

# LABOR AND EMPLOYMENT LAW

## INFORMATION MEMO

JUNE 5, 2023

### CMS Issues Final Rule Withdrawing Health Care Staff COVID-19 Vaccination Requirement

On June 5, 2023, the Centers for Medicare and Medicaid Services (CMS) published a [final rule](#) withdrawing the requirement that employees of CMS covered health care providers be vaccinated against COVID-19. You may recall that CMS issued an interim final rule in November 2021 that required Medicare- and Medicaid-certified providers to ensure the vaccination of their staff members. The final rule published today effectively eliminates that requirement.

While CMS intends to continue encouraging staff vaccination in health care contexts, it will not use its enforcement authority to *require* it. CMS explained that “[a]t this point in time, we believe that the risks targeted by the staff vaccination [interim final rule with comment period (IFC)] have been largely addressed, so we are now aligning our approach with those for other infectious diseases, specifically influenza.”<sup>1</sup> Thus, CMS announced that “we are withdrawing from the CFR the requirements regarding COVID–19 vaccination of health care staff as established under the staff vaccination IFC.”<sup>2</sup>

Rather than mandating COVID-19 vaccination in health care, CMS intends to utilize quality programs and other incentives to promote continued vaccination. Despite the withdrawal of its health care staff vaccination requirement, CMS expressed its support for health care employers to “maintain evidence-based policies regarding staff vaccination for COVID-19 and other communicable diseases for which vaccination is available and recommended.”<sup>3</sup> Consistent with applicable state and federal laws – including anti-discrimination laws – health care employers may continue to implement vaccination requirements.

The Final Rule will become effective on Aug. 4, 2023. CMS will not enforce staff vaccination requirements between now and Aug. 4, 2023.

If you have any questions about the CMS Final Rule, or any of 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> *Medicare and Medicaid Programs; Policy and Regulatory Changes to the Omnibus COVID–19 Health Care Staff Vaccination Requirements*, 88 Fed. Reg. 36,485 (June 5, 2023)..

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

