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Complying with COVID-19 Mandates in New York City and the State of New York

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Both New York City and New York State have continued to issue vaccination mandates and additional guidance on what may seem like a daily basis. While legal challenges likely remain, this alert provides New York employers with a summary of the requirements as they are currently set forth. We will continue to monitor any further developments in New York.

Mandate for Employers in New York City: Require All Covered Workers to be Vaccinated¹

- **Effective Date:** Dec. 27, 2021
- **Covered Employers:** Any non-governmental entity that employs more than one worker in New York City, or maintains or operates a workplace in New York City is covered. A “workplace” is any place such as an office (and including a vehicle) where work is performed in the presence of another worker, or a member of the public. This mandate does not apply to covered employers who are already subject to another Order of the Commissioner of the Department, Board of Health, the Mayor, or a State or federal entity that is in effect and requires them to maintain or provide proof of full vaccination. Covered employers who are subject to federal vaccination mandates that are not currently in effect because of a court order must comply with this New York City mandate.
- **Covered Workers:** Workers who perform in-person work or interact with the public while working for a covered employer in New York City, and include a full- or part-time staff member, employer, employee, intern, volunteer or contractor of a covered employer. The following workers are not covered by this mandate:
 - an individual who works from their own home and whose employment does not involve interacting in-person with co-workers or members of the public;
 - an individual who enters the workplace for a quick and limited purpose (for example, using the bathroom, making a delivery, or clocking in and receiving an assignment before leaving to begin a solitary assignment); or
 - non-City residents who are performing artists, college or professional athletes, or individuals accompanying such performing artists or college or professional athletes who do not have to display proof of vaccination pursuant to the Key to NY.
- **Vaccination Mandate:** Beginning Dec. 27, employers must require covered workers to show proof that they have received at least one dose of a COVID-19 vaccine as a condition of entry into the workplace. Covered workers must be required to show proof of their second dose 45 days after that. Businesses

¹ New York City has issued specific COVID-19 vaccination guidance for indoor entertainment, recreation, dining and fitness establishments in the City. Employers in those sectors must consult that guidance.

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must exclude from the workplace any covered worker who has not provided such proof, unless an exception due to a religious or medical accommodation applies.

- **Proof of Vaccination:** Accepted forms of proof are Excelsior Pass, Excelsior Pass Plus, SMART Health Cards issued outside of New York State, full-course vaccination through NYC COVID Safe app, a CDC Vaccination Card, or other official immunization record. Additionally, employers must ask covered workers to show a proof of identification (such as a driver's license). Non-employee workers, such as contractors, must be required to provide vaccination proof to their employers. Businesses may request that a contractor's employer confirm proof of vaccination. Businesses must then keep a log of these requests and the confirmations they receive.
- **Reasonable Accommodation:** Workers who have a sincerely held religious belief (not a social or political belief), or a medical condition that prevents them from being vaccinated may be eligible for a reasonable accommodation but must apply for a reasonable accommodation by Dec. 27. Employers may permit such workers to continue coming into the workplace while their reasonable accommodation request is pending. City agencies may review a covered employer's reasonable accommodation process and records to ensure that the entity is handling requests promptly and appropriately. Guidance on how to handle reasonable accommodation requests as well as a checklist that employers can use to process reasonable accommodation requests is available [here](#). If an employer chooses to follow this checklist and keeps it on file, that will demonstrate that the employer handled the reasonable accommodation request appropriately.
- **Record Retention:** Businesses must verify and keep a record of each covered worker's proof of vaccination by Dec. 27. Options to satisfy this requirement include:
 - Copy of the covered worker's vaccination card or records of reasonable accommodation, where applicable, and including a record of when the reasonable accommodation was granted, the basis for doing so, and any supporting documents the employee provided for the reasonable accommodation.
 - Employers can create their own record that includes the following information for each employee: (1) name; (2) whether the covered worker is fully vaccinated; (3) for covered workers who submitted proof of the first dose of a two-dose vaccine, the date by which they can provide proof of a second dose (no later than 45 days after submitting proof of the first dose); and (4) record of reasonable accommodation with supporting documentation
 - Employers may check each covered worker's proof of vaccination before they enter the workplace each day. They must keep a record of each verification.

