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LABOR & EMPLOYMENT ISSUES

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DEPARTMENT OF HOMELAND SECURITY DISALLOWS AUTOMATIC EXTENSION OF EMPLOYMENT AUTHORIZATION DOCUMENTS

The United States Department of Homeland Security ("DHS") U.S. Citizenship and Immigration Services ("USCIS") announced on October 30, 2025 that it is disallowing automatic extensions of most Employment Authorization Documents ("EAD"), effective immediately. USCIS is accepting public comments on the Interim Final Rule (published at 90 FR 48799) through December 1, 2025.

Since 2016, there has been a regulatory provision that provided automatic extensions for EADs as long as the applicant had timely filed a renewal application. The automatic extension was initially only offered to nonimmigrant groups but eventually changed to apply to groups such as refugees, asylees, and those receiving Temporary Protected Status, among others. The extension was a guaranteed work authorization for anywhere from 180 days to 540 days for select categories. The DHS's press release stated that the purpose of this rule change was to prioritize "proper screening and vetting of aliens before extending the validity of their employment authorizations."

This revocation by the DHS will potentially have an impact on thousands of workers who benefited from the automatic extension due to the 6- to12-month processing period for a renewal. This means many of these workers may have an unexpected and extended lapse of work authorization while waiting for the outcome of their request. Those workers who happened to file their extensions prior to October 30, 2025 will still receive the benefit of an automatic extension. Exceptions for those who file after that date will only apply to specific categories of workers, such as certain nonimmigrants with authorization through a nonimmigrant visa and those working in certain specialized areas such as visa holders completing the STEM Optional Practical Training program.

Before it becomes an imminent issue for any workers, the DHS has advised that anyone who relies on this benefit should apply for an extension to avoid any possible lapse of authorization. Additionally, employers can check whether their employees rely on EADs and whether they have an upcoming expiration of their work authorization due to this rule change. The earlier one applies for an extension, the lower the risk is for any lapse in authorization.

EIGHTH CIRCUIT DECLINES TO RECONSIDER FAILED CHALLENGE AGAINST CAPTIVE AUDIENCE BAN IN MINNESOTA

The United States Court of Appeals for the Eighth Circuit on Monday, November 3, 2025 declined to provide a full *en banc* rehearing for a coalition of businesses in Minnesota looking to block enforcement of the state's ban on captive audience meetings. The coalition, the Minnesota Chapter of Associated Builders and Contractors ("MNABC"), sought an injunction to prevent state attorney general, commissioner, and later the governor from enforcing a new ban on mandated, employer-led meetings discouraging unionization. The three officials made a motion to dismiss in response, claiming they were protected by sovereign immunity under the Eleventh Amendment of the United States Constitution. The District Court for the District of Minnesota denied the motion to dismiss, and the officials appealed to the Eighth Circuit.

In September, a panel of three Eighth Circuit judges reversed the district court's decision, explaining that in order to defeat this motion to dismiss, MNABC would have to demonstrate an imminent threat of enforcement of the law. The panel found that statements made by Minnesota Governor Tim Walz asserting (incorrectly) that employers would go to jail for holding captive audience meetings did not provide sufficient support for MNABC's argument, and it granted the motion to dismiss the claims against all defendant officials. This week, in a one-sentence order, the Court declined MNABC's request for an *en banc* rehearing of the case.

Minnesota is one of close to a dozen states that have in recent years passed state-level bans on captive audience meetings. Challenges to these laws often center on First Amendment issues of free speech for employers. In this case, the decision came down to jurisdictional issues, and neither the district court nor the Eighth Circuit weighed in on the constitutional aspects of the law.

The case is *MN Chapter of Assoc. Builders, et al v. Keith Ellison, et al*, Docket No. 24-03116 (8th Cir. Oct. 18, 2024).

