

# Local Legal Strategies to Increase Vaccination During the COVID-19 Pandemic — Lessons from New York City

## Health Policy Portal

Lisa Landau,<sup>1</sup> Naomi Stark,<sup>2</sup> and Dave A. Chokshi<sup>3</sup>

1: NYC DEPARTMENT OF HEALTH AND MENTAL HYGIENE, NEW YORK, NY, USA, 2: YALE LAW SCHOOL, NEW HAVEN, CT, USA, 3: NEW YORK UNIVERSITY, NEW YORK, NY, USA.

**Keywords:** Vaccines, COVID-19, Pandemic, Law, New York City

**Abstract:** Vaccine mandates played a critical role in the success of New York City's COVID-19 response. By relying on evidence as a substantive basis for the mandates and adhering to procedural requirements and precedent, New York City leveraged its position and expertise as a local governmental authority to devise mandatory vaccine policies that withstood numerous legal challenges. New York City's experience highlights the role of municipal government in mounting a meaningful public health response, and the strategies adopted by NYC may provide a blueprint for municipalities around the world facing the ongoing COVID-19 pandemic and the threat of future public health emergencies.

New York City's mass vaccination campaign began with targeted distribution through hospital and outpatient provider channels, as well as city-run vaccination sites. In the first three months, vaccination access was limited to the populations with the greatest risk of exposure, including

healthcare workers, teachers, front-line workers, and vulnerable populations such as the elderly. As of April 2021, all adult New Yorkers were eligible for free vaccination. By the end of that month, 45% of New York City residents had received at least one dose.<sup>1</sup>

Vaccine uptake began to slow in May 2021. The government of New York City (NYC) took additional measures to increase rates of vaccination, augmenting the availability of convenient vaccines through mobile vans and expanded provider access, engaging partners to collaborate on education campaigns targeted to the particular needs and constraints of each neighborhood and community in NYC, and implementing cash-incentive programs for vaccination, including \$100 prepaid debit cards, free tickets to sporting events, and free memberships to various museums and theaters. This multi-pronged approach produced moderate increases in vaccination rates: as of July 1, 2021, some 58% of NYC residents had received at least one dose.<sup>2</sup> However, vaccination rates slowed once again, while rates of infection began to rise with the new Delta variant.

In this precarious moment for vaccine uptake, the NYC Department of Health and Mental Hygiene (DOH) began gradually rolling out a series of vaccine mandates through orders issued by the Commissioner of Health

### About This Column

**Aaron Kesselheim** serves as the editor for Health Policy Portal. Dr. Kesselheim is the JLME editor-in-chief and director of the Program On Regulation, Therapeutics, and Law at Brigham and Women's Hospital/Harvard Medical School. This column features timely analyses and perspectives on issues at the intersection of medicine, law, and health policy that are directly relevant to patient care. If you would like to submit to this section of JLME, please contact Dr. Kesselheim at [akesselheim@bwh.harvard.edu](mailto:akesselheim@bwh.harvard.edu).

**Lisa Landau, J.D.**, joined the NYC Department of Health and Mental Hygiene (DOHMH) as General Counsel in November 2020. Prior to her work at DOHMH, Lisa served for nine years as Chief of the Health Care Bureau at the New York State Attorney General's Office (NY AG). Lisa has focused on women and family health through her tenure as Executive Director of Nurse-Family Partnership at DOHMH, as well as previous positions at the ACLU and The Legal Aid Society of New York. **Naomi Stark, M.A., C.L.C.**, is a J.D. candidate at Yale Law School where she is a fellow at the Solomon Center for Health Law and Policy. She is a trained Full-Spectrum Doula and Certified Lactation Counselor based in Brooklyn, New York. **Dave A. Chokshi, M.D., M.Sc.**, was the 43rd Health Commissioner of New York City. He is currently a Clinical Professor of Population Health at the NYU Grossman School of Medicine and an attending physician at Bellevue Hospital, in New York, NY.

and subsequently ratified by NYC's Board of Health. As a result of these mandates — ultimately numbering over a dozen — New York City's vaccination campaign prevented an estimated 1.9 million cases, 303,000 hospitalizations, and 48,000 deaths as of March 2022.<sup>3</sup>

The success of these mandates was the result of several key conditions and commitments in their development: (1) The legal authority granted to the Health Commissioner to pro-

tections brought against them — none of which have succeeded thus far.

