



Coping with COVID: The Latest on Employer Obligations and Best Practices

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Disclaimer

Today's presentation is informational only and is not intended to constitute legal advice.

Legal mandates regarding vaccinations, face coverings, and other COVID-19-related practices and policies are currently changing frequently. New orders and legal decisions released after the presentation date may make the information in the webinar no longer fully accurate.

Please consult with counsel for legal advice pertinent to your organization.



Overview

- Office Safety Plans
- Vaccination
- Masking
- Key regulations in play:
 - NYS HERO Act
 - NYS DOH Mandate
 - NYC Safe Employees and Contractors
 - NYC DOE Mandate
 - NYC Key to New York City
 - NYC Private Businesses Mandate



Office Safety Plans





New York State HERO Act

- All New York State employers must adopt an Airborne Infectious Disease Exposure Prevention Plan
 - Can use NYS model plan
 - Must consult employees if create own plan
- COVID has been declared a highly contagious communicable disease that presents a serious risk of harm to the public health (*extended through 2/15/22*)
 - Triggers implementation of plan
 - Post plan onsite or online
 - Distribute and review it with employees
- Employers with at least 10 employees must permit formation of employee safety committee (not limited to COVID)

Who Are “Employees”?

- Full, part time, temporary, and seasonal employees
- Independent contractors
- Staffing agency workers
- Employees of contractors or subcontractors working onsite
- Delivery or transport workers
- Does not include volunteers (cf. city mandates)





Model Workplace Exposure Prevention Plan

- Responsibilities
- Exposure Controls
 - Policies
 - Screenings
 - Masking per NYS and CDC rules
 - recommended not required as of 2/10/22
 - Ventilation
- Housekeeping
 - Frequency; approved disinfectants
- Infection Response
- Training and Information (only for actual employees)
- Plan Evaluations
- No Retaliation!



Model Plan: Details

- Designate responsible managers
- Stay at home policies (cf. guidance from NYSDOH/CDC)
- Daily screenings (cf. guidance from NYSDOH/CDC)
- Physical distancing
 - Includes remote work
- Engineering controls
 - Ventilation, barriers, reconfigure work areas
- Administrative controls
 - Scheduling , layout, training, PPE
 - Training includes information about COVID and the contents of the plan



Infection Response

- Employee calls in sick
 - If diagnosed with, tested for, or exposed to COVID
 - <https://www1.nyc.gov/assets/doh/downloads/pdf/covid/covid-19-understanding-quarantine-and-isolation.pdf>
 - Must alert coworkers in immediate area
 - Respect privacy
 - Disinfect work area (waiting period)
 - Employee must quarantine/isolate for 5 days after close exposure/positive test; may return (masked for another 5 days) if symptoms resolving and no fever
 - boosted and vaccinated employees need not quarantine after exposure
 - NYS paid leave
- Employee becomes sick at work
 - (cf. guidance from NYSDOH/CDC)
 - Mask and isolate immediately
 - Medical assistance
 - Same as above



Visitors

- Private property owners may make rules
 - Check with your landlord
- NYS Plan does not require exclusion
- Best practice: limit number of people in workplace
- Can require:
 - Proof of vaccination
 - Prescreening
 - Masks
 - Hand hygiene
- NYC mandates



Navigating Vaccine and Mask Mandates





Vaccine Mandates: An Overview of the Regulations at Play

- Federal (**Currently Suspended and/or Withdrawn**)
 - Executive Order on Requiring Vaccination for Federal Employees and Contractors
 - Occupational Safety and Health Administration's ("OSHA") COVID-19 Vaccination and Testing Emergency Temporary Standard (100+ employee mandate)
- New York State
 - NYS Department of Health Vaccine Mandate
- New York City
 - COVID-Safe Order for City Employees and Contractors
 - Order of the Commissioner of Health and Mental Hygiene to Require Covid-19 Vaccination for Department of Education Employees, Contractors, and Individuals Working in Certain Child Care Programs
 - Vaccination Proof for Indoor Activities (Key to NYC)
 - Vaccine Mandate for Private Businesses

