

Home Care Developments

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Second Circuit Lifts Injunction on Healthcare Worker Vaccination Mandate

Yesterday, we alerted our readers that the Second Circuit had, on Friday, granted a temporary injunction against the enforcement of the healthcare worker vaccination regulation. By order posted today, however, the Second Circuit has “dissolved” that temporary injunction. In relevant part, the Second Circuit’s order states:

“Plaintiffs [We The Patriots USA Inc.] move for a temporary injunction pending resolution of this appeal, prohibiting enforcement of New York State’s regulation requiring vaccination of specified healthcare workers. A judge of this Court entered the injunction on Friday, September 24, 2021 for administrative purposes without reference to the merits, pending decision by a three-judge panel. IT IS HEREBY ORDERED that the September 24 temporary injunction is DISSOLVED. IT IS FURTHER ORDERED that oral argument will be heard on Wednesday, September 29, 2021 at 10:00 AM, limited to Plaintiffs’ challenge based on the First Amendment’s clause guaranteeing Free Exercise of Religion.”

Therefore, the general vaccination mandate is “back on,” for the time being. And, per an injunction granted in a different lawsuit by a federal judge in Utica, New York, providers are also still required to continue considering religious exemption requests.

We will provide an update on this situation as more information becomes known. In the meantime, please do not hesitate to let us know if you have any questions.

HERO Act Update

On September 23, 2021, New York State issued updated model airborne infectious disease exposure prevention plans for employer use pursuant to the HERO Act. While a general model plan appropriate for office workplaces and separate plans for certain specific industries were previously issued by the New York State Department of Labor (NYDOL), these have now been updated and reissued with substantive changes to two sections – face coverings and social distancing.

With regard to face coverings, the model plans now provide that, in workplaces where all individuals on premises, including but not limited to employees, are fully vaccinated, face coverings are “recommended, but not required.” For all other workplaces, the model plan now states: “Employees will wear appropriate face coverings in accordance with guidance from State Department of Health or the Centers for Disease Control and Prevention, as applicable.” Previously, the model plans stated that “employees will wear face coverings throughout the workday to the greatest extent possible” and “[f]ace coverings and physical distancing should be used together whenever possible.”

With regard to social distancing, the revised model plans remove prior references to “avoiding unnecessary gatherings” and “using a face covering when physical distance cannot be maintained.” Now, the section states only: “Physical distancing will be used

to the extent feasible, as advised by guidance from State Department of Health or the Centers for Disease Control and Prevention, as applicable.” The revised plans still, however, require the employer to list the health and safety controls it will implement in circumstances where distancing cannot be maintained.

As a reminder, the foregoing Hero Act requirements are applicable to LHCSA office staff, fiscal intermediary office employees, and personal assistants in CDPAP.

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