES, JURISDICTION AND VENUE**

23 2.1 Plaintiff Teamsters Joint Council No. 28 is a group of affiliated locals of the
24 International Brotherhood of Teamsters (IBT) and is comprised of all Local Unions affiliated
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1 with the IBT in the States of Washington, Alaska, and parts of Northern Idaho, except such
2 Local Unions as may be in the five southwest counties of the State of Washington. Members of
3 the constituent locals are members of Joint Council 28. The Joint Council is governed by an
4 Executive Board consisting of elected officers, who are responsible for setting policy for the
5 Joint Council and its affiliated locals and who have a broad range of authority over such issues as
6 jurisdictional disputes amongst Local Unions, approving private-sector contracts negotiated by
7 Local Unions, coordinating multi-union contract negotiations, educating unions and their staff,
8 advocating on issues pertaining to employee wages and benefits, and coordinating the Joint
9 Council's political agenda. Joint Council 28 is located in Tukwila, Washington, in King County.

10 2.2 Defendant Jay Inslee is the Governor of Washington State. Joint Council 28 sues
11 Jay Inslee in his official capacity. All acts alleged to have been done by Defendant Jay Inslee
12 were done under color of state law.

13 2.3 Defendant Office of Financial Management (OFM) supplies information, fiscal
14 services, and policy support for the Governor, the Legislature, and state agencies. It maintains
15 and publishes statistical information related to COVID-19 vaccination status for employees
16 covered by the Proclamation.

17 2.4 Jurisdiction of this Court arises pursuant to RCW 2.08.010.

18 2.5 Venue lies in this Court pursuant to RCW 4.12.020(2) and RCW 4.92.010(5).

19 III. FACTS

20 3.1 On February 29, 2020, Governor Inslee issued Proclamation 20-05, proclaiming a
21 State of Emergency for all counties in Washington as a result of the coronavirus disease 2019
22 (COVID-19) outbreak.

23 3.2 On August 9, 2021, Governor Inslee issued Proclamation 21-14, requiring, as a
24 condition of employment, all employees, on-site independent contractors, volunteers, goods and

1 services providers, and appointees of designated state agencies to be fully vaccinated against
2 COVID-19 on or before October 18, 2021. The Proclamation prohibits State Agencies and
3 operators of Educational Settings (as defined in the proclamation) from permitting workers
4 covered by the Proclamation from engaging in work for the agency after October 18, 2021, if the
5 worker has not been fully vaccinated against COVID-19 and provided proof thereof to the
6 employer.

7 3.3 On August 20, 2021, Governor Inslee issued Proclamation 21-14.1, amending
8 proclamations 20-05 and 20-14. This proclamation extended the employment-based vaccine
9 mandate to child-care settings, K-12 schools, colleges, universities, and community colleges
10 (educational settings).

11 3.4 On September 27, 2021, Governor Inslee issued Proclamation 21-14.2, amending
12 proclamations 20-05 and 20-14 to extend the employment-based vaccine mandate to certain
13 additional agencies.

14 3.5 Governor Inslee issued all four Proclamations in exercise of his emergency
15 powers under RCW 43.06.220(1)(h) and (3).

16 3.6 Governor Inslee maintains a webpage entitled “Vaccine Mandate Frequently
17 Asked Questions.” It states, in part: “All employees must be fully vaccinated by October 18,
18 2021 as a qualification of fitness for continued employment. Employees who refuse will be
19 subject to non-disciplinary dismissal from employment for failing to meet the qualifications of
20 the job.” It also states that employees who refuse to provide proof of vaccination “will be subject
21 to non-disciplinary dismissal from employment for failing to meet the qualifications of the job.”

22 3.7 Joint Council 28’s constituent local unions represent thousands of employees
23 covered by the State employment-based vaccine mandate. Such covered employees include but
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1 are not limited to: Washington State Department of Corrections (DOC) employees; State
2 enforcement sergeants; school district employees; school bus drivers; and paraeducators, among
3 other employee types. Many, if not most, of the Teamster-represented employees working for
4 public employers like the State and school districts were deemed essential workers and have
5 been required to be physically present at their work sites throughout the COVID-19 pandemic.

6 3.8 The Governor's Office and/or OFM possess data regarding which employees
7 subject to the Proclamations have and have not been vaccinated, which employees are subject to
8 termination for non-compliance, and the race and ethnicity of those employees.

