

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X Case No.:

MATTHEW RIVERA, Individually, and for all others
similarly situated,

Plaintiff(s),

-against-

VERIFIED COMPLAINT

THE CITY OF NEW YORK, ERIC L. ADAMS,
MAYOR OF NEW YORK CITY IN HIS OFFICIAL
CAPACITY, NEW YORK CITY DEPARTMENT OF
HEALTH AND MENTAL HYGIENE, DAVE A.
CHOKSHI, COMMISSIONER OF THE NYC
DEPARTMENT OF HEALTH AND MENTAL
HYGIENE IN HIS OFFICIAL CAPACITY,
CONSOLIDATED EDISON COMPANY OF NEW
YORK, INC., and UTILITY WORKERS UNION OF
AMERICA, AFL-CIO, LOCAL UNION NO. 1-2,

JURY TRIAL DEMANDED

Defendant(s).

-----X

JOHN A. WEBER IV, ESQ.

LAW FIRM OF VAUGHN, WEBER & PRAKOPE, P.L.L.C.

Attorney for Plaintiffs

TIMOTHY B. PRAKOPE, ESQ., *co-counsel*

ROBERT MEHRAN, JR., ESQ., *of-counsel*

PRELIMINARY STATEMENT

This is a civil action seeking a declaratory judgment, injunctive relief, compensatory damages, and special damages as it relates to the penalty provisions of the NYC Vaccine Mandate, the Mandate itself and the Employment Policy of Defendant as it relates to the Mandate.

COMPLAINT

1. Plaintiff Matthew Rivera, Individually, as an Employee, as a Union Member and for all others similarly situated parties attached at Exhibit 1, (hereinafter collectively referred to as “Plaintiffs”), by his attorneys, the Law Firm of Vaughn, Weber & Prakope, PLLC, complains of

the Defendants The City of New York (hereinafter “NYC”), Eric L. Adams, mayor of New York City, in his official capacity (hereinafter “Mayor”), the Department of Health and Mental Hygiene (hereinafter “DOHMH”), Dave A. Chokshi,, commissioner of the Department of Health and Mental Hygiene, in his official capacity (hereinafter “Commissioner”), Consolidated Edison Company of New York, Inc. (hereinafter “ConEd”), and the Utility Workers Union of America, AFL-CIO, Local Union No. 1-2 (hereinafter “Union”).

NATURE OF ACTION

2. This action is challenging the authority of the Defendants’ in issuing Executive Orders 316 and 317 (the “NYC Mandate”). However, this is not a referendum on whether or not a person should be required to get the vaccine or whether the vaccine is safe. Rather, it is an application concerning government overreach and, more specifically, the Executive Branch taking legislative action in unilaterally suspending and changing the penalty provisions under the New York City Administrative Code.

3. In doing so, the former Mayor of New York in executing and Mayor Adams in continuing said NYC Mandate, exceeded authority by taking action vested solely in the Legislature’s realm, violated individuals due process rights (bestowed by both the United States Constitution and New York State Constitution), mandated excessive fines and created exemptions to the NYC Mandate that were arbitrary and capricious.

4. By such action, the NYC Mandate compelled ConEd to act as agents of the state and comply therewith and in violation of its collectively bargained contract and without the defense and protection afforded its employees through Union inaction.

5. Given the evolving nature of COVID-19 and its ever-changing variants, infection is likely to occur regardless of whether a person is fully vaccinated and/or then taken an additional “booster” shot. Therefore, the very problem that the NYC Mandate is attempting to solve and

prevent is no longer achieved through the means which were mandated. Even the CDC recently released a study evidencing that natural immunity gained by people who have suffered and recovered from COVID-19 Delta variant was six times more effective at preventing future infection than the vaccine¹.

6. This action seeks injunctive and declaratory relief from New York City Executive Orders 316 and 317 along with the December 13, 2021, DOHMH order that mandates the COVID-19 vaccination for all employees working in New York City (the “NYC Mandate”).

