

## **CLIENT ALERT: First Circuit Court of Appeals Refuses to Enjoin Mass General Brigham's Mandatory Vaccination Policy**

On November 18, 2021, the First Circuit Court of Appeals upheld a ruling by the Federal District Court in Massachusetts denying Mass General Brigham (MGB) employees' request for a preliminary injunction which would have prevented MGB from enforcing its mandatory COVID-19 vaccine policy for all workers.

In June 2021, MGB announced it would require its employees to obtain a COVID-19 vaccination. In light of the recent outbreak of COVID-19 cases caused by the Delta variant, MGB determined that such a vaccination policy was critical to keeping safe its medically vulnerable patient population, employees and visitors. MGB required that employees receive the COVID-19 vaccine by October 15, 2021. Employees were told that noncompliance with the policy would result in unpaid leave on October 20, 2021, and termination thereafter on November 5, 2021. The announcement explained that certain exemptions would be available for medical contraindications or sincerely held religious beliefs, but that accommodations such as testing and masking were not adequate to meet MGB's urgent health and safety priorities and protect its vulnerable patient population.

MGB created two separate committees to review requests for exemption: the Religious Exemption Review Committee and the Medical Exemption Review Committee. A total of 2,402 employees submitted requests for exemptions. After review, 234 employee exemptions were granted. Plaintiffs – two hundred and thirty seven (237) MGB employees – were denied requests for exemptions based on purported medical and/or religious reasons.

On October 17, 2021, plaintiffs brought a lawsuit in Federal District Court in Boston claiming that they suffered various disabilities (e.g., anxiety, pregnancy, PTSD and leukemia) and/or held sincere religious beliefs (e.g., a need to glorify God at all times by keeping the body pure of any foreign substances, an objection to the use of vaccines tested with aborted fetal cells, and opposition to vaccines that interfere with the body's immune system that God created) that prevented them from being vaccinated. They requested that the Court intervene and find that MGB wrongly denied their requests.

In a November 12, 2021 decision, the District Court ruled that plaintiffs had no likelihood of success on the merits of any of their claims. In particular, with respect to plaintiffs' medical exemption requests, the court held that there was "considerable doubt" that any of the plaintiffs had a "disability" that substantially limits them from working, and that none of the plaintiffs had shown a medical contraindication. The court went on to state that it was reasonable for MGB to conclude that the unvaccinated plaintiffs posed a "direct threat" to the health and safety of others in the workplace, and that an accommodation in the form of testing and masking was not reasonable and would pose an undue hardship on MGB, which must ensure the health and safety of its patients, staff and visitors. Lastly, the court held that because evidence in the record showed that MGB communicated with

plaintiffs about their exemption requests, followed up for additional information as needed, and rendered individual decisions on accommodations in accordance with CDC guidelines, plaintiffs were unlikely to succeed on their claim that MGB failed to engage in an interactive process.

With respect to plaintiffs' religious exemption claims, the court similarly held that MGB had shown that an accommodation in the form of testing and masking was not reasonable and would pose an undue hardship on MGB, and that permitting plaintiffs to continue to work at MGB without being vaccinated would materially increase the risk of spreading the disease and undermine public trust and confidence in the safety of its facilities. The court also held that where MGB formed a Religious Exemption Review Committee to evaluate requests for religious exemptions, and often sent follow-up requests for information, MGB had likely engaged in an interactive process in good faith as the law obligates.

Finally, the District Court ruled that plaintiffs could not show irreparable injury (a requirement to succeed on a request for an injunction), as any injury suffered could be addressed through the payment of money damages if plaintiffs succeeded in a trial on the merits of their lawsuit. The court also held that a balance of the equities (i.e., the economic hardship experienced by plaintiffs if they lose their jobs vs. MGB's strong interest in protecting its patients, visitors and staff from exposure to COVID-19) favored MGB, and that enjoining MGB from enforcing a vaccination mandate intended to curb the spread of COVID-19 is not in the public interest.

On November 18, 2021, the First Circuit Court of Appeals upheld the District Court's ruling on narrow grounds, stating that because plaintiffs have an adequate remedy in the form of money damages (should they prevail at a trial on the merits), an injunction was not appropriate. Although the First Circuit did not formally engage in an analysis of plaintiffs' likelihood of success on the merits, it did reference, in a footnote, the district court's factual findings and commented on the challenges plaintiffs face in succeeding in their case.

On November 23, 2021, the employees made an emergency petition to the United States Supreme Court seeking review of the First Circuit's opinion. On November 29, 2021, Justice Breyer rejected plaintiffs' emergency petition. The case will now proceed on the merits in the Federal District court in Massachusetts.

*Jeffrey T. Collins is an attorney with Morgan, Brown & Joy, LLP, and may be reached at (617) 788-5024, or [jcollins@morganbrown.com](mailto:jcollins@morganbrown.com). Morgan, Brown & Joy, LLP focuses exclusively on representing employers in employment and labor matters.*

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