



Labor & Employment Issues In Focus

Pitta LLP
For Clients and Friends
September 15, 2021 Edition



“All that serves labor serves the Nation. All that harms labor is treason to America. No line can be drawn between these two. If any man tells you he loves America, yet hates labor, he is a liar. If any man tells you he trusts America, yet fears labor, he is a fool. There is no America without labor, and to fleece the one is to rob the other.”

Abraham Lincoln

ADMINISTRATION IMPOSES SWEEPING VACCINE MANDATE ON FEDERAL WORKERS AND LARGE EMPLOYERS

On September 9, 2021, the Administration pulled the trigger on sweeping vaccine mandates for all Federal workers, health care workers employed at any facility which receives Medicare or Medicaid funds, employees of large employers, and defined Federal contractors. The mandates, which are not scheduled to take effect for seventy-five days and face many obstacles, including litigation and administrative rulemaking, could impact as many as 100 million workers.

The President's six-pronged plan to fight the virus includes: vaccinating the unvaccinated; further protecting the vaccinated through booster shots; keeping schools open; increasing testing and requiring masks; protecting the economic recovery; and improving care for those with Covid-19.

In a major speech that day, referencing the 80 million unvaccinated, President Biden said: “We've been patient, but our patience is wearing thin, and your refusal has cost all of us.” The core of the mandate is a direction to the Labor Department to require all businesses with 100 or more employees to ensure their workers are either vaccinated or tested once a week, with large daily per employee fines of up to \$14,000 being used as a stick to enforce compliance.

In addition to the large employer directive, Biden signed an executive order requiring that all government employees be vaccinated against Covid-19, with no option of being regularly tested, as well as an order directing the same standard for employees of most Federal government contractors. In his remarks, the President called on reluctant or outright resistant state governors also to require vaccinations for schoolteachers and staff.

In this case, the Labor Department's "emergency temporary standard" will require large employers to give their workers paid time off to get vaccinated, another possible issue for litigation from business interests. The Occupational Safety and Health Administration (“OSHA”) is developing the emergency rule, which the White House anticipates will apply to more than 80 million private-sector workers. The rule, which should be published in the coming weeks and will not be subject to a comment period, would take the form of an emergency temporary standard, meaning it will undergo an

expedited review process before taking effect. The Occupation Safety and Health Act limits such emergency temporary standards to new hazards which pose a “grave danger” to workers.

The Administration fully expects Court challenges from certain Republican governors and large employers falling under the mandate, though a federal rulemaking process may undercut such litigation, while also delaying the implementation of the mandate.

Side by side with the mandates, the President also announced a significant expansion of free testing and the use of the Defense Production Act to accelerate the production of rapid tests. Further, Biden called on large entertainment venues to require proof of vaccination or negative tests for patrons seeking entry. Finally, he also said the Transportation Safety Administration would double fines on passengers who refuse to wear masks on planes. "If you break the rules, be prepared to pay — and by the way, show some respect," he said, chastising recent incidents of "air rage" directed toward hard-working cabin crews.

UNIONS AND TYSON FOODS AGREE ON PAID SICK LEAVE FOR COVID-19 VACCINATED WORKERS

On September 3, 2021, the United Food and Commercial Workers (“UFCW”) and an affiliate of the Retail, Wholesale and Department Store Union (“RWDSU”) signed an agreement with Tyson Foods, Inc. (“Tyson”) to provide as many as 20 hours of paid sick leave per year for workers who have received a COVID-19 vaccine.

Under the terms of the agreement, vaccinated workers at Tyson, America’s largest meat company, can begin earning as many as 20 hours of paid sick leave per year in January. Tyson will also provide new hires one week of vacation after six months of employment. Tyson’s agreement with UFCW and RWDSU comes at the heels of the company’s mandate for all workers to receive the COVID-19 vaccine by November 1, 2021. The UFCW said that securing paid sick leave was a “historic” achievement for its members.

The meat industry was among the industries with the highest rates of COVID-19 transmission. Rapid spread of the virus is attributed to the nature of the work, with workers engaged in: i) physical labor, ii) in an indoor environment, iii) in close proximity, iv) for extended periods of time. COVID-19 outbreaks at meat processing plants have caused plants to shut down, thereby resulting in increases in the price of meat on the commodity, wholesale, and retail markets.

Earlier this year, Tyson provided its frontline workers with a \$200 incentive to voluntarily receive the COVID-19 vaccine. In addition, Tyson is giving out more than \$6 million in sweepstakes to incentivize its workers to be vaccinated. Tyson, within this industry, is also piloting flexible work schedules and introducing health clinics at seven of its locations to improve access to healthcare for their workers.

