New York City Announces Vaccine Mandate for All Private Employers

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On Dec. 6, New York City Mayor Bill de Blasio announced an across-the-board COVID-19 vaccination mandate for all private employers in New York City ("the City") as a "pre-emptive strike" against a potential new wave of infections including due to the Omicron variant. The City is expected to issue detailed guidance on the mandate on Dec. 15. In the meantime, below are highlights from the information available so far:

- **Vaccination Mandate:** Private employers will be required to mandate vaccination in the workplace. The mandate will not apply to remote workers or to circumstances where the workplace has only one in-person employee.
- **Timing:** Employees will be required to be vaccinated with a first dose of a two dose vaccine or a single dose vaccine by Dec. 27.
- **Reasonable Accommodation:** Employers will be required to offer exemption from the vaccination mandate for employees entitled to reasonable accommodation due to medical disability or sincerely held religious belief.
- **COVID-19 Testing:** Unlike OSHA's COVID-19 ETS, there will be no testing alternative to vaccination. However, we expect the upcoming guidance to identify the circumstances under which testing may serve as a reasonable accommodation for those who cannot be vaccinated.
- **Unpaid Leave:** It remains to be seen whether employers will be required to put unvaccinated employees on unpaid leave before they can be terminated for non-compliance with the mandate. But if the City decides to align this mandate with that for employees working for the City, there may be a requirement that employees be placed on unpaid leave before they can be terminated.
- **Legal Challenges:** The City has taken the position that the Commissioner of Health has the authority to issue the vaccine mandate to combat the "pressing public health threat" posed by a potential new wave of COVID-19 spread. However, it is likely that the mandate will face both legal challenges and political opposition. It further remains to be seen how the incoming Mayor Eric Adams will enforce and defend the mandate after he takes office in the New Year.

While waiting for further guidance from the City, employers should continue to encourage vaccination in the workplace. For workplaces that have already mandated vaccination, employers should revisit their policies to ensure alignment with the City guidance when it is issued on Dec. 15. For remaining workplaces, it would be prudent for employers to begin exploring policies for mandating vaccination, for granting exemptions, and feasible accommodations.

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