

NYC School Staff Vaccine Mandate Can Move Forward

By **Melissa Angell**

Law360 (September 22, 2021, 10:55 PM EDT) -- A New York state court judge on Wednesday lifted a temporary restraining order that barred the implementation of the Big Apple's vaccine requirement for public school staff.

In a five-page order, Justice Laurence L. Love ruled that the municipal unions petitioning to stop the mandate are unlikely to prevail and noted that the public's health interests outweigh the interests of the petitioners.

"The state and federal courts have consistently held that a mandatory vaccine requirement does not violate substantive due process rights and properly fall within the State's police power," the judge wrote in his order.

The judge took note that it was unlikely that the petitioners could demonstrate irreparable harm since losing a job can be compensated with money and reinstatement.

The Municipal Labor Committee's Chair, Harry Nespoli, said Wednesday that though the court has lifted the restraining order, it still has yet to make a final decision. Nespoli added that the group is "preparing additional material to support our case."

"This case has already led to progress in protecting the rights of our members, since the city — in the wake of the court's initial issuance of the restraining order — admitted that there can be exceptions to the vaccine mandate," Nespoli said in a statement.

Justice Love **issued the temporary restraining order last week** and said that the city must show why he shouldn't strike down an August mandate from the city's health commissioner requiring full vaccination of all Department of Education staff, contractors and others who spend time in DOE facilities.

That list includes unionized workers like electricians and plumbers who work in school buildings, an attorney for the petitioners previously told Law360. Most, but not all, of the petitioners are directly affected by the Aug. 24 order.

The New York City Municipal Labor Committee and other unions, including the United Federation of Teachers — which represents most of the city's public school teachers and other education workers — filed their petition Sept. 9, asking the judge to strike down the DOE-related vaccination order.

The vaccine mandate has drawn frustration from others as well.

In a separate lawsuit, a group of 10 New York City teachers on Tuesday asked a federal judge to strike down the city's COVID-19 vaccine mandate for educators, saying the requirement tramples their constitutional right to religious expression.

The city's one million public school students went back to school this month.

According to the UFT, New York City had unveiled two rounds of mandates without negotiating. The first allowed teachers to choose either to be vaccinated by Sept. 13 — the first day of school — or submit to weekly testing. But the city changed course Aug. 24 and dropped the testing option, without exemptions for religious or medical concerns.

UFT accused the city and its Department of Education of stonewalling in negotiations over the vaccine mandate. But Mayor Bill de Blasio said there have been "intense" negotiations over the policy, which as announced in August did not include exemptions for teachers with medical concerns or religious objections.

But in early September, de Blasio **changed his tune**, saying city teachers would have the opportunity to claim those exemptions.

During a Sept. 8 news conference, New York City Schools Chancellor Meisha Ross Porter said 72% of teachers and 61% of students between ages 12 and 17 had at least one dose of the shot.

Separately, **an independent arbitrator determined** Sept. 10 that New York City teachers who are exempt from getting the COVID-19 vaccine for medical or religious reasons must be offered non-classroom work.

Representatives for the city did not immediately respond to requests for comment Wednesday.

The petitioners are represented by Alan M. Klinger of Stroock & Stroock & Lavan LLP.

The city is represented by Kimberly Brown of the New York City Law Department.

The case is the New York City Municipal Labor Committee et al. v. The City of New York et al., case number 158368/2021, in the New York Supreme Court for the County of New York.

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