9 3.9 By letter dated September 15, 2021, the Joint Council alerted Governor Inslee to
10 its concerns that the terminations of unvaccinated employees under the Proclamations might
11 have a disparate impact on the communities of color that are already hardest hit by the COVID-
12 19 pandemic. The employees who will be fired will not just lose a job; they stand to lose hard-
13 earned careers in stable, union-represented positions with strong wages, health insurance and
14 pensions, and other employment benefits that have allowed workers and their families to secure a
15 hard-fought place in the middle-class. Therefore, the Joint Council, on behalf of its constituent
16 local unions, has been investigating the possible disparate impacts of the terminations on workers
17 of color and legal action the Joint Council will consider taking in the event that the disparate
18 impacts of such terminations are not voluntarily addressed by the State.

19 3.10 As part of that investigation, the Joint Council requested information from the
20 Governor on September 15, 2021, which included, among other requests, documents reflecting
21 COVID-19 vaccination rates among the following groups, by racial group and/or ethnic group: a.
22 Washington residents; b. Employees of Washington State; c. Contractors with Washington State;
23 d. King County residents; and e. King County employees. It asked that this data be produced to
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1 reflect current data and historic data (weekly, or monthly, if maintained that way) since COVID-
2 19 vaccines became available in Washington. In the same request, the Joint Council asked for
3 documents reflecting the number of State employees and State contractors who, due to their
4 unvaccinated status and lack of exemption, currently stand to lose their jobs on October 18,
5 2021, by racial group and/or ethnic group. These requests were submitted via a Public Records
6 Act (PRA) request, and the Joint Council also sent those PRA requests directly to the Governor,
7 along with a request to talk with the Governor about the Joint Council's concern that the
8 terminations under the Proclamation will disproportionately impact BIPOC workers. The Joint
9 Council asked that the Governor take prompt action to mitigate the disparate impacts of the
10 COVID-19 vaccine mandate on workers based on their race or ethnicity.

11 3.11 The Governor responded that some of the information is maintained by the
12 Washington State Department of Health (DOH), to whom the Joint Council also submitted the
13 PRA request, and stated that other requested information would be produced on approximately
14 December 1, 2021. The DOH responded to the Joint Council's request with a link to the COVID-
15 19 Data Dashboard, suggested that the Joint Council seek records about the proclamations from
16 the Governor's Office, and stated that any responsive documents would likely be provided by
17 March 31, 2022. In other words, the Governor's Office and the DOH each directed the Joint
18 Council to request information from the other.

19 3.12 The Joint Council's law firm submitted a PRA request to the Governor's office on
20 October 6, 2021, seeking documents reflecting the number of Workers covered by Governor
21 Inslee's Proclamation 21-14.1 who are represented by any local of the International Brotherhood
22 of Teamsters who have been issued separation notices or pre-disciplinary *Loudermill* notices
23 under the Proclamation and, as to each, the Worker's: 1) Race/ethnicity, 2) Employing agency or
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1 entity, 3) The Teamsters Local that represents the employee, and 4) Basis for separation notice.
2 The Governor's office responded on October 11, 2021, that it did not have documents responsive
3 to this request, and suggested the request be submitted to OFM. On October 13, 2021, the Joint
4 Council submitted an identical PRA request to OFM. On October 18, 2021, OFM estimated that
5 it would provide responsive documents by October 29, 2021.

6 3.13 To date, most of the information requests have gone unanswered.

7 3.14 Due to the urgency and public importance of issues of race and national origin
8 discrimination, the October 18, 2021, deadline for vaccine compliance, and the failure of the
9 Governor or OFM to provide the requested information, on October 15, 2021, the Joint Council
10 re-submitted requests to the Governor's office and OFM pursuant to RCW 41.80 and RCW
11 41.56 for documents relating to the race and ethnicity of vaccinated individuals, individuals who
12 stand to lose their jobs under the Proclamations, and workers who have been issued separation
13 notices or pre-disciplinary *Loudermill* notices under the Proclamations. The Joint Council asked
14 for confirmation no later than the close of business on Monday, October 18, 2021, that the
15 information would be provided no later than noon on Wednesday, October 20, 2021. No such
16 confirmation was received and the information has not yet been produced.

17 3.15 The Defendants' failure to produce the requested information is hindering the
18 Joint Council's investigation into the possible disparate impacts of the terminations on its
19 members of color. The investigation is time-sensitive because the State and other employers
20 covered by the Proclamations will begin implementing separations of employment on October
21 18, 2021. In the event that a disproportionate number of workers of color will be terminated for
22 failure to be fully vaccinated against COVID-19, the disparate impact will result in substantial
23 and actual injury to the Joint Council's members.