YOU WENT ABOUT IT ALL WRONG: NEW YORK'S APPROACH TO BARGAINING OVER CIVIL SERVICE VACCINE MANDATES

In a series of decisions from the New York City Board of Collective Bargaining ("BCB"), New York State Public Employment Relations Board ("PERB") and the Supreme Court of the State of New York, County of New York ("Court"), the two boards and Court held that, while a public sector employer's decision to implement a vaccine mandate is a managerial prerogative, the impacts and effects of that decision require negotiations with public sector unions.

With respect to the BCB case, the Municipal Labor Committee ("MLC"), as well as several uniformed public sector unions from the NYPD and FDNY, filed an improper practice charge alleging that New York City's unilateral decision requiring all City employees be vaccinated by October 29, 2021 violated the New York City Collective Bargaining Law ("NYCCBL") § 12-306(a)(4) because the City failed to negotiate over the impacts the City's vaccine mandate had on several mandatory subjects of bargaining, including but not limited to the use of accrued leaves and the procedural mechanisms utilized by said mandate. The MLC and unions also contended that the City's unilateral establishment of arbitrary deadlines for compliance did not provide them with sufficient time to negotiate said issues, in further violation of the NYCCBL's statutorily-imposed duty to bargain in good faith under NYCCBL § 12-307(a). The City argued that it had no obligation to bargain over any aspect related to its vaccine mandate, as COVID was a public health emergency; and regardless, the City was empowered by NYCCBL § 12-307(b) to exercise its statutorily-established management right when imposing the vaccine mandate. The BCB held that, even though the City properly exercised its managerial prerogative by imposing said mandate, the City's unilateral placement of workers who refused to comply with the vaccine mandate on unpaid leaves of absence and its refusal to allow such employees to utilize their respective accrued leaves required negotiations because those aspects of the vaccine mandate affected mandatory subjects of bargaining. Moreover, the procedural components of the vaccine mandate, such as the deadlines for compliance and the appeals process for those employees who requested reasonable accommodations should have been negotiated to fruition or impasse prior to implementation. The BCB decision was not appealed by the City and is cited as MLC v. City, 15 OCB2d 34 (BCB 2022)

With respect to New York State's vaccine mandate, a group of public sector unions with members in the Unified Court System ("UCS") filed an improper practice against the UCS claiming violations of the Public Employees' Fair Employment Act ("Taylor Law") § 209-a(1)(d). After an evidentiary hearing on the merits, the PERB administrative law judge ("ALJ") actually found that UCS's decision to promulgate the vaccine mandate, as well as the effects related thereto, constituted a violation of the duty to bargain in good faith under the Taylor Law. Unlike the BCB, the ALJ determined that UCS was not absolved of liability by its managerial right when imposing said mandate and ordered that UCS reinstate employees who were terminated for non-compliance and provide them with a make-whole remedy which included back pay with interest.

However, on appeal to the full board, PERB modified the ALJ's decision by stating that, like the BCB, UCS acted within the scope of its managerial prerogative when it issued its vaccine mandate, but that UCS failed to negotiate over the effects of the decision to implement said mandate. Those effects related to mandatory subjects of negotiations included but was not limited to the procedures associated with the implementation of said mandate, paid time off for testing or vaccination, and the process for obtaining medical or religious exemptions; all of which still constituted a violation of § 209-a(1)(d) of the Taylor Law. Remedially, PERB ordered the parties to bargain to fruition over these topics but did not require reinstatement or back pay with interest. On further appeal to the Court, the PERB decision was upheld in its entirety and without any modification. The PERB ALJ decision is cited as *NYSCCA, et al v. UCS*, 56 PERB ¶ 4513 (2023); the PERB decision is cited as *NYSCCA, et al v. UCS*, 56 PERB ¶ 3020 (2023); and the Court's decision is cited as *UCS v. PERB, et al*, Index No. 161972/2023 (Sup. Ct. N.Y. Co. June 4, 2024). The Court's decision is currently being appealed.

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