


2022
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Introduction



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Vaccine Mandate Update for Employers



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Vaccine Mandates Update

- Whose mandate?
 - local, state, federal, employer
- What mandate?
 - test out, exemptions, effective date
- Consequences?
 - termination, leave, reinstatement rights, injunctions
- Other considerations
 - bargaining, staffing, liability



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Vaccination Mandate – Healthcare Providers

- Emergency Regulations Issued – August 26, 2021
- Preceded by Section 16 Commissioner’s Orders
- TRO Issued by the US District Court for the NDNY – limited to religious exemption
- FAQ’s issued by the NYS DOH September 20, 2021
- TRO Extended by the US District Court on September 20 through October 12
- NYS Opposition papers in the court proceeding due September 22
- Governor has indicated that she will not back off



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Emergency Regulations Basics

- Vaccine mandate
- No test out
- Medical exemption
- No religious exemption
- Implementation date – September 27 for general hospitals and nursing homes; October 7 for home health agencies and assisted living facilities
- Covered personnel – employee and non-employee members of the medical and nursing staff, contract staff, students and volunteers – who engage in activities such that they could expose other covered personnel, patients residents and staff to the disease



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Emergency Regulations Medical Exemptions

- Generally accepted medical standards
- Severe allergic reaction to previous dose or components
- Other limited precautions are listed
- Exempt individuals may continue normal job duties
- Testing not required by the ER



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Emergency Regulations Religious Exemptions

- Not included in the emergency regulations
- Subject to the TRO
- What to do now, pending the outcome of the court case?
- Sincerely held religious belief
- Undue hardship standard to grant/deny accommodation
- Other accommodations
- Documentation



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NYC Department of Education Order

- Order mandating vaccination issued
- Court action commenced
- State court TRO issued
- Order revised to add accommodation provisions
- State court TRO vacated
- Federal court injunction denied 14th Amendment due process theory
- Second Circuit temporary injunction pending hearing granted
- Second Circuit panel vacates the injunction



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Key to NYC Executive Order

- Vaccine mandate for restaurants, indoor entertainment and sports venues and fitness centers
- No test out included
- Medical and religious accommodations are available
- Exceptions for certain de minimis activities
- Masking and social distancing for certain out of town performers and athletes
- Federal court action is pending
- To be heard on October 8



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Federal Developments

- President Biden announced a multi-point federal approach
- OSHA ETS not yet issued
- Federal contractor guidance issued
 - Vaccination of covered contractor employees, except where an employee is legally entitled to an accommodation;
 - Compliance by individuals, including covered contractor employees and visitors, with the Guidance related to masking and physical distancing while in covered contractor workplaces; and
 - Designation by covered contractors of a person or persons to coordinate COVID-19 workplace safety efforts at covered contractor workplaces.
- This applies to federal contractors and subcontractors (and the guidance suggests it must be flow-down to all lower-tier subcontractors as well).
- Notably, the guidance suggests that covered contractors must ensure that all of their employees are fully vaccinated (unless they are legally entitled to an accommodation) by December 8, 2021.



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Other Considerations

- Bargaining obligations
- OSHA ETS
- Other applicable mandates
- Staffing issues
- HERO Act
- PPE



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HERO Act Update



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HERO Act - NYSDOL Updates Model Plans

- Last week NYSDOL updated their model plans
- Two key updates:
 - Face coverings
 - Physical Distancing



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Initial

4. **Face Coverings:** To protect your coworkers, employees will wear face coverings throughout the workday to the greatest extent possible. Face coverings and physical distancing should be used together whenever possible. The face covering must cover the nose and mouth, and fit snugly, but comfortably, against the face. The face covering itself must not create a hazard, e.g. have features could get caught in machinery or cause severe fogging of eyewear. The face coverings must be kept clean and sanitary and changed when soiled, contaminated, or damaged.

Update re: Face Coverings

4. **Face Coverings:** When in use, face coverings must cover the nose and mouth, and fit snugly, but comfortably, against the face. The face covering itself must not create a hazard (e.g., have features could get caught in machinery or cause severe fogging of eyewear). The face coverings must be kept clean and sanitary and changed when soiled, contaminated, or damaged.
 1. **[APPLICABLE FOR MOST WORKPLACES]** 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.
 2. **[APPLICABLE FOR WORKPLACES where all individuals on premises, including but not limited to employees, are fully vaccinated – defined as having completed a federally authorized or approved vaccination series for an airborne infectious disease designated as a highly contagious communicable disease that presents a serious risk of harm to the public health (as is currently the case for COVID-19, pursuant to the Commissioner of Health's designation)]** Appropriate face coverings are recommended, but not required, consistent with State Department of Health and the Centers for Disease Control and Prevention applicable guidance, as of September 16, 2021.

