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CLIENT ALERT

New York State Court Halts Flu Vaccine Mandate For Health Care Workers

On October 16, 2009 a New York State Supreme Court judge issued a temporary restraining order preventing the state from requiring that health care workers get vaccinated for the seasonal flu and the H1N1 virus. The temporary restraining order suspends enforcement of emergency regulations issued by the New York State Department of Health under Title 10 of the New York Codes, Rules, and Regulations, Subpart 66-3 (“Emergency Regulations”), which mandate flu vaccinations for certain health care personnel by November 30, 2009, as a precondition to employment and on an annual basis. See our client alert of August 17, 2009, at http://www.putneylaw.com/cu_081709.html, for more information on the Emergency Regulations.

Justice Thomas J. McNamara of the New York State Supreme Court in Albany issued the temporary restraining order in response to three lawsuits filed by the Public Employees Federation, New York State United Teachers, and three private sector health care workers. The lawsuits challenge the Emergency Regulations by contending that the New York State Department of Health (“NYSDOH”) exceeded its legal authority by requiring the vaccinations without explicit statutory authority from the New York State Legislature. Although the NYSDOH invoked emergency powers to promulgate the Emergency Regulations, the plaintiffs argue that there is little evidence that swine flu is an emergency.

The lawsuits also allege that the NYSDOH did not follow the necessary procedures under the New York State Administrative Procedure Act when it promulgated the regulations. In addition, the lawsuits claim that the Emergency Regulations violate the constitutional rights of health care workers by failing to provide due process protections and an exemption for religious beliefs. The lawsuits seek a permanent injunction preventing the state from implementing the Emergency Regulations, as well as a declaration that the Emergency Regulations are null and void.

Justice McNamara's temporary restraining order did not explain the reasoning for its issuance. A court hearing is scheduled for October 30, 2009, where the parties will argue whether the suspension should be made permanent.

If you should have any questions regarding the immediate effects of the temporary restraining order, please contact us.

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