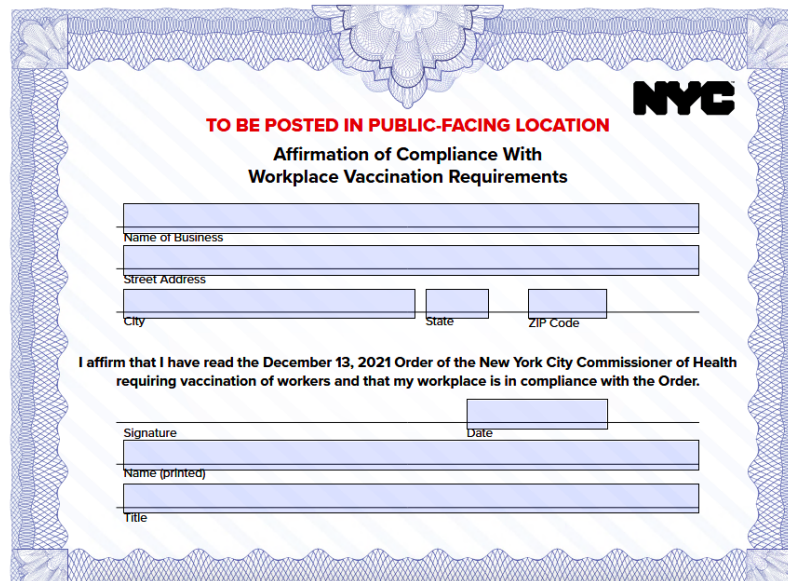


Employee Vaccine Mandates: City Rules (Private Sector Mandate)

- Starting on December 27, workers must provide proof of vaccination to their employer before entering any private NYC workplace (one dose by 12/27, second dose required 45 days later).
 - Mandate covers any non-governmental entity that employs more than one worker in New York City or maintains a workplace in NYC.
 - “Workplace” means any location, including a vehicle, where work is performed around other workers or members of the public.
 - “Workers” includes full- or part-time staff members, interns, volunteers, and contractors.
 - Mandate does not apply to employees:
 - who work from home;
 - whose employment does not involve interacting in-person with co-workers or members of the public; or
 - who enters the workplace for a quick and limited purpose.
- A self-employed individual or a sole practitioner who works at a workplace or interacts with workers or the public in the course of their business must be fully vaccinated.

Employee Vaccine Mandates: City Rules (Complying with the Private Sector Mandate)

- Employers must verify each worker's proof of vaccination and keep a record of worker vaccination status.
- Businesses may request that a contractor's own employer confirm proof of vaccination, but that business must then keep a record of these requests and the confirmations they receive.
- Employers should be prepared to make their records available for inspection.
- Employers must conspicuously post a mandate attestation sign at each business location.



TO BE POSTED IN PUBLIC-FACING LOCATION **NYC**

**Affirmation of Compliance With
Workplace Vaccination Requirements**

Name of Business _____

Street Address _____

City _____ State _____ ZIP Code _____

I affirm that I have read the December 13, 2021 Order of the New York City Commissioner of Health requiring vaccination of workers and that my workplace is in compliance with the Order.

Signature _____ Date _____

Name (printed) _____

Title _____



Employee Vaccine Mandates: City Rules (NYC Employees and City-Contracted Employees)

- All NYC employees must be fully vaccinated with no testing option.
- All City-contracted employees of “human services organizations” must be fully vaccinated with no testing option.
 - “Human services” organizations include day care, foster care, home care, health or medical services, housing and shelter assistance, preventive services, youth services, the operation of senior centers, employment training and assistance, vocational and educational programs, legal services, and recreation programs.
- All other City-contracted employees must be fully vaccinated or submit to weekly testing (**the NYC private sector mandate now supersedes this**).
- City contractor mandate applies to City-contracted or subcontracted employees:
 - Whose salary is paid in whole or in part from funds provided under a City contract;
 - Who performs any part of the work under the contract within the City of New York; and
 - Whose work under the contract includes physical interaction with City employees or members of the public.

Employee Vaccine Mandates: City Rules (Key to NYC)

- All employees of indoor entertainment and recreational settings, indoor gyms and fitness settings, and indoor bars and restaurants must be fully vaccinated with no testing option.
 - The Key to NYC mandate also applies to contractors, volunteers, and interns.