### **Leveraging Local Authority**

#### *Historical Precedent*

The citizens and the courts within New York City's jurisdiction have years of experience with vaccine mandates. As far back as the 1860s, New York State required school-age children to be vaccinated against smallpox,<sup>4</sup> and to protect patients from communicable diseases, the

review of federal employer mandates issued by the Occupational Safety and Health Administration (OSHA) and the Centers for Medicare and Medicaid Services (CMS) has had mixed results. Notably, an initiative by OSHA to impose mandates on private employers to require vaccination for their employees was struck down by the US Supreme Court.

To explain this disjuncture in the legal treatment of ostensibly analogous mandates, we can look to the

**The success of these mandates was the result of several key conditions and commitments in their development: (1) The legal authority granted to the Health Commissioner to protect the public during a public health emergency, and clear historical precedent for exercising that authority by issuing vaccine mandates; (2) Reliance on evidence in promulgating orders, with clear explanation of the basis and strong scientific and public health expertise in the Department and on the Board of Health to corroborate to that basis; (3) A strategy of prudence and restraint, progressively adding and expanding mandates as conditions and evidence dictated; and (4) A judiciary that applied the law to give primacy to the Department's duty to protect the public health. As a result of these key factors, the profound public health impact of the mandates remained unimpeded by the many legal challenges brought against them.**

tect the public during a public health emergency, and clear historical precedent for exercising that authority by issuing vaccine mandates; (2) Reliance on evidence in promulgating orders, with clear explanation of the basis and strong scientific and public health expertise in the Department and on the Board of Health to corroborate to that basis; (3) A strategy of prudence and restraint, progressively adding and expanding mandates as conditions and evidence dictated; and (4) A judiciary that applied the law to give primacy to the Department's duty to protect the public health. As a result of these key factors, the profound public health impact of the mandates remained unimpeded by the many legal chal-

state has required hospital employees who pose a risk of transmission to patients to be immunized against rubella (since 1980) and measles (since 1991).<sup>5</sup>

More recently, at the municipal level, New York City took action during a local measles epidemic, mandating vaccination in zip codes where outbreaks were taking place — a policy upheld by an appeals court.<sup>6</sup> Similarly, the City's influenza vaccine requirement for children in childcare settings was upheld by the State's highest court as within the City's powers.<sup>7</sup>

#### *National Context*

The employer vaccination mandates issued in NYC have largely withstood legal attacks. By contrast, judicial

process employed by NYC in developing evidence-based vaccine mandates and leveraging the unique position and authority of municipal government to promulgate those mandates.

#### *Municipal Authority*

The New York City Charter establishes the NYC Department of Health, granting it broad authority to "regulate all matters affecting health" in NYC.<sup>8</sup> When the public health is threatened, the NYC Commissioner of Health has the power to declare a public health emergency under the NYC Health Code,<sup>9</sup> and may subsequently issue orders to take urgent public health actions — in the form of Commissioner Orders — when necessary.<sup>10</sup> More specifically, the City administrative code provides that

the Department of Health may adopt vaccination measures to effectively prevent the spread of communicable diseases.<sup>11</sup>

Commissioner Orders must be ratified by the NYC Board of Health on the basis of supporting scientific evidence. The Board of Health — created in 1866 to address living conditions that were causing cholera in NYC — is currently made up of 11 experts in the fields of medicine, science, and public health, who are appointed by the mayor and approved by the NYC Council. The Board holds public meetings to review Commissioner Orders, and it renders decisions on ratification of those orders by way of a public vote.

