

# LABOR AND EMPLOYMENT LAW

## INFORMATION MEMO

JANUARY 31, 2023

### Update Regarding New York's Healthcare Vaccine Mandate

On Jan. 13, 2023, Onondaga County Supreme Court Justice, Hon. Gerard J. Neri, struck down a regulation adopted by the New York State Department of Health (NYSDOH) – 10 N.Y.C.R.R. § 2.61 (the Regulation) – requiring covered healthcare entities to ensure that their “personnel” are “fully vaccinated” against COVID-19.<sup>1</sup> Judge Neri invalidated the Regulation on several grounds, holding that the NYSDOH exceeded its authority in implementing the Regulation and that the Regulation lacked a rational basis given the NYSDOH’s acknowledgement that the mandate does not prevent transmission.<sup>2</sup>

On Jan. 24, 2023, the Commissioner of Health, Governor Hochul, and the NYSDOH (collectively, Respondents) filed a Notice of Appeal, appealing “each and every part” of Judge Neri’s decision.<sup>3</sup> Once perfected, Respondents’ appeal will be heard by the Appellate Division Fourth Department, one of New York’s intermediate appellate courts.

On Jan. 27, 2023, Respondents moved for a stay pending appeal of Judge Neri’s decision.<sup>4</sup> Respondents have asked the Fourth Department to hear their motion on February 6, 2023, or as soon thereafter as the Fourth Department will allow. The Fourth Department’s decision on Respondents’ motion will give healthcare employers clarity about the enforceability of the Regulation during the pendency of the appeal. If the Fourth Department grants Respondents’ motion and stays Judge Neri’s decision, the Regulation and its requirement that personnel of covered healthcare providers be fully vaccinated against COVID-19 will remain in effect while the appeal is heard.

If you have any questions about the information contained in this memo, please contact [Adam Mastroleo](#), [Hannah Redmond](#) or the Bond attorney with whom you are regularly in contact.

<sup>1</sup> *Medical Professionals for Informed Consent et al. v. Mary T. Bassett, et al.*, Index No. 008575/2022, Decision and Order Motion #1 and Motion #2, NYSCEF Doc. No. 87, at p. 12 (Onondaga Cty. Supreme Ct. Jan. 13, 2023).

<sup>2</sup> *Id.* at p. 11.

<sup>3</sup> *Medical Professionals for Informed Consent et al. v. Mary T. Bassett, et al.*, Index No. 008575/2022, Notice of Appeal, NYSCEF Doc. No. 92 (Onondaga Cty. Supreme Ct. Jan. 24, 2023).

<sup>4</sup> *Medical Professionals for Informed Consent et al. v. Mary T. Bassett, et al.*, CA 23-00161, Motion for Stay, NYSCEF Doc. No. 3 (4th Dep’t Jan. 27, 2023).

