

# NOW & NEXT

## Labor & Employment Alert

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### New York Department of Health to issue COVID-19 vaccination mandate for healthcare workers

By Tara E. Daub, Stephanie M. Caffera, and Conor T. Tallet

The New York State Department of Health will soon issue orders mandating that all healthcare workers in hospitals and certain other healthcare facilities receive at least the first dose of the COVID-19 vaccine by September 27, 2021.



#### What's the Impact

- / The order may clarify the definition of covered "healthcare workers," such as whether it will include staff not involved in patient care.
- / Healthcare employers should consult with counsel in the coming weeks to understand their obligations, and the limited exceptions, under the forthcoming Department of Health orders.

Just weeks after announcing a COVID-19 vaccine mandate for patient-facing healthcare workers in state-run hospitals, on August 16, 2021 Governor Cuomo announced that the COVID-19 vaccine mandate would soon be expanded to healthcare workers in many other healthcare facilities within New York State.

Specifically, Governor Cuomo announced that the New York State Department of Health (“Department of Health”) will soon issue orders mandating that all healthcare workers in hospitals, long-term care facilities, nursing homes, adult care, and other congregate care settings in New York receive at least the first dose of the COVID-19 vaccine by September 27, 2021. The forthcoming Department of Health orders will require covered employers to develop and implement a policy mandating employee vaccinations for such healthcare workers, with limited exceptions for those with sincerely held religious beliefs or medical reasons. The Department of Health orders also may impose additional requirements on covered employers, such as mask requirements for employees and COVID-19 testing protocols.

While the Governor’s previously announced mandate for state-run hospitals specified that only “patient-facing healthcare workers” would be covered under that mandate, the Governor’s new announcement does not define or otherwise provide guidance as to the scope of “healthcare workers” to be covered by the forthcoming Department of Health orders. Until the orders are issued, it is unclear the exact scope of employee coverage, and whether the definition of covered “healthcare workers” will be broad enough to include all non-patient-facing facility staff, independent contractors, agency staff, or other on-site employees, vendors, and providers not otherwise involved in patient care, but the Governor’s announcement suggests the scope of the new mandate is likely to exceed ordinary “patient-facing” healthcare employees.

For now, hospitals and other covered healthcare providers should be aware that mandatory vaccines will soon be required for at least a portion of their employees. Covered employers with collective bargaining agreements should be mindful of bargaining obligations that may arise concerning their unionized staff. Union and non-union employers should consult with counsel in the coming weeks to understand their obligations under the forthcoming Department of Health orders, particularly as they relate to the scope of employee coverage and the implementation of a mandatory vaccine policy with the limited exceptions.

For more information on the content of this alert, please contact your Nixon Peabody attorney or:

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