The vaccine mandates issued by Commissioner Order and ratified by the Board of Health in 2021 were legally authorized as consistent with the requirements of the Health Code and City administrative code. This process was not always linear: the final mandates were honed through collaboration and iteration during the regular public meetings held by the Board of Health during the COVID-19 pandemic. Ultimately, after completing this collaborative process, the Board of Health moved to ratify every Commissioner Order mandating vaccination.

### Architecture of Legal Strategies

The strength and sustainability of the NYC vaccine mandates were a function of the principles undergirding their implementation:

1. Rooting the scope and substance of mandates in rigorous public health science by constructing the policies with input from numerous experts.
2. Strategically sequencing a phased rollout of mandates: beginning narrowly, where justification was strongest (e.g. protecting vulnerable populations in healthcare and congregate settings, and prioritizing mandates for public sector employees); then building on that foundation to encompass the

broader population and expand mandates to the private sector.

3. Establishing stringent, legible parameters for the mandates by prioritizing vaccine requirements over a testing option and limiting medical and religious exemptions to those required by law.

Two key features related to the scientific grounding of NYC vaccine mandates were repeatedly invoked in court rulings. First, evidence of the need for each mandate was expressly stated in every Commissioner Order. This evidence was proffered in the “whereas” clauses in the preamble to each order — for example: “Whereas a study by Yale University demonstrated that the City’s vaccination campaign was estimated to have prevented about 250,000 COVID-19 cases, 44,000 hospitalizations and 8,300 deaths from COVID-19 infection since the start of vaccination through July 1, 2021.”<sup>12</sup> During public proceedings, the Board of Health thoroughly reviewed, discussed, challenged, and ultimately deemed this evidence sufficient for the purpose of ratifying each order.

Second, city scientists and established experts were largely in agreement over the data and willing to attest to the facts supporting each of the Orders — and the courts, in turn, were unanimous in deferring to the expertise of the Department of Health. For instance, one court decision emphasized an affidavit provided by the DOH chief medical officer, invoking her reasoning that “from a public safety perspective, vaccination provides a more certain and verifiable record of immunity than that afforded by prior COVID-19 infection,” and consequently, “vaccination of individuals providing City services and working in City facilities will save lives, protect public health, and promote public safety.”<sup>13</sup>

When New York City began implementing vaccine mandates in summer 2021, city authorities constrained the scope of their mandates to prioritize protecting vulnerable New Yorkers: patients in health care settings,<sup>14</sup>

and residents of congregate and residential care facilities.<sup>15</sup> Two separate vaccine mandates were issued in July and August to require staff of these facilities to be vaccinated or undergo weekly testing.

Subsequent vaccine mandate Orders followed the greatest needs as dictated by societal circumstances and burgeoning evidence. By late August, with the school year about to begin, cases rising, and no vaccinations yet available for children under 12, the NYC Health Commissioner issued a mandate requiring employees of the Department of Education to have at least one vaccination by October 1, without a testing option.<sup>16</sup> Failure to demonstrate vaccination would result in employees being placed on leave without pay. Around this same time, the NYC Mayor issued the “Key to NYC” Executive Order, requiring that public accommodations — like restaurants, museums, and sporting arenas — only admit patrons who had proof of receiving at least one vaccine dose.<sup>17</sup> Between September and December, the Commissioner issued four more vaccine mandates designed to protect children: for childcare programs,<sup>18</sup> high-risk extracurricular activities,<sup>19</sup> early intervention programs,<sup>20</sup> and nonpublic schools.<sup>21</sup>

After the City’s previous vaccine mandates had all been implemented and largely upheld by the courts, the Commissioner issued an additional Order mandating that all private businesses in NYC — approximately 184,000 in total — require their employees to be vaccinated.<sup>22</sup> The Board of Health ratified that Order on December 20, 2021, making it the first vaccine mandate of the pandemic to apply broadly to all private employers within a municipality.