7. The instant action and relief requested is necessary and warranted based upon continuing case law limiting enforcement of such mandates unilaterally enacted through Executive Order, and without any Legislative Action as well as the withdrawal of the Federal Vaccine Mandate as an acknowledgement of lack of Executive, unilateral authority (“OSHA Mandate”).

8. Plaintiffs are moving this Court for a temporary restraining order and preliminary and injunctive relief in view of the rolling employment termination dates for Plaintiffs beginning on January 18, 2022 and moving forward for noncompliance with the NYC Mandate, after which Plaintiffs will be harmed irreparably by loss of employment and professional standing.

9. Plaintiffs are also moving this Court to restore the status quo and/or employment status, lost wages and benefits of any of Plaintiffs or similarly situated individuals, ConEd employees and ConEd Union Members.

PARTIES

10. Plaintiff, Matthew Rivera, is a resident of Nassau County, New York.

11. Plaintiff, Matthew Rivera, is an employee of ConEd.

12. Plaintiff, Matthew Rivera, is a Union Member of the Union.

¹ https://www.cdc.gov/mmwr/volumes/71/wr/mm7104e1.htm?s_cid=mm7104e1_w#contribAff

13. There are numerous similarly situated Plaintiffs (Ex. 1).
14. There are numerous similarly situated Plaintiffs employed by ConEd.
15. There are numerous, similarly situated Plaintiffs who are members of the Union.
16. The Plaintiffs are adversely affected by the NYC Mandate.
17. The Plaintiffs will suffer imminent harm and damages if the NYC Mandate is enforced.
18. The collective Defendants are the source and cause of the Plaintiffs' damages.
19. Defendant, NYC, is a municipal government entity organized under the laws of the State of New York and at all times herein, Defendant NYC, was and still is an independent agency and/or municipal governmental entity operating in and for the counties of Kings, Richmond, Manhattan, Bronx and Queens. Plaintiff is suing Defendant NYC in their official capacity.
20. Defendant Eric L. Adams ("Mayor") is the mayor of New York City. He is responsible for promulgation and enforcement of the challenged vaccine mandate. At all pertinent times, Mayor has acted and will act under the color of state law and in his official capacity. Defendant Mayor's principal place of business is located at City Hall, New York, NY 10007. He is sued in his official capacity.
21. Defendant Department of Health and Mental Hygiene ("DOHMH") is a municipal government entity organized under the laws of the State of New York and at all times herein, Defendant DOHMH, was and still is an independent agency and/or municipal governmental entity operating in and for the counties of Kings, Richmond, Manhattan, Bronx and Queens. DOHMH is responsible for promulgation and enforcement of the challenged vaccine mandate. Plaintiff is suing Defendant DOHMH in their official capacity.

22. Defendant Dave A. Chokshi (“Commissioner”) is Commissioner of Health for the DOHMH. He is responsible for promulgation and enforcement of the challenged vaccine mandate. At all pertinent times, Commissioner has acted and will act under color of state law. Defendant Commissioner’s principal place of business is located at 42-09 28th Street, Queens, Long Island City, NY, 11101. He is sued in his official capacity.

23. Defendant Consolidated Edison Company of New York, Inc., (“ConEd”) was, and still is, domestic corporation formed by and under the Laws of the State of New York with its’ principle place of business located at 4 Irving Place, New York, NY 10003. They are acting as agents of the state and enforcing the NYC Mandate and they are being sued in their official and private capacity.

24. Defendant Utility Workers Union of America, AFL-CIO, Local Union No. 1-2, (“Union”), is the designated collective bargaining agent for the ConEd employees. The Union negotiates and advocates on ConEd employees’ behalf with NYC in the matters of policy, terms and conditions of employment, and all matters relating to ConEd employees’ general welfare. The core function of the Union is to advocate for, protect and advance the rights and interests of all ConEd employees. The NYC Mandate applies to all the Union’s members and was unilaterally implemented by the municipal Defendants. The Union has failed ConEd members who oppose the NYC Mandate by failing to protect their Constitutional rights and negotiate terms and conditions of employment.

25. Plaintiffs seek injunctive and declaratory relief from NYC and all Defendants in enforcement of the penalty provisions of the NYC Mandate.

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