

ALERTS

New York City's COVID-19 Vaccine Mandate for Private Employers and Other Recent Developments

December 21, 2021

Following Mayor Bill de Blasio's announcement of a vaccine mandate for private-sector workers in New York City, the New York City Commissioner of Health and Mental Hygiene ("Commissioner") issued an order dated Dec. 13, 2021 ("Order"). Employers in New York City are required by Dec. 27, 2021 to prohibit unvaccinated workers from entering their workplaces, with limited exceptions. The City subsequently posted FAQ Guidance and a flyer.

Employers and Workers Subject to the Order

The Order affects all "Covered Entities," which are defined to include any non-governmental entity that employs one or more workers in New York City or operates a workplace in New York City. The Order does not apply to Covered Entities or individuals who are already subject to another order of the Commissioner, Board of Health, the Mayor or a state or federal entity that requires them to maintain proof of full vaccination, or to individuals who have been granted a reasonable accommodation under those requirements. Covered Entities or individuals, however, must comply with this Order if they are subject to federal requirements that are not in effect because of a court order. A "workplace" encompasses any location, including vehicles and co-working spaces, where work is performed in the presence of other workers or members of the public.

Covered Entities must obtain proof of at least one dose of a COVID-19 vaccine from each of their workers by Dec. 27, 2021, regardless of where the workers live. “Workers” are defined as individuals who work in-person in New York City at a workplace, and include full and part-time employees, interns, volunteers, a Covered Entity’s contractors, and self-employed individuals or solo practitioners.

The Order does not apply to:

- Individuals who work from home and do not have in-person interactions with co-workers or members of the public;
- An individual who only enters the workplace for a quick or limited purpose^[1];
- A performing artist or athlete who does not need to be vaccinated under the Key to New York City program; and
- Individuals who have been granted an accommodation.

Compliance with the Order

Covered Entities must verify their workers’ proof of vaccination by either:

- Making a copy of each worker’s proof of vaccination or record of reasonable accommodation; or
- Maintaining a record of each worker’s vaccination information, which record must state (i) the worker’s name, (ii) whether the worker is fully vaccinated,^[2] and (iii) for a worker that submits proof of only the first dose of a two-dose vaccine, the date by which the worker must submit proof of the second dose, which must be no later than forty-five (45) days after proof of the first dose was submitted,^[3] or (iv) for a worker that requests a reasonable accommodation, supporting records^[4]; or
- Checking and recording each worker’s proof of vaccination before the worker enters the workplace.

With respect to contractors, Covered Entities may ask the contractor’s employer to confirm that the contractor is vaccinated and maintain a record of such request and confirmation instead of directly requesting proof of the contractor’s vaccination status.

Workers may request a reasonable accommodation to be exempt from this Order's requirements. Reasonable accommodations may be granted only for documented medical or religious reasons. Employers should consider each request on a case-by-case basis. For more information about reasonable accommodations, see the Equal Employment Opportunity Commission's COVID-19 guidance.

All records related to vaccination and reasonable accommodations must be kept confidential and stored separately from employees' personnel files.

Affirmation of Compliance

Covered Entities must sign and post the Affirmation of Compliance in a conspicuous location by Dec. 27, 2021.[5] Covered Entities who refuse to comply with the Order will be subject to a \$1,000 fine, and escalating penalties thereafter if violations persist.

Other COVID-19 Mandates for New York City Employers

Employers are also bound by New York State's Determination on Indoor Masking ("Mask Mandate"). The Mask Mandate is currently in effect through Jan. 15, 2022, at which time it will be reevaluated. The Mandate requires masks to be worn in all indoor public places, defined as any indoor space that is not a private residence, including business and office spaces. The Mask Mandate, however, does not apply to indoor public places that require all individuals, including visitors, to provide proof of vaccination as a condition of entry to such place. Therefore, employers may avoid requiring masks in their workplace while complying with both the Order and Mask Mandate if they adopt a mandatory vaccination policy that requires all individuals, including visitors, entering their offices to show proof of vaccination as a condition of entry.

The New York State Commissioner of Health has extended the designation of COVID-19 as a "highly contagious communicable disease" under the New York State Health and Essential Rights Act ("HERO Act") until at least Jan. 15, 2022. Therefore, employers must continue to comply with their airborne infectious disease exposure prevention plans. More information about the HERO Act can be found in a previous *SRZ Alert*.

Finally, private employers should note that a new amendment to the Earned Safe and Sick Time Act requires that employers provide employees with up to four (4) hours of paid leave for each time their child receives a dose of a COVID-19 vaccine.

Please contact *Mark E. Brossman, Ronald E. Richman, Max Garfield, Scott A. Gold, Donna K. Lazarus* or *Abdulrahman Alwattar* if you have any questions about these orders.

[1] Examples of a quick or limited purpose include using the bathroom, making a delivery, and clocking in to receive an assignment before leaving to begin the assignment.

[2] A worker is “fully vaccinated” once at least two weeks have passed after the worker received (i) a second dose of a two-dose vaccine series, such as the Pfizer or Moderna vaccines; or (ii) a single dose of a vaccine that only requires one-dose, such as the Johnson & Johnson vaccine.

[3] Workers who fail to provide proof of a second dose within forty-five (45) days must be prohibited from the workplace until they can provide proof of their second dose. Whether workers who do not provide proof of vaccination are fired, disciplined, or allowed to work remotely is at the discretion of the Covered Entity.

[4] Covered Entities may allow workers to enter the workplace while their reasonable accommodation request is pending. Covered Entities may use the following checklist, which the City will regard as an appropriate handling of a reasonable accommodation request.

[5] Covered Entities that have already posted a notice pursuant to the Key to New York City program do not need to post this Affirmation. Additionally, Covered Entities that do not have a fixed workplace or work in a vehicle may instead keep their proof of vaccination with them at all times.

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