Rather than including express exemptions in the content of the Orders, NYC relied on existing protections for those seeking medical and religious exemptions for similar mandates. The mandates simply provided: “Nothing in this Order shall be construed to prohibit any reasonable accommodations otherwise required by law.”<sup>23</sup> Employees, for example,

could still request a religious or medical exemption under federal, state, or local law. This formulation permitted reasonable accommodations while precluding broad exemptions that would have invited confusion and undermined the public health impact of the mandates.

To promote vaccine uptake, the Orders also limited the duration and availability of options to test or provide evidence of prior infection as an alternative to vaccination. Although these alternative options would have made the mandates more politically palatable, the scientific experts of the NYC DOH felt strongly about strict vaccination requirements as the most impactful from a public health perspective. According to a subsequent Health Department analysis, vaccination rates for municipal employees increased more quickly after the test-

ing option was eliminated from the mandate in October.<sup>24</sup>

**Legal Challenges**

Two categories of legal claims were levied against the NYC vaccine mandates: claims challenging the validity of their form and claims against the substance of the mandates. None of these initial challenges succeeded in stopping the mandates from moving forward (Table 1).

*Form*

Claims brought against the form of the mandates either challenged the authority of the Department of Health to promulgate the Orders – invoking separation of powers – or asserted that the Department’s actions were “arbitrary and capricious” – meaning that the factual basis for the Department’s mandates

did not meet the legal standard prescribed by the state law. On the question of authority, the courts cited the NYC Charter and NYC Administrative code in holding that the Department of Health and Board of Health did indeed have the authority to issue mandates to protect the public health during a public health emergency.<sup>25</sup> The courts resoundingly rejected the “arbitrary and capricious” claims, finding that the decision to mandate vaccination was supported by a rational basis and that courts should defer to the agency’s own interpretation of its own regulations. In the words of one such decision, “[A]n agency’s decision to rely on the conclusions of its experts, rather than the conflicting conclusions of challengers’ experts, does not render its determination arbitrary, capricious, or lacking in a rational basis...It is undisputed that

Table 1

**Legal Challenges to New York City Vaccine Mandates**

Case	Basis for Challenge	Outcome
<i>New York City Municipal Labor Committee v. City of New York</i>	School-based employees allege violation of substantive due process rights to personal autonomy, bodily integrity and right to reject medical treatment.	The court denied Petitioners’ request for injunctive relief and granted Respondents’ motion to dismiss claim in its entirety. The court concluded: “It is undisputed that the Department of Health and Mental Hygiene had the authority to issue the Order...Further, this Court cannot and will not substitute Petitioners’ judgment for that of New York City’s public health experts, especially where, as here, Petitioners submit no medical documentation.” <sup>31</sup>
<i>In the Matter of the Application of v. Blasio</i>	Uniformed Firefighters Association claims Order violates state and city law, is arbitrary and capricious, and an abuse of discretion.	The court denied Petitioners’ request for injunctive relief and granted Respondents’ motion to dismiss. The court cited the opinion in <i>New York City Mun. Lab. Comm. v. City of New York</i> , noting that “the court ‘cannot and will not substitute Petitioners’ judgment for that of New York City’s public health experts’ vested with the authority to safeguard the public health amid an ongoing global pandemic.” <sup>32</sup>
<i>Maniscalco v. New York City Department of Education</i>	DOE employees claim violation of substantive due process and equal protection, and that Order was arbitrary and capricious.	The second circuit affirmed the district court’s decision to deny Plaintiffs’ request for injunctive relief. The decision by the district court emphasized: “Public school students have already endured two school years that were mired by disruption, leaving many students far behind. Minimizing interruption by providing a safe environment for these students is also a legitimate and important governmental purpose. Although plaintiffs argue that masks and testing adequately can advance this objective, it is not irrational for defendants to conclude the vaccine mandate better enhances this purpose.” <sup>33</sup>
<i>Marciano v. de Blasio</i>	Police detective alleges violation of separation of powers, state law preemption, and Order violates US Constitution due process rights.	The court granted defendants’ motion to dismiss the complaint with prejudice, concluding that “Marciano fails to articulate how this process falls below the constitutional floor...it appears that he was afforded constitutionally adequate process.” <sup>34</sup>

the Department of Health and Mental Hygiene had the authority to issue the Order.”<sup>26</sup>

