



December 16, 2021

NYC Vaccine Mandate for Private Employers

On December 6, 2021, NYC Mayor DeBlasio announced that the City would require private employers in NYC to mandate COVID-19 vaccinations, starting December 27, 2021. As promised, the NYC Commissioner of Health issued an [Order](#) implementing the mandate, and the City issued [guidance](#) on December 15, 2021, to assist employers in implementing the new mandate.

The following summarizes the new mandate:

<p>What do NYC employers need to do starting December 27, 2021?</p>	<p>Starting December 27, 2021, NYC employers must:</p> <ol style="list-style-type: none"> 1. Verify their workers’ proof of vaccination against COVID-19 before entering the workplace, and 2. Exclude from the workplace any worker who has not provided such proof, unless an exemption due to reasonable accommodation applies, and 3. Complete the NYC-issued Affirmation Form and post the Affirmation in a conspicuous location.
<p>When is a worker considered vaccinated for purposes of the mandate?</p>	<p>A worker is considered vaccinated for purposes of the mandate when:</p> <ol style="list-style-type: none"> 1. The worker is “fully vaccinated”, meaning at least two weeks have passed after a one-dose COVID-19 vaccine or the second dose of a two-dose COVID-19 vaccine approved by the FDA or WHO, or 2. The worker received the first dose of a two-dose COVID-19 vaccine by December 27, 2021, and provides proof of receiving the second dose of that vaccine within 45 days.
<p>When must an employer refuse to allow a worker in the workplace?</p>	<p>If a worker refuses to show proof of vaccine (and is in the workplace for more than a quick and limited purpose, and has not requested a reasonable accommodation), the employer must not allow the employee into the workplace.</p> <p>Also, if a worker only provides proof of one dose by December 27, 2021, and fails to provide proof of second dose within 45 days, the employer must exclude them from the workplace until they can display proof of</p>



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	the second dose.
What other actions should the employer take if an employee refuses to submit proof of vaccination?	As long as the employer keeps the worker out of the workplace, it is the employer's decision whether to take other action with respect to the employee (e.g., discipline, termination, remote work, etc.).
How should NYC employers verify their worker's vaccination status?	<p>Employers can choose from three methods for verifying worker vaccination status:</p> <ol style="list-style-type: none"> 1. The employer can maintain a <i>copy</i> (photocopy or picture) of worker proof of vaccination (or a record of reasonable accommodation). -OR- 2. The employer can maintain a <i>record</i> (written or electronic) of worker proof of vaccination which includes: <ol style="list-style-type: none"> i. the worker's name; ii. whether the worker is fully vaccinated; iii. if the worker has only received the first of two doses, 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 iv. for a worker requesting a reasonable accommodation, a record that the accommodation was provided with supporting documentation. -OR- 3. The employer can check the proof of vaccination each time before permitting entry to the workplace and maintain a record of the verification.
What constitutes proof of vaccine?	<p>Proof of vaccine should include the person's name, vaccine brand and date of administration, and can be any of the following:</p> <ol style="list-style-type: none"> 1. A CDC COVID-19 Vaccination Record Card 2. Official immunization record from the jurisdiction, city, state, or country where the vaccine was administered, 3. Official immunization record from a healthcare provider <p>Digital copies are acceptable, as are NYC COVID Safe App, NYS Excelsior Pass/Excelsior Pass Plus, CLEAR's Digital Vaccine Card or CLEAR Health</p>



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	Pass.
Does the employer need to check proof of ID when checking proof of vaccine?	<p>Yes. Employers should ask to view one of the following forms of identification:</p> <ul style="list-style-type: none"> • Driver’s license • Non-driver government ID card • IDNYC card • Passport • School or work ID card <p>Workers may provide copies of their identification document, including a picture on their phone or an app like NYC Covid Safe.</p>
What if the employer already checked worker vaccination status before the mandate was issued?	<p>As long as the employer has the necessary records (see above), then they just need to complete the NYC-issued Affirmation Form and post the Affirmation in a conspicuous location.</p> <p>If the employer did not keep records, then they should re-verify and keep records in accordance with the mandate’s requirements.</p>
Are vaccination records confidential?	<p>Yes. Any vaccination information should be collected and stored in a secure manner to ensure the privacy and security of the information is protected. Such information should only be accessed by employees or other individuals who have a legitimate need to access such information. Vaccination information should not be used for any other purpose.</p>
Which employers are covered?	<p>The mandate covers any non-governmental entity that</p> <ol style="list-style-type: none"> 1. Employs more than one worker in New York City, <i>or</i> 2. Maintains a workplace in New York City. <p>A workplace is any location (including a vehicle) where work is performed in the presence of another worker or member of the public.</p> <p>The mandate also covers self-employed individuals or a sole practitioners who work at a workplace or interact with workers or the public in the course of their business.</p> <p>Businesses that rent workspace in a coworking space are covered and must comply even though their co-working space has their own compliance requirements.</p>