David Dow/NBAE/Getty Images



Employee Vaccine Mandates: State Rules

- Healthcare personnel in hospitals, nursing homes, diagnostic and treatment centers, home care agencies, hospices, and adult care facilities must be fully vaccinated **and boosted**.
 - There is no testing option.
 - The mandate does not include an exemption for people with religious objections to vaccination (this is currently subject to litigation).
 - “Personnel” is defined as “all persons employed or affiliated with a [healthcare facility], whether paid or unpaid, including but not limited to employees, members of the medical and nursing staff, contract staff, students, and volunteers, who engage in activities such that if they were infected with COVID-19, they could potentially expose other personnel, patients or residents to the disease.”
 - On Jan. 21, 2022, an amendment adding a booster requirement to the mandate became effective. Healthcare personnel currently eligible for a booster dose must be boosted by Feb. 21, and personnel not currently eligible for boosters must receive their boosters within 30 days of becoming eligible.



Employee Vaccine Mandates: Federal Rules

- **Executive Order:** All civilian federal employees and employees of federal government contractors must be vaccinated with no testing option.
 - These federal mandates are currently suspended.
- **OSHA:** In-person employees of employers with at least 100 employees must be fully vaccinated by January 4, 2022 or submit to weekly testing.
 - The mandate has been withdrawn.



Employee Vaccine Mandates: The Details

- **Which vaccines are acceptable under the mandates?**
 - Only FDA-authorized and WHO-approved vaccines are accepted under the various mandates.
- **How can employees prove their vaccination status?**
 - CDC vaccination card (or a photo/copy)
 - Apps: Excelsior Pass, NYC COVID Safe App, CLEAR Health Pass
- **Should employers keep records of vaccination status?**
 - Yes, it is good practice for employers to keep records of employees' vaccination status. Many of the mandates (such as the NYC private workplace mandate) require record keeping.
 - Note that such record keeping is deemed to be confidential employee medical information, and should not be disclosed except as required by law.



Employee Vaccine Mandates: The Details

- **What are the employer's obligations to provide leave for employee vaccinations?**
 - The NYS Department of Labor requires all employers to provide employees sufficient paid leave of absence to get vaccinated, capped at 4 hours per dose (12 hours total if a vaccine requires two doses, and a booster).
 - Under state law, an employer may require notice before an employee takes leave to get vaccinated.
 - Under state law, employers are not required to provide employees with paid leave to recover from vaccine side effects, but employers must allow employees to use accrued sick leave for side effects recovery.
- **What are the employer's obligations to provide employees leave for child vaccinations?**
 - NYC law requires employers to provide employees up to 4 hours of paid leave for each vaccine dose and/or care for vaccine side effects, for each child under the age of 18 or who is incapable of self-care.
 - The law went into effect on Dec. 24, 2021 but was retroactive to Nov. 2, 2021. Employers with employees who previously took unpaid time off for children's vaccinations should pay employees for such time in the next payroll period.



Employee Vaccine Mandates: The Details

- **When is the weekly testing alternative available to employees?**
 - Testing is only an option under the NYC COVID-Safe Order applying to city-contracted employees that do not work for human services organizations.
 - Note that the inclusive NYC private employer mandate does not allow for a testing alternative, so testing is no longer a viable alternative to employee vaccination in NYC.
- **If no mandates apply to an employer, can that employer still impose a vaccination policy?**
 - Yes. Employers may require employees to be vaccinated, so long as they make reasonable accommodations for employees who cannot be vaccinated due to medical reasons or who object on religious grounds (see next slide).



Accommodations

- Previously, NYC mandates allowed workers to be either vaccinated, or to test weekly
- Testing option has been removed for all social services contractors and private employers
- Employers may still have to consider reasonable accommodations for employees who are unvaccinated
 - For medical reasons
 - For religious reasons
 - Religious accommodations are not available for healthcare workers under NYS DOH rules
 - NB: restrictions on religious accommodations are being heavily litigated
- Written notice to employee of accommodation decision



Medical Accommodation

- Confidential process
- Must be requested by employee
- Must be documented by health care provider
- Under NYSDOH limited exceptions:
 - severe adverse reactions
 - limited time period: immunocompromised, recent monoclonal treatment, certain heart conditions
- Good faith consideration
 - Telework
 - Reassignment or relocation
 - Special PPE
- Cannot grant if undue hardship
 - Health and safety
 - Violation of law, mandate, or funding requirement



Religious Accommodation

- Must grant accommodation for “sincerely held religious beliefs, practices, or observances” *absent undue hardship*
 - May ask employee to explain how religious belief interferes with vaccine requirement
 - May ask for clarification/documentation if **objective basis** for doubting sincerity of belief:
 - Inconsistency
 - Multiple objections, not all based on religion
 - Internet downloads
 - *Social, political, or economic views, or personal preferences are NOT protected*
- If sincere belief, consider accommodations/undue hardship