### Substance

Substantive challenges were all brought under constitutional claims. Claimants argued that the vaccine mandates violated their substantive due process rights, undermined their right to equal protection under the law, or infringed on their freedom to exercise religion.

Claims brought under the Due Process Clause of the Fourteenth Amendment argued that NYC’s vaccine mandate deprived them of the right to engage in their profession. But in each case, the courts highlighted that the Due Process Clause does not secure the right to a specific job. Furthermore, courts consistently rejected claims that the costs of mandate enforcement mechanisms outweighed the public health benefits. For example, in a case brought by a New York City Police Union, the court held that “while employment rights are significant, equity must favor a policy which respondents have enacted to decrease serious illness and death.”<sup>27</sup>

In every case invoking the equal protection clause, claimants failed to demonstrate their belonging to a protected class. As a result, courts applied a rational basis standard in lieu of a stricter analysis, leading to consistent decisions to uphold the vaccine mandates. For example, in a case brought by the teachers’ union, the court found that the city’s requirement to be vaccinated — with no test-out option — was rational. The court explained that, “[u]nlike other municipal employees, these DOE employees are necessarily in close contact for long hours with children below twelve — who cannot be vaccinated — in indoor, congregate settings.”<sup>28</sup>

### Conclusion

In decisions rendered on the numerous legal challenges to New York City’s vaccine mandates, courts have highlighted the value of local public health authority for taking informed, responsive, and constitutionally con-

strained action to promote widespread vaccination. By contrast, in the Supreme Court decision rejecting the federal vaccine-or-test mandates promulgated by OSHA, the Court explicitly referenced OSHA’s lack of statutory authority to implement a mandate of this kind, noting “that OSHA, in its half century of existence, has never before adopted a broad public health regulation of this kind,”<sup>29</sup> and concluding “that the mandate extends beyond the agency’s legitimate reach.”<sup>30</sup>

By leveraging its unique position and capability as a local public health authority, the New York City Department of Health honed an evidenced-based process to motivate, shape, and justify vaccine mandates. In the continuing battle against COVID-19 — and in the event of future public health emergencies — municipal health authorities are positioned to take swift, targeted action that may be more difficult to achieve at the national level.

### Note

The authors have no conflicts of interest to disclose.

### References

1. *COVID-19: Data on Vaccines, New York City Department of Health and Mental Hygiene* (April 2022), available at <<https://www1.nyc.gov/site/doh/covid/covid-19-data-vaccines.page>> (last visited August 22, 2022).
2. *Id.*
3. New York City Department of Health and Mental Hygiene, “City’s COVID-19 Vaccination Campaign has Prevented an Estimated 48,000 Deaths, 300,000 — NYC Health,” Press Release, March 4, 2022, available at <<https://www1.nyc.gov/site/doh/about/press/pr2022/covid-19-vaccination-campaign.page>> (last visited August 22, 2022).
4. J.G.H. Hodge and L.O. Gostin, “School Vaccination Requirements: Historical, Social, and Legal Perspectives,” *Kentucky Law Journal* 90, no. 4 (2001): 831–890, available at <<https://www.ncbi.nlm.nih.gov/pubmed/15868682>> (last visited August 22, 2022).
5. New York City Codes, Rules, and Regulations, Title 10 §405.3(b)(10)(i)-(iii) (2022).
6. *C.F. v. NYC Department of Health & Mental Hygiene*, 191 A.D.3d 52 (2nd Dept. 2020).
7. *Garcia v. NYC Department of Health & Mental Hygiene*, 21 N.Y.3d 601 (2018).

