



Written by [Michael Tennant](#) on October 26, 2022

Judge Orders New York City to Reinstate Workers Fired Over “Arbitrary and Capricious” Vaccine Mandate

A New York State Supreme Court judge on Tuesday [ordered](#) New York City to reinstate — with back pay — sanitation workers who were fired for failing to get vaccinated for Covid-19, calling the vaccine mandate “arbitrary and capricious.”

The city terminated over 1,750 public employees for failing to take the job pursuant to an October 2021 order from Health Commissioner David Chokshi. Sixteen former Department of Sanitation workers filed suit after they were ousted in February, their exemption requests having been summarily denied.



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Justice Ralph Porzio found in favor of the former employees primarily because of the city’s inconsistent mandates. Two months after Chokshi mandated vaccinations for city employees, he issued a similar order for private employees. Then, in March, Mayor Eric Adams issued his own order exempting athletes, performers, and others from the private-employee mandate. This sequence of events, wrote Porzio, “violated the petitioners’ equal protection rights as the [public-employee] mandate is arbitrary and capricious.”

“Either there is a mandate for all, or there is a mandate for none,” he declared.

Porzio also found that “the Board of Health does not have the authority to unilaterally and indefinitely change the terms of employment for any agency.” City employees have never been required to be vaccinated against any disease, and the plaintiffs were working under a contract that did not mandate Covid-19 jobs. “This court believes that a new ‘condition of employment’ cannot be imposed upon these employees when the ‘condition’ did not exist when they accepted contracted employment,” penned the judge.

Moreover, he opined, “states of emergency are meant to be *temporary*.” (Emphasis in original.) Chokshi, he maintained, does not have the authority “to enact a permanent condition of employment during a state of emergency” and, in so doing, “is in violation of separation of powers” by enacting rules not grounded in existing legislation.

Unlike Chokshi and Adams, Porzio believes in individual responsibility. To the city’s claim that the fired sanitation workers were a threat to civilians, “hundreds of thousands of whom are unvaccinated,” Porzio responded:

This argument is patently incorrect. The petitioners work primarily outdoors and have limited interaction with the public. Those “hundreds of thousands of whom are unvaccinated” are responsible for their own health. They choose for themselves whether to be vaccinated or whether to risk infections. City employees should also have the right to



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make their own choice regarding their own health.

Furthermore, he observed, “Being vaccinated does not prevent an individual from contracting or transmitting Covid-19.... We have learned through the course of the pandemic that the vaccine against Covid-19 is not absolute. Breakthrough cases occur, even for those who have been vaccinated and boosted.”

Porzio concluded his opinion:

The vaccination mandate for city employees was not just about safety and public health; it was about compliance. If it was about safety and public health, unvaccinated workers would have been placed on leave the moment the order was issued. If it was about safety and public health, the health commissioner would have issued city-wide mandates for vaccination for all residents. In a city with a nearly 80% vaccination rate, we shouldn't be penalizing the people who showed up to work, at great risk to themselves and their families, while we were locked down.

If it was about safety and public health, no one would be exempt. It is time for the City of New York to do what is right and what is just.

Unfortunately for the ex-employees, the New York Supreme Court, despite its name, is not the highest court in the state. A spokesman for the city Law Department, which is also [appealing](#) a Porzio ruling in favor of a fireman who lost his job because of the vaccine mandate, [said](#) the department had already filed an appeal of Porzio's decision for the former sanitation workers, adding that “the mandate remains in place” for all other city employees.

However, as the plaintiffs' attorney, Chad LaVeglia, [pointed out](#), “every city employee who has been terminated because of the mandate could bring civil actions against the city,” which would cost taxpayers dearly.

For Chokshi and Adams, though, it is a small price to pay to maintain their status as absolute rulers of the Big Apple.





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