NYC Guidance on Acceptable Accommodations

- Weekly PCR Testing and Masking
 - eating and drinking at social distance
- Remote work that does not expose other workers
- Leave of Absence
- Other

Not granted if:

- Direct threat to health and safety
- Undue hardship
- *See NYC checklist of questions to determine if religious or medical accommodation may be granted:*
 - <https://www1.nyc.gov/assets/doh/downloads/pdf/covid/vaccination-workplace-accommodations.pdf>



Employee Mask Mandates: New York City

- All City agencies and contractors must require all employees *whose salary is paid in whole or in part from funds provided under a City contract, who perform any part of the work under the contract within New York, and whose work under the contract includes physical interaction with City employees or members of the public*, including those who are fully vaccinated against COVID-19, to wear a mask:
 - When interacting with members of the public
 - When present in a pre-kindergarten to twelfth grade school, public transit facility, homeless shelter, correctional facility, nursing home, or health care setting
- Employees covered by these orders may only be authorized to remove their face coverings in the workplace (either indoors or outdoors) or when interacting with City employees when they are not in the settings previously listed and they have provided documentation showing that they are fully vaccinated.



Masking up in public: New York City

- Per the NYC Department of Health, even fully vaccinated people must wear a mask:
 - When riding public transportation.
 - When in a school or health care setting, nursing homes and homeless shelters.
 - When in a store, restaurant or other public space where the owner or operator requires masks.
 - At work, if required by your employer.
- Unvaccinated people must wear a mask when in a public space, indoors or outdoors, and cannot properly social distance.



State mask mandates

- Mask mandate issued by Governor Hochul that specifically applies to: New York State Office of Children and Family Services-licensed and -registered child care centers, home-based group family and family child care programs, after-school child care programs and enrolled legally exempt group programs during operational hours.
- Mask requirements also apply to congregate programs and facilities licensed, registered, operated, certified or approved by the Office of Mental Health, the Office of Addiction Services and Supports, the Office for People With Developmental Disabilities, Office of Children and Family Services and the Office of Temporary and Disability Assistance



State mask mandates

- On Dec. 10, 2021, Gov. Hochul issued a new mask mandate:
 - applies to several specific public settings, including health care and adult care facilities, K-12 schools, correctional facilities, homeless shelters and public transportation centers and hubs.
 - Also included a general provision applicable to “all indoor public places” not otherwise covered by the mandate.
 - The provision applicable to “indoor public spaces” not otherwise covered by the mandate is no longer in effect as of February 10.



What about the schools? Vaccine mandates

- All DOE employees and DOE-contracted employees who work in-person in a DOE school setting or DOE building, including individuals who provide services to DOE students, must be fully vaccinated with no testing option.
 - The DOE mandate applies to volunteers and interns.
 - The city expanded the mandate to cover preschool, day care, and after-school workers who contract with the city.
- All Nonpublic school staff must be fully vaccinated with no testing option.
 - The mandate applies to full- and part-time school employees and unpaid adult staff (such as student teachers and volunteers).
 - The mandate applies to staff at religious and private preschool through 12 schools, as well as anyone who provides instruction in a student's residence for children who receive in-person instruction at home.

What about the schools? Masking up

- Per the NYC DOE, all students and staff must wear a face covering when riding on school buses and anywhere on school property, indoors and outdoors, regardless of vaccination status, unless they have a medical exemption.
- Students who are not medically able to tolerate masks will be provided with alternative accommodations.
- The New York State Department of Health also issued its own mask mandate requiring all students, faculty and staff to wear masks inside school buildings.



