

JUL 22 2021

1071 Grandview Lane  
Pawhuska, OK 74056



BY

  
T: 918-287-5514  
F: 918-287-5468

July 22, 2021

**OPINIONS OF THE ATTORNEY GENERAL  
OF THE OSAGE NATION  
ONAG-2021-02<sup>1</sup>**

**QUESTIONS SUBMITTED BY:** The Honorable Geoffrey M. Standing Bear, Principal Chief of the Osage Nation.

This Office has received your request for an Official Attorney General Opinion compulsory face covering and vaccinations for employees of the Osage Nation.

**I. QUESTIONS AND SHORT ANSWERS**

**1. Whether the Osage Nation can compel its employees to wear a face covering?**

Yes, while the Nation cannot “compel” its employees to wear face coverings, the Nation can condition continued employment upon wearing face coverings while at work.

**2. Whether the Osage Nation can compel its employees to be vaccinated against COVID-19?**

Yes; however with a few exceptions. Any COVID-19 vaccine mandate adopted by the Nation must comply with the laws of the Osage Nation (and any applicable federal laws), and must permit exemptions for medical reasons and sincerely held religious beliefs. The Nation may not compel employees funded by certain federal grants, compacts, or contracts who have certain medical conditions or sincerely held religious beliefs to obtain the vaccine.

---

<sup>1</sup> NOTICE: This opinion is subject to formal revision before official publication. Readers are requested to notify the Office of the Attorney General using the header information, or at AttorneyGeneralOffice@osagenation-nsn.gov, of any typographical or other formal errors, so that corrections may be made prior to official publication.

## II. DISCUSSION

In writing this opinion, we are guided by the unique Osage value •••••, “to do one’s best,” and the fundamental values mandated by our Nation’s Constitution, “Justice, Fairness, Compassion and Respect for and Protection of Child, Elder, All Fellow Beings, and Self.” *Osage Const. pmbl.*

### 1. Mandatory Face Coverings

Question One asks whether the Osage Nation can compel its employees to wear a face covering. This Office answers this question in the affirmative for several reasons. First, the Osage Nation, as an employer, generally possess significant authority to prescribe the manner in which employee perform their tasks. In addition, the Osage Nation, as a landowner, generally possess significant authority to prescribe the manner in which employees and guests conduct themselves on the Nation’s property. The Osage Nation’s general authority over its employees may be limited by applicable law<sup>2</sup> or the terms of an employment contract; however, this Office is not aware of any applicable law that would categorically prevent the Nation from adopting a mandatory face covering policy.

In certain circumstances, applicable federal law may require the Nation provide employees an exemption, such as for employees with health impediments. Since these cases must be reviewed on a case-by-case basis to determine whether the facts or any applicable law justify such an exemption, further discussion is not warranted. In cases where the employee has a health condition which prevents the employee from wearing a facemask, the Osage Nation may modify the employee’s duties to provide the employee with reasonable accommodations, such as: elimination

---

<sup>2</sup> For example, some funding agreements, grants, compact, or contracts may incorporate the *American with Disabilities Act*, the *Civil Rights Act of 1964*, or similar other Federal or State laws.

or substitution of particular “marginal” functions (less critical or incidental job duties as distinguished from the “essential” functions of a particular position); limiting contact with other employees or non-employees; erecting barriers between other employees and non-employees; modifying ventilation systems in the workspace; permitting telework (if appropriate); temporary modification of work schedules (if that decreases contact with coworkers and/or the public when on duty or commuting); moving the location of where one performs work or reassigning the employee to a vacant position in a different workspace (for example, moving a person to the end of a production line rather than in the middle of it if that provides more social distancing); etc.

## **2. Mandatory Vaccinations**

A. **Generally.** Question Two asks whether the Osage Nation can compel its employees to be vaccinated against COVID-19. Similar to Question One, this Office answers this question in the affirmative for several reasons; however with several exceptions (noted below). As noted above, the Osage Nation, as an employer, generally possess significant authority to prescribe the terms and conditions of employment. In addition, the Osage Nation, as a landowner, generally possess significant authority to prescribe the terms and conditions for entry on the Nation’s property. Like Question One, the Osage Nation’s general authority over its employees may be limited by applicable law<sup>3</sup> or the terms of an employment contract; however, this Office is not aware of any applicable law that would categorically prevent the Nation from adopting a mandatory vaccination policy provided the Nation adopt some exemptions.

### **B. Exemptions.**

---

<sup>3</sup> While many Federal laws are generally inapplicable to an individual’s employment with the Osage Nation, certain Federal laws may be made applicable through grant agreements, funding agreements, compacts, or contracts. Since it is impracticable to analyze which Federal laws apply to which employees, this Opinion merely notes that it is a possibility and due consideration should be made to each employment relationship.

i. **Medical Exemptions.** Although the Center for Disease Control, and virtually all other government agencies, are recommending individuals obtain a COVID-19 vaccination; there may be circumstances where an employee's health background may prevent them from obtaining the vaccination.<sup>4</sup> Each employee should be encouraged to consult with their health care professional before obtaining any vaccines. In the event an employee's health care provider advises against the employee obtaining the vaccine, each case must be made on an individual basis and any applicable law must be reviewed. In the event an employee is advised not to obtain the vaccine, the Osage Nation may modify the employee's duties to provide the employee reasonable accommodations similar to those mentioned for employees unable to wear a facemask. *See above.*

ii. **Religious Exemptions.** Under *Art. IV, § 3* of the *Constitution of the Osage Nation*, citizens of the Osage Nation provided "[t]here shall be certain inalienable rights, which shall not be abridged or denied by any branch/department of the Osage Nation government or by any official of the government." Additionally, *Art. IV, § 3* provides "nothing in this Constitution shall be interpreted in a way that would diminish the rights and privileges of any person within the jurisdiction of the Osage Nation." Included in the list of inalienable rights is the free exercise of religion. *Osage Const. Art. IV, § 3 (A)*. Accordingly, the Osage Nation may not require employees whose sincerely held religious beliefs prevent them from obtaining the COVID-19 vaccination to get the vaccine. However, in lieu of requiring vaccination, the Osage Nation may provide reasonable accommodations for any unvaccinated employee, such as requiring the individual to wear a facemask, work at a social distance from co-workers or non-employees, work a modified

---

<sup>4</sup> DO NOTE, as of the date of this Opinion, the Center for Disease Control has not identified any medical conditions that would prevent an individual from obtaining the COVID-19 vaccination. For more information, see <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/recommendations/underlying-conditions.html>, (date last accessed: July 22, 2021).

shift, get periodic tests for COVID-19, be given the opportunity to telework, or finally, accept a reassignment.

### III. CONCLUSION

**It is, therefore, the official opinion of the Attorney General:**

The Osage Nation may require employees to wear facemasks and obtain a vaccination for COVID-19, with some exceptions.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Clint Patterson", written over a horizontal line.

Clint Patterson, Attorney General