

Home Care Developments

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New York Healthcare Worker Vaccine Mandate Litigation Heats Up

Earlier today, a federal court judge for the Northern District of New York granted a temporary restraining order (the “Order”) against the enforcement of the State’s vaccine mandate for healthcare workers but only “to the extent that the DOH is barred from enforcing any requirement that employers deny religious exemptions from COVID-19 vaccination or that they revoke any exemptions” that were already provided. The Order further bars the DOH from “interfering in any way with the granting of religious exemptions from COVID-19 vaccination going forward.” **The Court did not invalidate the New York State vaccine mandate entirely.** Rather, the Court has prohibited the Department from enforcing the vaccine mandate in any manner that would disregard employees’ religious reasons for refusing to take the COVID-19 vaccines.

As our readers know, New York’s vaccine mandate was adopted by the DOH on August 26 and, as adopted, the mandate only exempted from its requirements those employees who were unable to become vaccinated due to medical reasons. The vaccine mandate, thus, did not expressly allow for religious objections as a way to avoid the general vaccination mandate. Today’s Order effectively forces the Department to allow covered healthcare providers to recognize their employees’ religious beliefs as a second exemption.

On Sunday, in a separate federal lawsuit out of Brooklyn, three New York nurses ~~lost~~ their legal challenge to the State’s healthcare worker vaccination mandate. In *We The Patriots USA Inc., et al. v. Hochul et. al.*, the nurses argued that New York’s vaccination mandate for healthcare workers violated their Constitutional rights, including their First Amendment right to practice religion. These were the same arguments that were successful in today’s litigation out of the Northern District of New York. The three nurses sought a temporary restraining order and an injunction against the vaccination mandate. The Court, without providing an opinion, rejected the nurses’ motion. The plaintiffs immediately filed an appeal.

To summarize, as of today, there are two conflicting decisions regarding the same vaccine mandate. One federal judge upheld the Department’s mandate entirely, while the second federal judge upheld the mandate but created an exception for those employees with sincerely held religious belief that prevent them from becoming vaccinated. Today’s Order is on schedule to be fully briefed and decided by the end of September, but these issues are likely to be appealed further.

Today’s case, out of the Northern District of New York, was filed by the Thomas More Society, a Chicago-based “not-for-profit, national public interest law firm dedicated to restoring respect in law for life, family, and religious liberty.” Their 205-page complaint was filed yesterday, and the Order was granted today. Given their mission and, most likely, deep pockets, the Thomas More Society will probably continue to litigate this matter, even potentially to the United States Supreme Court.

As providers wait on the litigation dust to settle and resolve, we wish to emphasize the

following:

1. As of today, there is no all-encompassing prohibition on New York's healthcare worker vaccination mandate. The mandate is still scheduled to take effect on October 7 for covered healthcare providers. Today's Order, should it be upheld, merely creates an additional basis to grant exemptions to those workers who have a sincerely held religious belief against the COVID-19 vaccine. Thus, employers should not cease their efforts to vaccinate their workforce and secure proof of vaccination or medical exemptions by October 7.

2. A religious exemption is not a panacea, and it cannot be automatically granted to everyone who requests it. Only exemptions based on "sincerely held religious beliefs" are permissible. Thus, an employee that invokes a religious reason as an objection to the vaccine mandate would have to establish that their religious beliefs bar prohibition, at a time when many rabbis, ministers, and other religious leaders have endorsed vaccination. The difficult task of determining who has a sincere religious reason for not taking the vaccine (versus a philosophical, medical or political reason) would be on the employer. And employers that wrongfully deny an exemption request from an employee can be sued under various federal and State laws protecting employees' rights to a reasonable religious accommodation. Thus, today's Order – while it may seem like a victory for the industry – could open the door to tougher times.

3. If the religious exemption is ultimately enforced – either by an order of a court or through the Department's willing amendment of its regulation – providers will need the Department's guidance on how to ensure the safety of patients and other employees from the unvaccinated employees who are working and continuing to provide services under the medical and religious exemption.

Lastly, on a separate note, thank you to the 220+ of you who attended my webinar yesterday with the New York Healthcare Providers' Association. As evident by the questions that came in throughout the presentation, providers are continuing to struggle with this mandate and the quickly approaching compliance deadline. In the absence of a broader injunction against its enforcement, the healthcare worker vaccine mandate is on course to take effect October 7. Please do not hesitate to reach out if we can help answer any questions or help your agency come into compliance by that deadline.



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