Mark Lennihan/AP



Key to NYC: Vaccine Mandates for the Public

- Members of the Public must show proof of vaccination/ID to enter INDOOR areas of:
 - Indoor dining spaces
 - EXCEPT schools and daycare; senior centers; community centers; dining in residences
 - Gyms, dance, fitness, and yoga studios
 - Music and concert venues
 - Museums, zoos, aquariums
 - Performing arts theaters/rehearsal spaces
 - Indoor play/recreational game areas
- Display poster:
<https://www1.nyc.gov/assets/doh/downloads/pdf/covid/posters/covid-19-vaccine-required-poster.pdf>
- Develop written plan:
<https://www1.nyc.gov/assets/doh/downloads/pdf/covid/covid-19-key-to-nyc-written-implementation-protocol.pdf>



Key to NYC: Acceptable Proof

- ACCEPTABLE VACCINES i.e. authorized by FDA or WHO
 - <https://www1.nyc.gov/assets/doh/downloads/pdf/covid/keytonyc-vaccine-list.pdf>
- ACCEPTABLE PROOF:
 - CDC Card
 - NYC vaccination record
 - NYC COVID Safe App
 - CLEAR Health Pass
 - Excelsior Pass
- NOTE:
 - Children 5-11 must have at least two doses (1/29/22)
 - Individuals 12 and older must have two doses
 - Booster not required (so far)



Key to NYC: Accommodating the Public

- Need not ask for documentation of disability
- Unvaccinated individuals may not enter except for limited purposes
- Duty to engage in cooperative dialogue
 - Telephone
 - Alternative participation: streaming
 - Service outside
- Subject to usual rules about undue hardship
 - “Hardship” direct threat to others



Vaccine Mandates for Program Participants

- NYC's FAQs specifically state that the city employee and contractor vaccine mandate does not apply to clients served by the City or its contractors.
- The FAQs note that the policy should be integrated into an organization's return to work and safety policies.
 - Currently, no legal requirement that program participants be vaccinated.
 - Can consider measures to protect your workers and the program participants themselves.



Looking ahead



Looking ahead

- Booster shots
- Vaccines for youngest age group
- Mask mandates
- Litigation





Additional Resources



Additional Resources: NYC Orders

- NYC Private Businesses Mandate Information Page and FAQs:
 - <https://www1.nyc.gov/site/doh/covid/covid-19-vaccine-workplace-requirement.page>
- Key to NYC Executive Order:
 - <https://www1.nyc.gov/office-of-the-mayor/news/239-001/emergency-executive-order-239>
- Key to NYC FAQs:
 - <https://www1.nyc.gov/assets/counsellor/doh/downloads/Key-to-NYC-FAQ.pdf>
- NYC COVID-Safe Order for City Employees and Contractors FAQs:
 - <https://www1.nyc.gov/assets/dcas/downloads/pdf/guidelines/faq-vaccine-mandate.pdf>
- NYC Department of Education Vaccination Order:
 - <https://www1.nyc.gov/assets/doh/downloads/pdf/covid/covid-19-vaccination-requirement-doe.pdf>
- NYC Nonpublic School Vaccination Order and FAQs:
 - <https://www1.nyc.gov/assets/doh/downloads/pdf/covid/vaccination-workplace-requirement-nonpublic-schools.pdf>
- NYC Guidance on accommodations (“Exceptions”):
 - <https://www1.nyc.gov/assets/doh/downloads/pdf/covid/vaccination-workplace-accommodations.pdf>
- NYC Guidance on quarantine and isolation:
 - <https://www1.nyc.gov/assets/doh/downloads/pdf/covid/covid-19-understanding-quarantine-and-isolation.pdf>



Additional Resources: Federal and State Orders

- EEOC's own Religious Accommodation Request Form
 - <https://www.eeoc.gov/sites/default/files/2021-10/EEOC%20Religious%20Accommodation%20Request%20Form%20-%20for%20web.pdf>
- NYS HERO Act Information Page:
 - <https://dol.ny.gov/ny-hero-act>
- NYS Department of Health Healthcare Worker Vaccination Order:
 - [https://regs.health.ny.gov/sites/default/files/pdf/emergency_regulations/Prevention of COVID-19 Transmission by Covered Entities.pdf](https://regs.health.ny.gov/sites/default/files/pdf/emergency_regulations/Prevention%20of%20COVID-19%20Transmission%20by%20Covered%20Entities.pdf)
 - Booster Amendment:
<https://www.leadingageny.org/linkservid/F843BCDB-F4E9-F8F5-EF6528A4E6AE5295/showMeta/0/>



Additional Resources: Lawyers Alliance helpline

- As the Omicron is subsiding, boosters are becoming the new standard, and offices look at their reopening policies and plans once again, we are restarting our employment law consultation helpline for NYC nonprofits
- We will take questions related the latest phase of the pandemic ONLY
- Clients will receive approximately an hour of attorney time by phone or videoconference
- Stay tuned for additional information!



QUESTIONS?





Thank you!

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