8. New York City Charter §551 (January 9, 2022).
9. New York City Health Code §3.01(d) (2022).
10. *Id.*
11. New York City Administrative Code §17-109(b) (2022).
12. Order of the Commissioner of Health and Mental Hygiene to Require Covid-19 Vaccination in the Workplace, COVID-19 Commissioner Orders and Advisories, New York City Department of Health and Mental Hygiene, December 13, 2021, available at <<https://www1.nyc.gov/assets/doh/downloads/pdf/covid/covid-19-vaccination-workplace-requirement.pdf>> (last visited August 22, 2022).
13. *Broecker v. NYC. Department of Education*, 21-CV-6387(KAM)(LRM), 41 (E.D.N.Y. Feb. 11, 2022).
14. Order of the Commissioner of Health and Mental Hygiene to Require Covid-19 Vaccination or Testing for Staff in Public Healthcare Settings, COVID-19 Commissioner Orders and Advisories, New York City Department of Health and Mental Hygiene, July 21, 2021, available at <<https://www1.nyc.gov/assets/doh/downloads/pdf/covid/covid-19-vaccination-or-testing-staff-public-settings-072121.pdf>> (last visited August 22, 2022).
15. Order of the Commissioner of Health and Mental Hygiene to Require Covid-19 Vaccination or Testing for Staff in Residential and Congregate Settings, COVID-19 Commissioner Orders and Advisories, New York City Department of Health and Mental Hygiene, August 10, 2021, available at <<https://www1.nyc.gov/assets/doh/downloads/pdf/covid/covid-19-vaccination-or-testing-staff-residential-congregational-081021.pdf>> (last visited August 22, 2022).
16. Order of the Commissioner of Health and Mental Hygiene to Require Covid-19 Vaccination for Department of Education Employees, Contractors, and Others, COVID-19 Commissioner Orders and Advisories, New York City Department of Health and Mental Hygiene, August 24, 2021, available at <<https://www1.nyc.gov/assets/doh/downloads/pdf/covid/covid-19-vaccination-requirement-doe-2.pdf>> (last visited August 22, 2022).
17. Emergency Executive Order 225, Key to NYC: Requiring COVID-19 Vaccination for Indoor Entertainment, Recreation, Dining and Fitness Settings; Office of the Mayor, New York City, August 16, 2021, available at <<https://www1.nyc.gov/office-of-the-mayor/news/225-001/emergency-executive-order-225>> (last visited August 22, 2022).
18. Order of the Commissioner of Health and Mental Hygiene Requiring Covid-19 Vaccination for Individuals Working in Certain Child Care Programs,

