

NEW YORK CITY ADOPTS VACCINE MANDATE FOR PRIVATE SECTOR WORKERS

Hodgson Russ Labor & Employment Alert
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As we reported [here](#), on December 6, 2021, New York City Mayor Bill de Blasio announced the first in the nation, city-wide COVID-19 vaccine mandate, along with an extension of the “Key to NYC” indoor activity restrictions to children aged five to eleven.

On December 13, 2021, the New York City Commissioner of Health and Mental Hygiene published the corresponding official order (found [here](#)) for the vaccine mandate, which detailed the requirements summarized in Mayor de Blasio’s announcement. Specifically, the Commissioner’s order requires that, beginning December 27, 2021, workers must provide proof of vaccination against COVID-19 to a covered entity employer before entering the workplace, and such employer must not permit any worker who has not provided such proof to enter and work, unless an employee is granted a reasonable accommodation for medical or religious purposes, or the “worker only ever enters the workplace for a quick and limited purpose.”^[1] Further, covered entities must verify workers’ proof of vaccination in one of the following ways:

- 1) Maintain a copy of each worker’s proof of vaccination and, if applicable, a record of reasonable accommodation(s); OR
- 2) Maintain a record of such proof of vaccination, provided that such record shall include:
 - The worker’s name; and
 - Whether the worker is fully vaccinated; and
 - For a worker who submits proof of the first dose of a two-dose vaccine, the date by which proof of the second dose must be provided, which must be no later than 45 days after the proof of first dose was submitted; and
 - For a worker who does not submit proof of COVID-19 vaccination because of an approved reasonable accommodation on the basis of medical condition or religion, the employer must maintain a record of when the accommodation was granted, the basis for such accommodation, and any supporting documentation the worker provided for the accommodation; OR

Attorneys

Luisa Bostick
Joseph Braccio
Glen Doherty
Andrew Drilling
Ryan Everhart
Andrew Freedman
Peter Godfrey
John Godwin
Charles H. Kaplan
Karl Kristoff
Jason Markel
Christopher Massaroni
Elizabeth McPhail
Lindsay Menasco
Kinsey O'Brien
Jeffrey Swiatek
Michael Zahler

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3) For a non-employee worker, such as a contractor, a covered entity may request that the worker's employer confirm the proof of vaccination in lieu of maintaining the above records. The covered entity is required to maintain a record of such request and confirmation.

Covered entities should check the proof of vaccination together with a form of identification (e.g., driver's license, non-driver government ID card, passport, school or work ID, IDNYC card). All records generated pursuant to the above requirements are to be maintained as confidential. However, businesses should be prepared to make their records available for inspection. A business with multiple locations may store employee vaccination records in one central location, as well as reasonable accommodation records, if any, instead of having such records available at each location. Each business location should have contact information available to offer to City inspectors to put them in touch with the business representative who is centrally storing such records for the business.

In addition to the aforementioned verification requirements, all covered entities must, by December 27, 2021, affirm compliance with the verification requirements on a form developed by the Department, and post that affirmation in a conspicuous, public-facing location. For businesses with multiple locations, such as a chain restaurant, each individual business location is covered by the order, and must post the attestation sign in a conspicuous location that affirms the business is in compliance with the order.

On December 15, 2021, the Commissioner also published a FAQ document (found [here](#)), which summarizes the above requirements and provides additional guidance to employers. The FAQ provides clarity on many aspects of the order. The key takeaways are as follows:

- Covered businesses are defined to include any non-governmental entity that employs more than one worker in New York City and any non-governmental entity that maintains or operates a workplace in New York City. A "workplace" is any place where work is performed in the presence of another worker, or a member of the public. Individuals who are self-employed or sole proprietors are not covered by the order unless they work at a workplace, or interact with other workers in-person, or interact with the public in-person in the course of their work.
- The order does not apply to covered entities or individuals who are already subject to another Order of the Commissioner of the NYC Department of Health and Mental Hygiene, the NYC Board of Health, the Mayor, or a State or federal entity that requires them to maintain or provide proof of full vaccination, or to individuals who have been granted a reasonable accommodation pursuant to such requirement.
- The vaccine mandate does not apply to the following:
 - People who work alone—at home or otherwise—and do not have in-person contact with co-workers or others in the course of their business;
 - People who enter a workplace briefly for a limited purpose, such as to use the bathroom;
 - Non-NYC resident performing artists, college or professional athletes, and anyone who accompanies them;
 - People who have been granted reasonable accommodations for medical or religious reasons.

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The Key to NYC website also include guidance materials associated with the granting of reasonable accommodation exceptions and equitable implementation of COVID-19 vaccination requirements, which can be found [here](#). The guidance documents generally provide as follows:

- Employees must apply for reasonable accommodations, and employers may deny accommodations that impose an undue burden, consistent with guidance from the U.S. Equal Employment Opportunity Commission. Employers are also not required to grant accommodations that would cause a direct threat to other employees or customers, or to the requester.
- Reasonable accommodations may include, but are not limited to, remote work, weekly COVID-19 testing, wearing of personal protective equipment, changing of work station or work schedule to avoid close contact with coworkers or customers, or taking a leave of absence. Guidance on reasonable accommodations for medical or religious reasons may be found [here](#).
- Businesses must also consider requests for reasonable accommodations from customers who need them because of a disability. Businesses must engage in a cooperative dialogue with a requester to see if a reasonable accommodation is possible. Guidance on reasonable accommodations for disabilities can be found [here](#).

Employers are not required to terminate or discipline employees who refuse to comply with the order. However, employers must keep employees out of the workplace who refuse to comply unless an aforementioned exception applies.

Employers may adopt a policy regarding vaccination that is stricter than what is required under the order as long as it is not discriminatory or otherwise unlawful.

Covered employers should be actively preparing for compliance. Inspectors from various City agencies will begin enforcing the order on December 27, 2021. Businesses that refuse to comply are subject to a fine of \$1,000, and escalating penalties thereafter if violations persist.

If you have questions regarding the NYC vaccine mandate and how it may impact your business, please contact [Charles H. Kaplan](#) (646.218.7513), [John Godwin](#) (716.848.1357), [Monaliza Seepersaud](#) (646.218.7542), or any member of Hodgson Russ's [Labor & Employment Practice](#).

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