



The ADVOCATE

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This edition of The Advocate includes Command Services and Legal Assistance topics. The articles are designed as a quick reference and overview on these subjects. Please do not hesitate to reach out to us for legal advice. To speak with an attorney, please contact us at RLSONDWLEGALASSISTANCE@NAVY.MIL.

COVID-19 VACCINE MANDATE: EVOLVING GUIDANCE AND PROCEDURES

- LT Laura Supple & LT Kyra Ziesk-Socolov, JAGC

Mandatory Vaccination

***COVID-19
Vaccine
Mandate:
Evolving
Guidance &
Procedures***

In recent months, the Department of the Navy (DON) has taken significant steps to counter the ongoing threat posed by the COVID-19 pandemic to the health and safety of the Fleet. On 31 Aug 2021, NAVADMIN 190/21 announced the Navy's mandatory COVID-19 vaccination policy. The NAVADMIN implemented a 24 Aug 2021 memorandum from the Secretary of Defense requiring vaccination against COVID-19 for all DoD service members. Navy Sailors will be fully vaccinated against COVID-19 with vaccines that have received Food and Drug Administration licensure or through the voluntary administration of vaccines under FDA Emergency Use Authorization (EUA) or World Health Organization (WHO) Emergency Use Listing. The NAVADMIN set firm deadlines for vaccination: Sailors on active duty were required to be vaccinated by 28 November 2021, while reservists were required to be compliant by 28 December 2021. The Navy's definition of "fully vaccinated" required service members to be at least two weeks past their second shot (or two weeks past their vaccine date for a single-dose vaccine like Johnson & Johnson) by the deadline to be compliant with the NAVADMIN.

While the 31 Aug NAVADMIN provided Sailors with clarity about the deadline for full vaccination, it left several important questions unanswered, including what would ultimately happen to service members who continued to refuse the COVID-19 vaccine or would not be vaccinated by the mandatory deadline.

Further, while the NAVADMIN did explain that these Sailors' cases would be handled by a designated COVID Consolidated Disposition Authority (CCDA) with access to the full range of administrative and disciplinary responses, the NAVADMIN did not indicate who the CCDA would be, or how the Navy intended to address service members who continued to refuse the vaccine.

**COVID-19
Vaccine Mandate:
Evolving Guidance
& Procedures
(cont.)**

Disciplinary Consequences

Sailors gained additional insight into the processes and disciplinary consequences associated with continued vaccine refusal on 14 Oct 2021, when the Navy released NAVADMIN 225/21. This NAVADMIN identified the Chief of Naval Personnel (CNP) as the CCDA, and clarified that any Navy service member who refused the COVID-19 vaccine and was not fully vaccinated by the applicable deadline, absent a pending or approved vaccination exemption request, would be processed for administrative separation. All separation proceedings associated with COVID-19 vaccine refusal will be centralized under the CCDA, with the exception of Entry Level Separations (ELS)(only available for Sailors in their first 180 days of continuous active duty service). Commanders and commanding officers remain the ELS separation authority under the NAVADMIN. Officer promotions and enlisted advancements will also be withheld for any Sailor refusing the vaccine.

Vaccination Exemptions

Exemptions to immunization requirements fall into one of three categories: medical, administrative, or religious.

Medical

Medical exemptions are applicable if a Sailor's medical history suggests that getting a given vaccine would adversely impact their health (e.g. underlying medical conditions, allergies to vaccine ingredients). Medical exemptions are generally of indefinite duration unless the exemption is granted in response to a temporary health condition like pregnancy or hospitalization. Sailors seeking medical exemptions should contact a military physician.

Administrative

NAVADMIN 225/21 specifies that Sailors who will begin terminal leave on or before their applicable vaccination deadline may be administratively exempted from receiving the vaccine. See BUMEDNOTE 6150 (21 Sep 21) and BUMEDINST 6230.15B for more information.