1 **IV. ALLEGATIONS RELATED TO JOINT COUNCIL 28'S STANDING TO BRING**
2 **THIS ACTION**

3 4.1 Joint Council 28 acts in this suit on behalf of its constituent local union members,
4 and in turn on behalf of the members of those local unions who are covered by the
5 Proclamations' employment-based vaccine mandates.

6 4.2 Joint Council 28 has standing to bring this suit because (a) the aggrieved members
7 of Joint Council 28 and its local unions have standing to bring suit in their own right, (b)
8 preserving the employment of its members and ensuring they are free from discriminatory
9 employment practices is germane to the purpose and goals of Joint Council 28, and (c) none of
10 the claims asserted require the participation of the aggrieved Teamster members. Joint Council
11 28 seeks only injunctive relief, and such relief is uniform and, if successful, will inure to the
12 benefit all members equally.

13 **V. FIRST CAUSE OF ACTION**

14 **UNFAIR LABOR PRACTICE – RCW 41.56, RCW 41.80**

15 5.1 Plaintiff Joint Council 28 re-alleges and incorporates paragraphs 1.1 through 4.2,
16 above.

17 5.2 As part of its obligation to bargain in good faith, the State of Washington has an
18 obligation to provide information requested by the labor unions representing state employees.

19 5.3 The Joint Council's constituent local unions represent state employees,
20 contractors, and educational employees covered by Governor Inslee's Proclamations establishing
21 an employment-based vaccine mandate.

22 5.4 On behalf of its constituent local unions, the Joint Council requested information
23 from Governor Inslee and OFM related to the unions' performance of their duties as the
24 bargaining representatives of employees covered by the Proclamations, including to ensure that

1 Teamsters-represented employees are not subject to unlawful discrimination based on race and
2 ethnicity with regard to their employment as a result of implementation of the Proclamations.

3 5.5 To date, Governor Inslee and OFM have not produced the requested information
4 or engaged in negotiations about the document requests.

5 5.6 Defendants' failure to timely provide the requested information constitutes an
6 unfair labor practice under RCW 41.56 and RCW 41.80.

7 5.7 Defendants' failure to timely provide the requested information is causing the
8 Joint Council and its members irreparable harm.

9 VI. SECOND CAUSE OF ACTION

10 PUBLIC RECORDS ACT – RCW 42.56.080, RCW 42.56.550

11 6.1 Plaintiff Joint Council 28 re-alleges and incorporates paragraphs 1.1 through 5.7,
12 above.

13 6.2 RCW 42.56.080(2) provides that “[p]ublic records shall be available for
14 inspection and copying, and agencies shall, upon request for identifiable public records, make
15 them promptly available to any person including, if applicable, on a partial or installment
16 basis...”.

17 6.3 The Joint Council requested records from Defendants via Public Records Act
18 requests, and Defendants have, to date, failed to produce them.

19 6.4 The Governor and OFM failed to make the records requested by the Joint Council
20 promptly available for inspection or copying, especially in light of the urgency caused by the
21 October 18, 2021, employment-based vaccine mandate and the consequential loss of careers for
22 unvaccinated individuals, which may have a disparate impact on people of color.

23 6.5 The Defendants' PRA violations are causing the Joint Council and its members
24 irreparable harm.

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VII. REQUESTED RELIEF

Wherefore, Plaintiff hereby prays for the following relief.

7.1 For the following injunctive relief against Defendants:

7.1.1 an order directing Defendants to produce to the Joint Council information it has requested so that the Joint Council can evaluate whether the terminations being issued under the Proclamations will have a disparate impact on BIPOC workers represented by the Joint Council's constituent unions; and

7.1.2 an order directing Governor Inslee to prohibit implementation of terminations under the Proclamations of Teamsters-represented employees covered by the Proclamations until Defendants produce the requested information and the Joint Council can evaluate the disparate impacts of the terminations on BIPOC workers and consider whether further legal action is appropriate.

7.2 For an award of attorney's fees and costs; and

7.3 For such other relief as the court deems just and equitable.

DATED this 19th day of October, 2021.

s/Kathleen Phair Barnard

Kathleen Phair Barnard, WSBA No. 17896

s/Jennifer L. Robbins

Jennifer L. Robbins, WSBA No. 40861

s/Dmitri Iglitzin

Dmitri Iglitzin, WSBA No. 17673

BARNARD IGLITZIN & LAVITT LLP

18 W Mercer St, Suite 400

Seattle, WA 98119

(206) 257-6002

(206) 257-6038

barnard@workerlaw.com

robbins@workerlaw.com

iglitzin@workerlaw.com