Engage PEO Client Alert:

New York: COVID-19 Vaccine Mandate for Healthcare Workers - Emergency Regulation

On August 26, 2021, the New York State Public Health and Health Planning Council and the Commissioner of Health passed an **emergency regulation requiring that "personnel" of "covered entities" in the healthcare industry obtain at least the first dose of the COVID-19 vaccine**.

"Covered entities" include**: (i) hospitals, general hospitals, nursing homes, and diagnostic treatment centers, (ii) "health agencies, long term home health care programs, acquired immune deficiency syndrome (AIDS) home care programs, licensed home care service agencies, and limited licensed home care service agencies," (iii) hospices, and (iv) adult care facilities**. In addition, "Personnel" is defined as those "employed or affiliated with a covered entity, whether paid or unpaid, including but not limited to employees, members of the medical and nursing staff, contract staff, students, and volunteers, who engage in activities such that if they were infected with COVID-19, they could potentially expose other covered personnel, patients or residents to the disease." While the definition of "covered entities" is currently limited to those listed above, the state may revise the definition as developments occur.

Under the Emergency Regulation, **personnel of general hospitals, and nursing homes, absent a medical exemption or reasonable accommodation, must receive the first dose of the vaccine by September 27, 2021, and personnel of all other covered entities must receive the first dose by October 7, 2021.**

Medical exemptions are permitted where a "licensed physician or certified nurse practitioner certifies that immunization with COVID-19 vaccine is detrimental to the health of member of a covered entity's personnel, based upon a pre-existing health condition." Therefore, affected companies may need to follow the Interactive Process under the Americans with Disabilities Act, as amended, as well as state and local equivalents, like N.Y.C.'s Cooperative Dialogue process.

Documentation and Policy

Covered entities must **maintain documentation of personnel vaccinations and any medical exemption and reasonable accommodation in personnel records,** and, upon request of the Department of State, must report and submit "(1) the number of personnel that have been vaccinated against COVID-19; (2) the number and percentage of personnel for which medical exemptions have been granted; (3) the total number of covered personnel." Documentation of medical exemptions must include "nature and duration of the medical exemption."

Additionally, covered entities must **create a policy to implement the above requirements.** The **New York Department of State "may require all personnel,** whether vaccinated or unvaccinated**, to wear an appropriate face covering** for the setting in which such personnel are working in a covered entity," and covered entities must supply the required face coverings without cost to personnel. **If you need assistance with a policy, please contact your H.R. Consultant.**

Job Impact Statement

Lastly, the regulation's **"Job Impact Statement" provides that "covered entities may terminate personnel** who are not fully vaccinated and do not have a valid medical exemption and are unable to otherwise ensure individuals are not engaged inpatient/resident care or expose other covered personnel."

The emergency regulation will expire 90-days after adoption, or on November 24, 2021, unless extended.

Notably, the absence of a religious exemption was challenged as unconstitutional by 17 medical professionals in New York, in Dr. A., et. Al. v. Kathy Hochul, No. 1:21-cv-01009 (N.D.N.Y., September 14, 2021). The federal judge presiding over the case enjoined the enforcement of the regulation to the extent it prohibits exemption based on religious beliefs. Therefore, **under a temporary restraining order, religious exemptions to the regulation may be permissible, at least until the federal court issues a final determination on the matter**.

You may reference our previous Alert regarding President Biden's September 9th Action Plan, which requires COVID-19 vaccines for employees working in many health care settings.

Please contact your Engage HR Consultant if you have questions.