Businesses should be prepared to make their records available for inspection.

- **Confidentiality of Records:** Any vaccination information should be collected and stored in a secure manner to ensure protection of the privacy and security of the information. Such information should only be accessed by employees or other individuals who have a legitimate need to access such information for purposes of compliance with this mandate, or other applicable laws. Vaccination information should not be used for any other purpose.

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- **No Discrimination/Retaliation:** When implementing vaccine requirements, employers should ensure that their policies and practices do not treat employees differently because of their race, national origin, disability, gender, religion/creed, age, or any other characteristic protected by the New York City Human Rights Law (NYCHRL). Employers are prohibited from retaliating against employees because they requested an accommodation, opposed discrimination, or filed or assisted with a claim under the NYCHRL.
- **Affirmation of Compliance:** By Dec. 27, businesses must complete and sign a [certificate](#) affirming they are in compliance with this mandate and post it in a public-facing location in the workplace.
- **Enforcement:** Inspectors from various City agencies will begin enforcing the order on Dec. 27. While the City's preference is to ensure compliance and avoid fines and penalties, businesses refusing to comply may be subject to a fine of \$1,000 and escalating penalties thereafter if violations persist.

Takeaways: Employers must monitor any legal challenges to this mandatory vaccination mandate. While there is no certainty, an emergency stay (just as in the case of OSHA's COVID-19 Vaccination ETS) may be issued against the mandate. But in the meantime, employers must take the following steps towards compliance –

- Draft mandatory vaccination policy for the workplace
- Inform employees about the mandate and required compliance
- Track vaccination status of employees
- Explore remote options for unvaccinated employees
- Draft and implement procedures for granting reasonable accommodation
- Explore policies for employees who refuse to get vaccinated and are not eligible for reasonable accommodation
- Explore policies for record retention
- Once in compliance, complete and sign the Affirmance of Compliance certificate and post it in a public-facing location at the workplace

Covid-19 Mandate for Employers in the State of New York: Require Vaccination or Masking for Every Person Entering the Workplace

- **Effective Date:** Dec. 13, 2021 to Jan. 15, 2022
- **Applicability:** Mandate applies to “indoor public places” defined as businesses and venues in the state of New York that are either publicly owned or owned by private business entities. This includes indoor entertainment venues, concert halls, indoor sports stadiums, recreational spaces, restaurants, office buildings, shopping centers, grocery stores, pharmacies, houses of worship and common areas in residential buildings.

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- Vaccination OR Mask Required: Unless an employer requires proof of vaccination from every person (including employees, guests, visitors, and patrons) as a condition of entry into its workplace, every person in the workplace (including employees, guests, visitors, and patrons past their second birthday) must wear a mask at all times regardless of their vaccination status except when eating, drinking, alone in an enclosed room, or otherwise engaged in an activity that cannot be performed while masked.
- Proof of Vaccination: Same as that allowed under the New York City mandate, discussed above. While boosters are strongly recommended, they are not required for fully vaccinated status.
- Part-Vaccination and Part-Mask Requirement Not Allowed: Employers cannot mix and match vaccination and mask requirements, for instance, they cannot allow vaccinated persons in the workplace to go unmasked and require unvaccinated persons to wear masks. They need to choose between a mandatory vaccination policy or a blanket mask policy regardless of vaccination status and implement that throughout the workplace.
- Mandate Applies to Private Events at Public Indoor Spaces: At private events held indoors at a business or venue, for example, where a wedding is held at a privately-owned restaurant or venue, the business must require masking or proof of vaccination as a condition of entry.
- Compliance with Local Mandates: Employers must continue to comply with their city and other applicable local mandates in addition to adhering with this state mandate. So, employers in New York City are subject to the state and the city mandate. As the city mandate allows only for a mandatory vaccination policy without the option for a mask policy, New York City employers do not have the latter option once the New York City mandate becomes effective.
- Compliance with the HERO Act: Employers must continue to comply with the HERO Act. For purposes of complying with the Act, this state mandate constitutes the applicable guidance related to face coverings, meaning employers must ensure their employees adhere to masking requirements or require proof of vaccination as a condition of entry into the business.
- Enforcement: Individuals or businesses that violate the state mandate are subject to a maximum fine of \$1,000 for each violation, which will be enforced via the local health departments.

