CLIENT ALERT: Supreme Judicial Court Upholds the City of Boston's COVID-19 Vaccine Mandate for City Employees

On March 30, 2023, the Supreme Judicial Court of Massachusetts reversed a decision of a single Justice of the Appeals Court, which had issued a preliminary injunction, preventing the City of Boston from enforcing its COVID-19 vaccination policy for all City employees. The firefighters union and two police unions sought to prevent the application of the vaccine requirement for its members, alleging that the City did not bargain with them over the policy. In vacating the injunction, the SJC held that the City's decision to require its employees to be vaccinated against COVID-19 was outside of the scope of required bargaining with City unions – particularly in light of the emergency created by the pandemic.

In August 2021, the City and two of the plaintiffs, unions that represent firefighters and police within the City, had bargained memoranda of agreement (MOAs) around the City's policy of mandatory vaccination. Those memoranda provided, as an alternative to vaccination, that employees could submit proof of a negative COVID-19 test every seven days to comply with the policy. As the Pandemic continued to evolve, the City updated its policy to mandate that all City employees be vaccinated against COVID-19 as a condition of employment, removing the testing alternative. Three unions challenged the City's modified policy requiring vaccination of all employees.

The SJC held that in light of the unique circumstances of the COVID-19 pandemic and its threat to public health and safety, the City's decision to change the policy was a nondelegable core decision that could not be the subject of mandatory decision bargaining. The court reasoned that a decision bargaining requirement would have impinged directly on the City's ability to provide essential public safety services to City residents. In dismissing the argument that the prior MOAs precluded the City from making any future vaccine policy changes without union agreement, the court suggested that any such agreement would likely be unenforceable in light of the public health emergency, as delegating away the authority to make unilateral decisions on matters of public health, safety and welfare would be contrary to the public interest.

The SJC also pointed to the requirement that a preliminary injunction must promote the public interest, or not adversely affect the public. The SJC explained that the City had a scientific basis to believe that public interest would be served by implementing the vaccine mandate, not by enjoining it.

The Unions had simultaneously filed claims with the Department of Labor Relations (DLR) and the Commonwealth Employee Relations Board (CERB), making the same arguments. Earlier this year, the DLR and the CERB both also found that the City was not required to bargain regarding its decision to depart from the previously negotiated MOA and issue a new COVID-19 vaccine policy.

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Dave Connelly and Morgan, Brown & Joy successfully represented the City in defending the underlying merits of those bargaining claims before the DLR and the CERB. The SJC's reasoning mirrors and adopts the reasoning of the DLR's and CERB's rulings in those cases, MBJ will continue to monitor this case and other cases involving COVID-19 vaccine mandates.

Employers are encouraged to contact their MBJ attorney with any questions about COVID-19-related issues to ensure they remain compliant with current law.

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This alert was prepared on March 30, 2023.

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