- COVID-19 Commissioner Orders and Advisories, New York City Department of Health and Mental Hygiene, September 12, 2021, *available at* <<https://www1.nyc.gov/assets/doh/downloads/pdf/covid/covid-19-vaccination-requirement-child-care.pdf>> (last visited August 22, 2022).
19. Order of the Commissioner of Health and Mental Hygiene to Require Covid-19 Vaccination for Participation in High Risk Extracurricular Activities, COVID-19 Commissioner Orders and Advisories, New York City Department of Health and Mental Hygiene, September 15, 2021, *available at* <<https://www1.nyc.gov/assets/doh/downloads/pdf/covid/covid-19-vaccination-requirement-high-risk-extracurricular.pdf>> (last visited August 22, 2022).
  20. Order of the Commissioner of Health and Mental Hygiene Requiring Covid-19 Vaccination and Face Coverings in Child Care and Early Intervention Programs, COVID-19 Commissioner Orders and Advisories, New York City Department of Health and Mental Hygiene, November 17, 2021, *available at* <<https://www1.nyc.gov/assets/doh/downloads/pdf/covid/vaccination-face-coverings-child-care-early-intervention.pdf>> (last visited August 22, 2022).
  21. Order of the Commissioner of Health and Mental Hygiene to Require Covid-19 Vaccination for Nonpublic School Staff, COVID-19 Commissioner Orders and Advisories, New York City Department of Health and Mental Hygiene, December 2, 2021, *available at* <<https://www1.nyc.gov/assets/doh/downloads/pdf/covid/covid-19-non-public-school-vaccination-requirement.pdf>> (last visited August 22, 2022).
  22. Order of the Commissioner of Health and Mental Hygiene to Require Covid-19 Vaccination in the Workplace, COVID-19 Commissioner Orders and Advisories, New York City Department of Health and Mental Hygiene, December 13, 2021, *available at* <<https://www1.nyc.gov/assets/doh/downloads/pdf/covid/covid-19-vaccination-workplace-requirement.pdf>> (last visited August 22, 2022).
  23. Order of the Commissioner of Health and Mental Hygiene to Require COVID-19 Vaccination for Department of Education Employees, Contractors, Visitors or Others. New York City Department of Health and Mental Hygiene, September 15, 2022, *available at* <<https://www1.nyc.gov/assets/doh/downloads/pdf/covid/covid-19-vaccination-requirement-doe-2.pdf>> (last visited August 22, 2022).
  24. B. L. Rubenstein, P. J. Amiel, A. Ternier, H. Helmy, S. Lim, D. A. Chokshi, and J. R. Zucker, "COVID-19 Vaccination Rate Increases for Municipal Employees After Implementation of Strict Workplace Vaccination Requirements: New York City, May 28 – December 30, 2021." Presentation at Council of State and Territorial Epidemiologists (CSTE) 2022 Annual Conference, Louisville, Kentucky (virtual), June 20, 2022.
  25. *Generoso v. Adams*, No. 2022-22036 (N.Y. Sup. Ct. February 10, 2022).
  26. *New York City Municipal Labor Committee v. City of New York*, 156 N.Y.S.3d 681, 689 N.Y. Sup. Ct. (September 29, 2021).
  27. *Police Benevolent Association, et al. v. de Blasio, et al.*, 2021 WL 5828792, (N.Y. App. Div. December 8, 2021).
  28. *Maniscalco v. New York City Department of Education*, 21-CV-5055 (BMC), 2021 WL 4344267, at 5 (E.D.N.Y. September 23, 2021), *aff'd*, 21-2343, 2021 WL 4814767 (2d Cir. October 15, 2021).
  29. *National Federation of Independent Business v. Department of Labor, Occupational Safety and Health Administration*, 142 S. Ct. 661, 666 (January 13, 2022).
  30. *Id.*
  31. *New York City Municipal Labor Committee v. City of New York*, 156 N.Y.S.3d 681, N.Y. Sup. Ct. (September 29, 2021) at 689.
  32. *In the Matter of the Application of v. Blasio*, No. 159738/2021, 2021 WL 6005291, N.Y. Sup. Ct. (Dec. 20, 2021) at 5.
  33. *Maniscalco v. New York City Department of Education*, 21-CV-5055 (BMC), 2021 WL 4344267, at 5 (E.D.N.Y. September 23, 2021), *aff'd*, 21-2343, 2021 WL 4814767 (2d Cir. October 15, 2021) at 5.
  34. *Marciano v. de Blasio*, No. 21-CV-10752 (JSR), 2022 WL 678779 (S.D.N.Y. Mar. 8, 2022) at 10; Another case pertaining to police officers – *Police Benevolent Assn. of the City of N.Y. v City of New York* – recently succeeded in the New York State Supreme Court. The judgement was stayed and the question to be considered on appeal is whether adverse employment actions can be levied by the NYC Department of Health as a means of enforcing vaccine mandates. See *Police Benev. Ass'n of the City of New York, Inc. v. City of New York*, No. 151531/2022, 2022 WL 4398685, 2022 N.Y. Slip Op. 33185(U), 1 (N.Y. Sup Ct, New York County Sep. 23, 2022).