Labor & Employment Issues
In Focus

Pitta LLP
For Clients and Friends
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"All that serves labor serves the Nation. All that harms labor is treason to America. No line can be drawn between these two. If any man tells you he loves America, yet hates labor, he is a liar. If any man tells you he trusts America, yet fears labor, he is a fool. There is no America without labor, and to fleece the one is to rob the other."

Abraham Lincoln

FEDERAL JUDGE ENJOINS STATE HEALTH CARE VAX MANDATE LACKING RELIGIOUS ACCOMMODATION

In a 27-page decision dated October 12, 2021, U.S. District Court Judge David N. Hurd enjoined New York State from enforcing a Department of Health ("DOH") emergency regulation that required mandatory vaccination of health care workers without an exemption for good faith religious accommodations. *Dr. A, Nurse A et al. v. Kathy Hochul et al*, N.D.N.Y. No. 1:21-cv-1009 (Oct. 12, 2021).

On August 18, 2021, the New York State DOH issued emergency regulation §2.61 to combat the continuing COVID threat by requiring vaccination of all health care workers, subject to medical and religious accommodation. On August 26, the State removed the religious but not the medical accommodation. Seventeen plaintiffs from all fields of health care, stylishly represented by attorneys from the Thomas More Society, sued pseudonymously to enjoin the regulation as violating their constitutional right to practice their religion by subjecting them to loss of employment and license for refusal to take vaccinations derived from fetal tissue.

Following an initial Temporary Restraining Order against the regulation and subsequent briefing, Judge Hurd held that Plaintiffs had met their burden of showing a likelihood of success and irreparable harm for a preliminary injunction against enforcement of §2.61 without religious accommodation. First, Judge Hurd held that the State's regulation fell before the constitution's Supremacy Clause, establishing Title VII's requirement of religious accommodation supreme over the State regulation. Second, Judge Hurd found that the regulation violated Plaintiffs' free exercise of religion by punishing them for adhering to their religious beliefs. He rejected the State's argument that the regulation was a neutral exercise of the State's police power, noting, among other things, that the State retained the medical exemption.

As the Court itself noted, this decision is likely to receive immediate Second Circuit review. In the meantime though, the District Court's lesson is clear and in synch with employer mandates in other jurisdictions, including New York City – courts uphold the mandate but favor religious accommodation.

SUMMARY JUDGMENT GRANTED TO AIRLINE OVER NYC PAID SICK LEAVE LAW

On September 30, 2021, U.S. District Judge I. Leo Glasser, from the United States District Court for the Eastern District of New York, granted the summary judgment motion of Delta Air Lines, Inc. ("Delta" or "Defendant") in a civil action brought by a group of Delta flight attendants alleging that Delta failed to comply with the New York City Earned Sick Time Act ("Act"). The Court deemed the City law preempted by Federal law regulating the airline industry.

According to the Act, any employer with 100 or more employees is required to provide New York City-based employees with 56 hours per year of paid leave to account for absences related to a physical or mental illness of an employee or his/her family member, as well as "safe time" if the employee or his/her family member was the victim of domestic abuse or stalking. *See* N.Y.C. Admin Code § 20-911, *et seq.*

In his decision, District Judge Glasser found that the Act contravened the Airline Deregulation Act of 1978 ("ADA"), which prohibits state regulations related to a price, route, or service of an air carrier. The Court determined that the ADA preempted the Act because it "threatens to subject Delta to a patchwork of state laws that will undermine its ability to compete in a deregulated marketplace." To find in favor of the plaintiffs would "undermine the congressional goals of efficiency and competition that underlie the ADA" and would hinder Delta's ability to provide timely services to its customers. In granting Defendant's motion, District Judge Glasser feared that permitting the Act to stand would lead to flight attendants seeking to move their respective home base of operations to take advantage of sick leave benefits in different localities. "A flight attendant's base has at least some impact on the airline's scheduling, so if flight attendants begin to forum-shop in order to take advantage of local laws, the airline's scheduling – and thus services –will be impacted to some extent."