Takeaways: As a vaccination requirement for employees, guests, visitors, and patrons may not be feasible, employers in the state of New York (outside New York City), may consider implementing a mandatory mask policy for all persons entering the workplace. Employers should consider posting signage to that effect at the entry point and designate personnel for checking adherence with the mask requirement prior to entry. These personnel should be trained on handling mask-resistant patrons. Employers must ensure that employees are informed of the mask requirement, especially that masks are required regardless of vaccination status.

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Related Alerts:

- [New York City Announces Vaccine Mandate for All Private Employers – 12/07/2021](#)
- [Employer Checklist: Complying with the COVID-19 Vaccination and Testing Standard – 11/08/2021](#)

HAYNES BOONE

- [Checklist for Implementing the New York HERO Act Infectious Disease Exposure Prevention Plan](#) – 09/15/2021
- [President Biden's Nationwide Strategy to Increase COVID-19 Vaccination Includes an Expected Mandatory Vaccination Standard from OSHA](#) – 09/10/2021
- [OSHA Updates COVID-19 Guidance to Mirror Recent CDC Recommendations](#) – 08/18/2021
- [OSHA Issues COVID-19 Emergency Temporary Standard for Healthcare Employers](#) – 06/14/2021
- [OSHA Issues New Guidance for Protecting Unvaccinated or Otherwise At-risk Workers from Exposure to COVID-19](#) – 06/14/2021
- [Checklist for Employers Mulling Relaxing COVID-19 Safety Rules for Fully Vaccinated Employees](#) – 05/20/2021
- [Update on OSHA's COVID-19 National Emphasis Program and Enforcement](#) – 03/30/2021
- [OSHA Announces New National Emphasis Enforcement Program on COVID-19](#) – 03/15/2021
- [OSHA Issues Revised COVID-19 Guidance for Workplaces](#) – 02/02/2021
- [OSHA Reminds Employers to Continue Assessing Employee Safety Regarding COVID-19 Hazards, While Also Not Neglecting Common Workplace Hazards](#) – 6/17/2020
- [COVID-19 and OSHA: Why Employers May See More Inspection Activity and More Injuries and Illnesses Being Recorded as Work-Related](#) – 05/21/2020
- [Checklist Part II: OSHA and Safety Issues Regarding COVID-19 When Returning to Work](#) – 05/09/2020
- [Protecting Your Company from Coronavirus-related Premises Liability Claims](#) – 04/27/2020
- [Checklist for Return to Work \(or Reinstatement\) for Employees Impacted by COVID-19](#) – 04/21/2020
- [Federal OSHA's New COVID-19 Enforcement Guidance](#) – 04/15/2020
- [OSHA Relaxes Requirement for Work-related Assessment for COVID-19 Recordkeeping for Certain Employers](#) – 04/13/2020
- [CARES Act Relief Checklist: Considerations in Deciding What Relief is Right for Your Business](#) – 04/06/2020
- [Employers Providing Face Masks Should Review Their Health and Safety Obligations](#) – 04/06/2020
- [Relief for Employers and Workers under the CARES Act](#) – 03/29/2020
- [COVID-19 OSHA Guidance: Hazard Assessments at Workplaces Considered Essential Businesses Under Shelter in Place Orders](#) – 03/25/2020; Last Updated – 03/29/2020
- [COVID-19 Restructuring and the WARN Act](#) – 03/25/2020
- [FFCRA - Temporary Non-Enforcement - Employer Payroll Tax Credit](#) – 03/23/2020
- [Employment Issues under the Families First Coronavirus Act of 2020](#) – 03/19/2020
- [New York Enacts COVID-19 Sick Leave Act](#) – 03/19/2020
- [Employer Checklist for Responding to a Positive COVID-19 Test](#) – 03/18/2020
- [COVID-19 and Discrimination Issues](#) – 03/18/2020
- [COVID-19 and the American With Disabilities Act](#) – 03/18/2020
- [COVID-19 and OSHA](#) – 03/18/2020