**NY HERO ACT:
TAKEAWAYS FROM GOVERNOR
HOCHUL'S RECENT COVID-19 DESIGNATION**

On September 6, 2021, Governor Kathy Hochul announced that the novel coronavirus, commonly referred to as “COVID-19,” was being designated as an airborne infectious disease under the New York Health and Essential Rights Act (“NY HERO Act”), which was passed in May 2021. As a result of this designation, all employers within the State must activate statutorily-mandated prevention plans to combat the insidious spread of and devastation caused by COVID-19. Such plans, as will be detailed below, must meet or exceed the applicable model plans first promulgated by the State when the NY HERO Act was enacted.

By designating COVID-19 as a highly contagious communicable disease that is airborne-transmissible and poses a serious risk of harm to the public health of this State, the Governor required that all employers must implement minimum preventative measures, such as daily health screenings for employees reporting on-site to work, mandatory mask/face coverings for employees in the workplace, a stay-at-home policy for employees experiencing symptoms of COVID-19, and requiring reasonable accommodations for employees who have heightened risk of infection and adverse ramifications from contracting this disease. Additionally, all employers are required to distribute, train, and educate their employees regarding their specific, implemented Prevention Plan, as well as post said plan in public, conspicuous locations. Further, all employers are proscribed from retaliating against employees who either report violations of the NY HERO Act or, in good faith, believe that their work location “exposes them or others” to “unreasonable risk of exposure.” Finally, the NY HERO Act imposes monetary fines on employers for the failure to adopt a Prevention Plan and/or to comply with the same.

With specific regard to the Prevention Plans, as referenced above, the model plan promulgated by the State is the baseline, but all employers are encouraged under the NY HERO Act to issue plans that are specifically tailored to their respective industries. Such “alternative plans” shall be crafted in accordance with any applicable collective bargaining agreement, or if no union representation is present, then “with meaningful participation of employees.” In addition, the Prevention Plans contemplated under the NY HERO Act are required to be reviewed and updated to reflect new or modified tasks and procedures that may affect occupational exposure and safety. Furthermore, as alluded to above, the Prevention Plans must be presented to all employees; there must be training provided to said employees concerning the Prevention Plans; and an appropriately-translated version of the Prevention Plan must be provided to each employee in his/her primary language.

COVID-19 and the measures undertaken by the federal state, and, local governments, as well as private entities, are in a constant state of flux. Due to such

fluidity, feel free to contact Pitta LLP and the attorneys with whom you typically work for the most up-to-date information and guidance. We are here for you.

NOTICE OF EXPIRATION OF COBRA PREMIUM ASSISTANCE

We previously advised you regarding the Consolidated Omnibus Budget Reconciliation Act (“COBRA”) premium subsidy included in the American Rescue Plan Act of 2021 (“ARPA”). The one hundred percent (100%) COBRA premium subsidy is available to Assistance Eligible Individuals (“AEI”) for the six-month period from April 1, 2021 through September 30, 2021. As directed by ARPA, the Department of Labor issued model COBRA notices in connection with the administration of the COBRA premium subsidy.

This is a reminder that AEI must be furnished the Notice of Expiration of Period of Premium Assistance fifteen to forty-five (15-45) days *before* their premium assistance subsidy expires. For instance, an AEI whose maximum period of COBRA continuation of coverage expires after September 30, 2021 (i.e. after the end of the COBRA premium subsidy) must be furnished the Notice of Expiration of Period of Premium Assistance on or before September 15, 2021. A Model Notice of Expiration of Period of Premium Assistance can be found by clicking the following link <https://www.dol.gov/sites/dolgov/files/ebsa/laws-and-regulations/laws/cobra/premium-subsidy/notice-of-premium-assistance-expiration-premium.docx>

Please contact us if you have any questions.

WARNING! THE “KEY TO NYC” PROGRAM HAS TURNED TO ENFORCEMENT

Indoor food service businesses, indoor fitness and gym venues, and indoor entertainment/recreational settings should note that the “Key to NYC” program became enforceable this past Monday, September 13. Among other now enforceable duties, covered establishments must ensure that employees, contractors and customers provide proof of at least one vaccination, identity and resulting status. Covered businesses must also have a written implementation plan and post a state issued vaccination poster. For details, see Focus dated [August 19, 2021](#), or contact any of the Pitta attorneys with whom you work.

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