Further, in distinguishing local anti-discrimination laws, such as the New York State Human Rights Law and the New York City Human Rights Law from the Act, District Judge Glasser held that employment discrimination laws "do not threaten the operation of an airline's existing operational network or flight staffing. In contrast, the Act threatens Defendant's ability to get flights off the ground on time."

IRS ISSUES SUPPLEMENTAL GUIDANCE ON EXTENSION OF COBRA ELECTION AND PAYMENT DEADLINES

On October 6, 2021, the Internal Revenue Service ("IRS") issued additional guidance (the "Guidance") addressing the application of certain extensions of the Consolidated Omnibus Budget Reconciliation Act ("COBRA") continuation coverage under the Employee Benefits Security Administration Disaster Relief Notice and the Notice of Extensions of Certain Timeframes for Employee Benefit Plans, Participant, and

Beneficiaries Affected by the COVID-19 Outbreak[1] ("Emergency Relief Notices") as well as the Emergency Relief Notices' interaction with the COBRA premium assistance available pursuant to the American Rescue Plan Act of 2021 ("ARPA").

The Emergency Relief Notices previously issued by the Departments of Labor and Treasury and the Internal Revenue Service extended certain employee benefit plan deadlines for participants and beneficiaries under the Employee Retirement Income Security Act of 1974 during the COVID-19 Outbreak Period ("Outbreak Period"). Pursuant to the Emergency Relief Notices, the maximum extension commonly referred to as the "disregarded period" with respect to COBRA continuation of coverage was set at one year and applies individually to the (i) sixty (60)-day election period for COBRA continuation coverage, (ii) dates for making COBRA premium payments, (iii) date for individuals to notify the plan of a qualifying event or determination of disability and (iv) date for providing COBRA election notice for group health plans and their sponsors or administrators.

Through ten (10) examples, the IRS clarifies that the due date for individuals to elect COBRA continuation coverage and to make initial and subsequent COBRA premiums during the Outbreak Period run concurrently. In addition, the Guidance provides a new transition relief, illustrates the transition relief applicability, and further clarifies that the Emergency Relief Notices extensions do not apply to the periods for providing the required notice of the extended election period for electing COBRA continuation coverage with COBRA premium assistance under the ARPA.

Under the Guidance, if an individual elected COBRA continuation coverage outside of the initial sixty (60)-day COBRA election timeframe, such individual will generally have one (1) year and one hundred and five (105) days after the date the COBRA notice was provided to him or her to make the initial COBRA premium payment. In the case where an individual elected COBRA continuation coverage within the initial sixty (60)-day COBRA election timeframe, such individual will have one (1) year and forty-five (45) days after the date of the COBRA election to make the initial COBRA premium payment. The foregoing is subject to the transition relief providing that in no event an initial COBRA premium payment be due before November 1, 2021, if the individual makes the initial COBRA premium payment within one (1) year and forty-five (45) days after the election date. For each subsequent COBRA premium payments, the maximum time for an individual to make the payment is one (1) year from the date the payment was originally due but for the disregarded period, including the mandatory thirty (30)-day period, but subject to the transition relief. Therefore, an individual is not required to make an initial COBRA premium payment before November 1, 2021, even if November 1, 2021, is more than one (1) year and one hundred and five (105) days after the date the election notice was received if the individual makes the initial premium payment within one (1) year and forty-five (45) days after he or she has made his election.

Furthermore, pursuant to the Guidance an individual who has a disregarded period under the Emergency Relief Notices may elect retroactive COBRA continuation coverage and may elect COBRA continuation coverage with COBRA premium assistance for any

[1] These notices are available at https://www.dol.gov/sites/dolgov/files/ebsa/employers-and-advisers/plan-administration-and-compliance/disaster-relief/ebsa-disaster-relief-notice-2021-01.pdf

period for which the individual is eligible for COBRA premium assistance. However, the disregarded periods continue to apply to payments of COBRA premiums after the end of the COBRA premium assistance period, to the extent that the individual is still eligible for COBRA continuation coverage and the Outbreak Period has not ended.

For additional information, including the ten (10) examples issued by the IRS in its Guidance, please see click on the following link: https://www.irs.gov/pub/irs-drop/n-21-58.pdf

Please contact us if you have any questions or require assistance with administering your COBRA continuation of coverage benefits.
