

# LABOR AND EMPLOYMENT LAW

## INFORMATION MEMO

JULY 14, 2022

### **Judge Declares New York's COVID-19 Isolation and Quarantine Regulation Unenforceable**

Last week, a New York State Supreme Court judge ruled that New York's regulation establishing isolation and quarantine procedures related to COVID-19 and other highly communicable diseases is void and unenforceable.

On April 4, 2022, three Republican state legislators and a citizens' group filed an Article 78 proceeding against Gov. Kathy Hochul, New York State Commissioner of Health Mary Bassett, the New York State Department of Health and the Public Health and Health Planning Council, alleging that the enactment of Section 2.13 of the New York Codes, Rules and Regulations (Rule 2.13) violates the separation of powers. More specifically, they claim that the state department, as an agent of the executive branch, did not have the authority to enact the isolation and quarantine procedures contained in Rule 2.13.

Rule 2.13 was first enacted on Feb. 22, 2022 and has been extended by successive 90-day periods through July 20, 2022. Rule 2.13 states in pertinent part: "whenever appropriate to control the spread of a highly contagious communicable disease," the state health commissioner may issue and/or direct local health officials "to issue isolation and/or quarantine orders, consistent with due process of law, to all such persons as the State Commissioner of Health shall determine appropriate." The rule allows the state health department to coordinate with local health authorities to mandate isolation and quarantine for individuals exposed to communicable diseases, even in locations outside of their own homes.

In a decision issued on July 8, 2022, Judge Ploetz of the Cattaraugus County Supreme Court held that Rule 2.13 violates state law, and is therefore null, void and unenforceable. To determine whether administrative rule-making crosses the line into improper lawmaking, Judge Ploetz considered whether the agency did more than balance costs and benefits according to preexisting guidelines, whether the agency filled in details of a broad policy, whether the legislature has unsuccessfully tried to reach agreement on the issue, and whether the agency used special expertise or competence in the field to develop the challenged regulation.

Judge Ploetz evaluated the above factors in view of the preexisting provisions contained in Section 2120 of the New York Public Health Law (PHL 2120). PHL Section 2120, enacted by the legislature in 1953, establishes a procedure for obtaining a quarantine or isolation order in light of a highly communicable disease. In weighing the above factors, Judge Ploetz concluded that the adoption of Rule 2.13 was invalid. Judge Ploetz found that PHL Section 2120 balances individual rights and the need for public safety, whereas Rule 2.13 "contravenes the procedures set forth in PHL Section 2120 and ignores the balancing act between an individual's rights and the need for public safety."

In discussing due process protections, Judge Ploetz stated that "[w]hile Rule 2.13 provides that isolation and quarantine must be done 'consistent with due process of law' and the detainee has the right to seek judicial review and the right to counsel, these protections are after-the-fact, and would force a detainee to exercise these rights at a time when he or she is already detained, possibly isolated from home or

family, and in a situation where it may be difficult to obtain legal counsel in a timely manner.” Judge Ploetz also stated that Rule 2.13 merely gave “lip service” to constitutional due process because the law could conceivably grant the commissioner unfettered discretion to force anyone into isolation or quarantine, despite a lack of evidence that a person was actually infected with COVID-19. He noted that, “[i]nvoluntary detention is a severe deprivation of individual liberty, far more egregious than other health safety measures, such as requiring mask-wearing at certain venues,” and “[i]nvoluntary quarantine may have far-reaching consequences such as loss of income (or employment) and isolation from family.” As such, Judge Ploetz permanently enjoined enforcement and readoption of Rule 2.13.

A Notice of Appeal was filed on July 13, 2022. It remains to be seen what will happen on appeal, however, the decision has the potential to impact the way the state manages future health crises after a period of expanded emergency authority due to the COVID-19 pandemic.

For more information on the information presented in this information memo, please contact [Gianelle M. Duby](#), any attorney in Bond’s [Labor and Employment practice](#) or the Bond attorney with whom you are regularly in contact.

