

2. Plaintiff's suggestion that time is "critical" because "Defendant can initiate Plaintiff's termination proceedings on the day of his choosing," Opp. at 3, is also wrong. As set out in Defendant's motion, Plaintiff has a pending exception request, and as long as that request is pending, he will not be subject to discipline. *See* Mot. at 2. Pursuant to guidance issued by the Safer Federal Workforce Task Force, if his request is denied, he will have two weeks from the date of that denial to begin the vaccination process before being subject to discipline. *See* Task Force, Frequently Asked Questions, Vaccinations, Limited Exceptions to Vaccination Requirement, <https://www.saferfederalworkforce.gov/faq/vaccinations> (last visited Nov. 24, 2021). Plaintiff offers no response other than to suggest that he could not consent to the requested extension because his agency did not approve a sick leave request.

3. The Fifth Circuit's decision in *BST Holdings, LLC v. OSHA*, --- F. 4th ----, 2021 WL 5279381 (5th Cir. Nov. 12, 2021), does not bear on the extension requested by Defendant, *contra* Mot. at 5. At an appropriate time, Defendant will explain that *BST Holdings* does not govern this case, which challenges action taken by the government in its capacity as an employer. *Cf. Engquist v. Or. Dep't of Agric.*, 553 U.S. 591, 598 (2008) (recognizing that "the government as employer indeed has far broader powers than does the government as sovereign"). For present purposes, however, the question is only one of scheduling: the Court should not put Defendant to the burden of moving to dismiss a pleading that Plaintiff is seeking to amend.

WHEREFORE, Defendant respectfully requests that the Court extend his deadline to respond to the original complaint to thirty days following any order denying Plaintiff's motion for leave to amend.

Dated: November 24, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 24, 2021, a copy of the foregoing was filed electronically via the Court's ECF system, which effects service upon counsel of record.

/s/ Steven A. Myers
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