

Healthcare and Labor & Employment Law Alert: Federal Judge Issues Temporary Restraining Order Blocking NYSDOH From Enforcing Prohibition on Religious Exemptions for Vaccine Mandate

On September 14, 2021, Judge David N. Hurd of the U.S. District Court for the Northern District of New York issued a Temporary Restraining Order (“TRO”) blocking the New York State Department of Health (“NYSDOH”) from taking enforcement action against any healthcare entity that grants an exemption on religious grounds from the State’s COVID-19 vaccine mandate. *The State’s vaccine mandate is scheduled to take effect September 27, 2021.* The TRO temporarily enjoins NYSDOH from taking enforcement action against covered entities that consider, and in their discretion grant, religious exemptions. It is not, however, a decision on the merits of the application seeking a permanent injunction prohibiting such enforcement actions, nor is it an indication of how the Court may rule on that application. NYSDOH has until September 22, 2021 to file its opposition to the TRO and the Court will hear oral argument on September 28, 2021. The Court will then decide whether the TRO should be extended as a “preliminary injunction” or vacated.

Until the Court takes further action, or a higher court intervenes, or there is a change in NYSDOH’s current position, hospitals, nursing homes, ambulatory surgery centers, home health providers and other entities covered by the vaccine mandate cannot be penalized by NYSDOH for approving religious exemption requests. Thus, entities should consider and act on their legal obligations pursuant to Title VII with respect to such requests. To be clear, nothing in the TRO mandates that covered entities grant every request for a religious exemption, nor does it define what is and is not a reasonable accommodation in light of such requests.

Consistent with the NYSDOH emergency rule, many entities covered by the vaccine mandate previously announced policies that effectively eliminate religious exemptions, in order to avoid the threat of a NYSDOH enforcement action. Now, such entities must consider retooling their policies to comport with the TRO, though it is unclear at this point whether a subsequent decision by the Court will lead to a permanent or substantive change to NYSDOH’s mandate. In short, the situation may change again depending on what the Court subsequently decides.

The TRO is contrary to an earlier decision made on September 12, 2021 by a federal judge in the U.S. District Court for the Eastern District of New York in a similar lawsuit. It is, however, effective statewide, not just in counties within the Northern District of New York. Thus, covered entities throughout the State must await further direction when the TRO is revisited during the oral argument scheduled for September 28, 2021. NYSDOH might also attempt to seek the intervention of the U.S. Court of Appeals for the Second Circuit to vacate a subsequently-issued injunction. Hancock will continue to monitor the situation and will update this alert as needed.

1800 AXA Tower I 100 Madison Street, Syracuse, NY 13202 | 315.565.4500  | www.hancocklaw.com