

LABOR AND EMPLOYMENT LAW

INFORMATION MEMO

MAY 25, 2023

New York Department of Health Commissioner Recommends Repeal of the Healthcare Worker Vaccine Mandate

On Aug. 26, 2021, the New York State Department of Health (DOH) implemented an emergency regulation requiring covered health care employers, including hospitals, to “continuously” ensure that their “personnel” are fully vaccinated against COVID-19. See N.Y. Comp. Codes R. & Regs. Tit 10, § 2.61 (the DOH Mandate). The DOH Mandate stated that healthcare personnel were required to receive a first dose of a COVID-19 vaccine by Sept. 27, 2021 “absent receipt of an exemption as allowed” by the regulation. The DOH Commissioner permanently adopted the DOH Mandate in June 2022.

Since its adoption, the DOH Mandate has been the subject of frequent litigation in both state and federal courts. As covered in our previous blog posts ([here](#) and [here](#)), the DOH Mandate was recently struck down by one New York State Supreme Court Justice, and that case is now pending before the Appellate Division, Fourth Department.

However, before the Fourth Department could issue a decision on whether the DOH Mandate is valid and enforceable, on May 24, 2023, the DOH Commissioner issued a “[Dear Administrator](#)” letter, which recommends that the DOH repeal the DOH Mandate. The letter notes that the recommendation is subject to consideration by the Public Health and Health Planning Council, and that until the recommendation is adopted, the DOH Mandate will remain in place.

Importantly, the Commissioner’s letter also states that, effective immediately, the DOH will cease citing providers for failing to comply with the DOH Mandate. The letter cautions that the DOH may continue to seek sanctions against providers based upon previously cited violations that allegedly occurred but clarifies that the DOH will stop enforcing the mandate prospectively.

If you have any questions about these issues, or any of the information contained in this memo, please contact [Adam Mastroleo](#), [Hannah Redmond](#) or the Bond attorney with whom you are regularly in contact.