Update re: Physical Distancing

5. **Physical Distancing:** Physical distancing will be followed as much as feasible. Avoid unnecessary gatherings and maintain a distance of at least six feet (or as recommended by the NYSDOH/CDC for the infectious agent) from each other. Use a face covering when physical distance cannot be maintained.



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Update re: Physical Distancing

5. **Physical Distancing:** 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.



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COVID Litigation Update



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Miscellaneous including Expiration of FFCRA

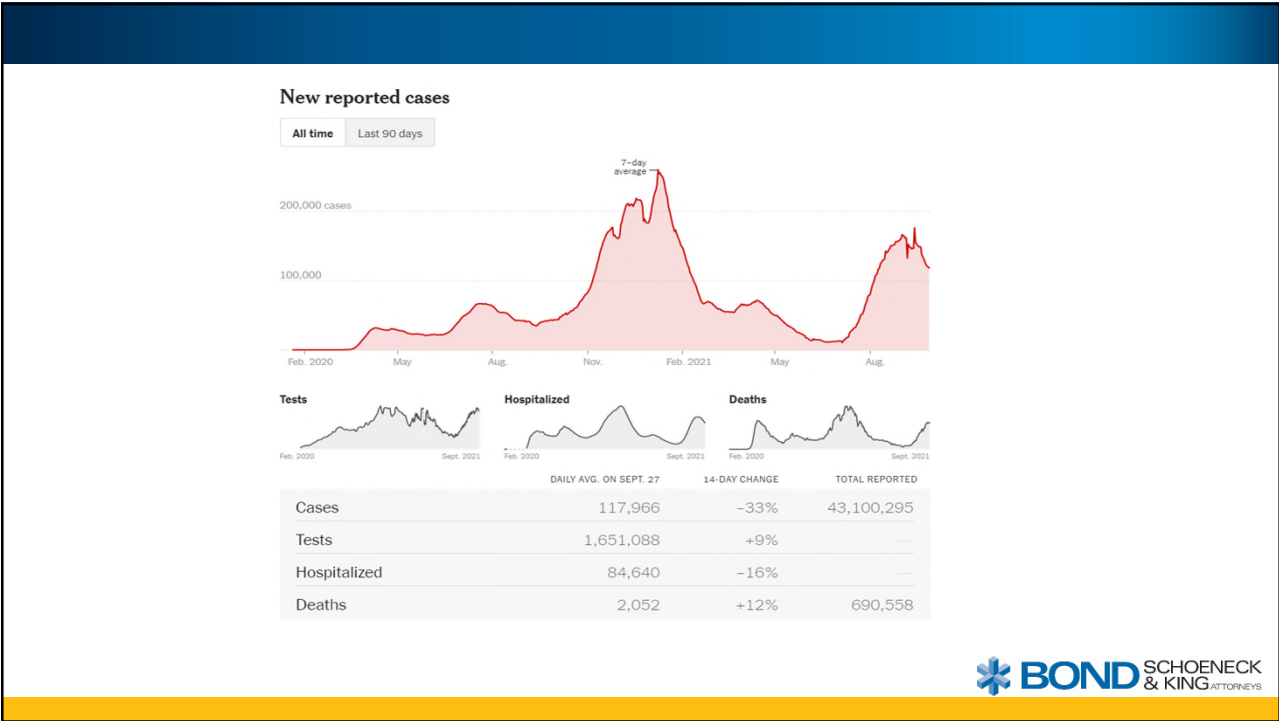


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Miscellany

- Pending Expiration of FFCRA (Sept. 30)
 - Remember: NYS COVID EPSL, PFL, PSL... still apply!
- Vaccination Mandate vs. Healthcare Delivery
- Unemployment Persists
 - National: **5.2%**
 - New York: **7.4%**
 - 20,000 Private Sector Jobs Added
 - New York City: **10.2%**

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Miscellany

- Tight Hiring Market
 - 10.9 Million Job Vacancies
 - 8.4 Million Unemployed
- Inflationary Pressure
 - <https://www.cnbc.com/2021/09/24/costco-nike-and-fedex-are-warning-theres-more-inflation-set-to-hit-consumers-as-holidays-approach.html>



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HERO Act Update

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Miscellaneous including Expiration of FFCRA

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