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What if the employer has multiple locations?	Each location is covered by the mandate and must post the Affirmation at its location. However, an employer with multiple locations may store employee vaccination records and reasonable accommodation records in one central location. Each location should have contact information for the representative who is centrally storing the records.
Which workers are covered by the mandate?	<p>The mandate covers any individual who works in-person in New York City at a workplace.</p> <p>It includes a full- or part-time staff, employees, interns, and volunteers. It also includes the employer, as well as self-employed individual and sole practitioners.</p> <p>Contractors are also covered. However, the employer may request that the contractor’s employer confirm the proof of vaccination and simply maintain a record of such request and confirmation.</p>
Which workers are excluded from the mandate?	<p>The following workers are <i>not</i> covered by the mandate</p> <ol style="list-style-type: none">i. Individuals who works from their own home and do not interact in-person with co-workers or the public;ii. individuals who enter the workplace for a “quick and limited purpose”; oriii. certain non-City residents who are performing artists, college or professional athletes, or those accompanying them.
Does it matter if the worker does not live in NYC?	No. The requirement is specific to New York City workplaces. Where the worker lives is not relevant.
Can employees request exemptions based on reasonable accommodations for medical or religious reasons?	<p>Yes. They must apply for a reasonable accommodation by December 27, 2021. Employers may permit workers to continue coming into the workplace while their reasonable accommodation request is pending.,</p> <p>Reasonable accommodations that employers may consider include weekly PCR testing and masking, changing work stations or schedules, remote work, and leaves of absence.</p> <p>Employers may deny an accommodation request that imposes an undue burden on the business or where the unvaccinated worker would likely pose a direct threat to themselves or others.</p>



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	<p>City agencies may review an employer’s reasonable accommodation process and records to ensure that it is handling requests promptly and appropriately.</p> <p><i>Note:</i></p> <p><i>The guidance does not address employees who apply for accommodations after the December 27th deadline or new hires.</i></p> <p><i>The guidance also does not address whether testing is required while an accommodation request is pending.</i></p> <p><i>The guidance states that employees may request an exemption from the vaccination mandate as a reasonable accommodation for additional protected categories: disability, pregnancy, childbirth, lactation, religious beliefs or observances, or status as a victim of domestic violence, stalking, or sex offenses.</i></p> <p><i>The City guidance included a Checklist regarding the reasonable accommodation process. However, note that the Checklist may not be consistent with federal EEOC guidance. The Checklist is not legal advice, and may not protect in the event of a lawsuit. Consult with legal counsel for questions regarding reasonable accommodations.</i></p>
<p>Does the guidance address discrimination requirements in implementing the vaccine mandate?</p>	<p>Yes. When implementing vaccine requirements, employers should take care 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 NYC Human Rights Law. For example, employers should not:</p> <ul style="list-style-type: none">• Scrutinize proof of vaccination more closely when it is provided by employees of a particular race, national origin, or religion based on the perception that people in those groups are less likely to be vaccinated;• Require proof of vaccination only for older employees or employees with disabilities based on the belief that COVID-19 is more dangerous for them; or• Refuse to accept certain types of valid proof of vaccination, such as official immunization records from countries outside the United States or photographs of CDC vaccination cards.



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How will the mandate be enforced?	Inspectors from various City agencies will begin enforcing the mandate on December 27, 2021.
Are there any penalties for noncompliance?	Yes, noncompliant employers are subject a fine of \$1,000 and escalating penalties thereafter if violations persist.
How long is the mandate in effect?	The mandate will continue until it is rescinded.
What about the other City, State and Federal mandates?	The mandate does not apply to employers and individuals already subject to another governmental order mandating COVID-19 vaccines or accommodations granted under those orders. Employers or individuals who are subject to federal requirements that are not currently in effect because of a court order must comply with the NYC mandate.

This alert is for general information purposes and should not be construed as legal advice. If you would like information about this alert, please contact one of the firm's attorneys:

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