CLIENT ALERT: New York Trial Court Strikes Down New York City's COVID-19 Vaccine Mandate for Public Employees

In a rare decision finding a COVID-19 vaccine mandate unlawful, on October 24, 2022, a New York trial court struck down the City of New York's COVID-19 vaccine mandate for public employees. Justice Ralph Porzio of the New York State Supreme Court in Richmond County wrote that the Commissioner of Health and Mental Hygiene's order requiring vaccination against COVID-19 as a condition of employment with the City of New York violated the impacted employees' substantive and procedural rights under the New York Constitution and was an arbitrary and capricious exercise of executive authority. He ordered the petitioners—former employees of the Department of Sanitation who were terminated due to noncompliance—to be reinstated with back pay.

The Commissioner originally issued the order on October 20, 2021, which required all City employees to show proof of at least one dose of the COVID-19 vaccine. On December 13, 2021, the mandate was extended to cover employees in the private sector. On March 24, 2022, Mayor Eric Adams signed an executive order providing blanket exemptions from the private employee vaccine mandate for athletes, performers and other artists. However, on September 20, 2022, Mayor Adams announced that the private sector vaccine mandate would be lifted in its entirety effective November 1, 2022.

The court found that Mayor Adams' executive order exempting certain employees from the vaccine mandate resulted in the mandate being "arbitrary and capricious," meaning it was so lacking in reason for its promulgation that it is essentially arbitrary. The executive order, in the court's view, was capricious in that it altered the nature of the mandate so that it applied differently to similarly-situated employees in identical circumstances (i.e., unvaccinated private employees were treated differently from unvaccinated public employees). This amounted to a violation of the public employees' constitutional right to equal protection under the law.

The court also held that in issuing the mandate, the City's executive branch usurped the power of the legislature, violating the principle of separation

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of powers. Though the court affirmed the authority of the City to issue the mandate, it specified that such mandates must be temporary and tied to an ongoing public health emergency. Further, the court stated that if the order were truly about public health, rather than compliance, then unvaccinated workers would have been placed on leave as soon as the mandate was issued, rather than remaining on full duty for months while their medical and religious exemption requests were considered.

The City has appealed the decision. MBJ will continue to monitor this and other cases involving COVID-19 vaccine mandates in different jurisdictions throughout the country. Employers are encouraged to contact their MBJ attorney with any questions about COVID-19-related issues to ensure they remain compliant with this constantly evolving area of law.

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