Religious

If the COVID-19 vaccine substantially burdens a service member's sincerely-held religious beliefs, the Sailor may request a waiver by routing a religious accommodation package via their commanding officer to the Deputy Chief of Naval Operations (Manpower, Personnel, Training and Education) (DCNO (N1)). DCNO (N1) is the decision authority on all religious accommodation requests. Service members seeking religious accommodations must be counseled by a qualified healthcare provider on the medical risks associated with refusing the vaccine and must conduct an administrative interview with a Navy chaplain prior to submitting a package. Reference DoDI 1300.17 (Religious Liberty in the Military Services), BUPERSINST 1730.11A (Standards and Procedures Governing the Accommodation of Religious Practices), and MILPERSMAN 1730-020 (Immunization Exemptions for Religious Beliefs) for additional information on requesting a religious accommodation.

If you have any questions, please contact your chain of command or your local SJA office!

TAX RULES IN PLAY FOR SAILORS AND THEIR SPOUSES IN THE NATIONAL CAPITAL REGION

- *LT Thaddeus Tate, JAGC*

The Servicemember's Civil Relief Act (SCRA) and tax laws in Virginia, Maryland, and the District of Columbia contain provisions which give tax protections and means for recouping wrongfully taxed pay to Sailors and their spouses.

Sailor Taxability

A key factor involved in determining an individual's ability to be taxed by a given jurisdiction is whether the individual is a resident of the taxing jurisdiction. Here, SCRA plays an important role. Under the SCRA, a Sailor neither loses nor gain a residency for tax purposes (person, personal property, or income) by being present in a tax jurisdiction when his presence is solely pursuant to orders. 50 USC § 4001(a)(1).

The SCRA also bars a tax jurisdiction in which a servicemember is a non-resident or not domiciled from taxing his military compensation. 50 U.S.C § 4001(b).

Military Spouse Taxes

Like Sailors, military spouses are also afforded tax protections under the SCRA. First is tax residency loss protection; under which a military spouse neither loses nor gains residency or domicile for tax purposes (person, personal property, or income) by being present in a tax jurisdiction solely because their spouse is present pursuant to military orders. 50 U.S.C § 4001(a)(2).

A military spouse's income is protected in a similar fashion under the SCRA. The law excludes income earned by a military spouse from being deemed income earned within a tax jurisdiction in which the spouse is a non-resident or not domiciled if the income is earned because the military spouse is in the jurisdiction solely to be with the servicemember serving in compliance with military orders. 50 U.S.C § 4001(a)(2)(A).

Military spouses can also elect to be residents of the Sailor-spouse state of residence. The SCRA allows for any taxable year of the marriage, a military spouse may elect to use the same residence for tax purposes as the servicemember regardless of the date on which the marriage of the spouse and the servicemember occurred. 50 U.S.C § 4001(a)(2)(B).

*Tax Rules in Play
for Sailors and
Their Spouses in
the National
Capital Region
(cont.)*

Property Taxes

The SCRA shields Sailors and their spouses from personal property taxes. Sailors and their spouses' personal property are deemed to be not located or present in tax jurisdictions in which the Sailor is serving pursuant to military orders. However, if the Sailor is in their state of residency, the protection does not arise and the Sailor is liable for the personal property taxes. Additionally, personal property used as part of a trade or business is not shielded from taxation, regardless of residency or domicile status. 50 U.S.C § 4001(d)(1)-(2).

Example – Seaman Tate's Honda Civic and Mrs. Tate's Toyota Corolla are personal property items which Virginia would not be able to tax because they are not residents. However, the food truck the pair purchased to launch their new food truck business, Tate's Tacos and Tortas, would be a taxable piece of personal property as it is used for business purposes.

State and D.C. Law

The federal provisions discussed above supersede any provisions of state tax laws with which they conflict. As a result tax jurisdictions universally try to comport their tax laws to the federal despite it not being clear at times what the state law means. Virginia, Maryland, and D.C.'s tax laws have many similarities in how they address military members and are nearly uniform for non-residents. They tend to diverge with regard to the taxing of in-state residents.

COMBATTING IDENTITY THEFT AND SOCIAL SECURITY FRAUD

- LTJG Thejasa Jayachandran, JAGC

In this day and age, stolen identities are more commonplace than stolen goods. Identity theft affects everyone and can lead to debilitating financial consequences if you do not take the proper steps to mitigate it. In this case, the best solution is prevention. But if you are unsuccessful in preventing identity theft, you can still protect yourself by contacting the right authorities.

Ways to prevent identity theft:

- 1) Do not carry around important documents, like your birth certificate, passport, or Social Security Card unless necessary. These should be safely stored in your home when not being used.
- 2) Contact your phone company and post office to remove your address, and phone number from marketing lists.
- 3) Unsubscribe from marketing emails to avoid phishing.
- 4) Cancel unused credit cards and only provide your credit card information to trusted sources.
- 5) Pull and review your credit report from the three credit reporting agencies once a year.
- 6) Shred all important documents.
- 7) Avoid sharing your PIN numbers unless necessary.
- 8) Depersonalize PINs and passwords.

What to do if you are a victim of identity theft? Notify!

- 1) Notify the fraud divisions of the three credit reporting agencies: Trans Union, Experian, and Equifax. Request that they flag your account and request that creditors call you before issuing new credit accounts.
 - Equifax: 1-800-525-6285 or <http://www.equifax.com>
 - Trans Union: 1-800-680-7289 or <http://www.tuc.com>
 - Experian: 1-800-301-7195 or <http://www.experian.com>
- 2) Notify the police to leave a paper trail.
- 3) Notify your bank and credit card companies and close any affected accounts.
- 4) Notify any involved institutions (e.g. If you are the victim of social security fraud, contact the Social Security Administration)
- 5) Change your PIN numbers and passwords.

What to do if you are a victim of Social Security fraud?

- 1) Check your SSA earnings record by calling 1-800-772-1213 and asking for a Form SSA-7004, Request for Earnings and Benefit Estimate Statement.
- 2) Contact the Social Security Fraud Hotline at 1-800-269-0271 or oig.hotline@ssa.gov.
- 3) Notify the Federal Trade Commission at 1-877-438-4338 or <http://www.consumer.gov.idtheft>.
- 4) File a report with the local police and keep a copy of the report for your records.
- 6) Contact the fraud units of the three credit reporting bureaus and request that they flag your account and request that creditors call you before issuing new credit accounts.
- 5) Report fraud for any affected accounts to your creditors.
- 6) Under certain circumstances, the Social Security Administration will assign you a new SSN. To apply, complete Form SS-5, Application for a Social Security Card.

It is important to remember that identity theft can negatively impact your credit score, ability to qualify for home loans, job prospects, and even your security clearance. The best way forward is to stay vigilant and maintain proper cyber hygiene.

COMMAND SERVICES STAFF JUDGE ADVOCATE DIRECTORY

The mission of the command services department is to provide prompt and effective legal services to commands throughout the Naval District Washington area of responsibility. The following is a list of contacts for each installation:

NSA Washington/Washington Navy Yard – (202) 685-0937

NSA Bethesda – (301) 400-2236

NSA Annapolis – (410) 293-9203

NAS Patuxent River – (301) 342-1934

NSA South Potomac – (301) 342-1934

For NDW related issues, please contact:

Naval District Washington

- Staff Judge Advocate (202) 433-2424
- Deputy Staff Judge Advocate – (202) 433-2423

RLSO NDW LEADERSHIP

COMMANDING OFFICER: CAPT David Gonzalez
EXECUTIVE OFFICER: CDR Sara DeGroot
SENIOR ENLISTED LEADER: LNCS Bonnie Vermillion

RLSO NDW Leadership

COMMAND SERVICES DEPARTMENT HEAD: LCDR Stephen Buckley
TRIAL DEPARTMENT HEAD: LCDR Brandon Sargent
LEGAL ASSISTANCE DEPARTMENT HEAD: Ms. Erica S. Riley/Mr. Kurt Gilabert

COMMAND DUTY OFFICER: (571) 379-6030
COMAND E-MAIL: RLSO.NDW@NAVY.MIL
LEGAL ASSISTANCE E-MAIL: RLSONDWLEGALASSISTANCE@NAVY.MIL

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