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COVID-19 FAQs for Nonprofits (Updated)

This Legal Alert addresses some of nonprofits' frequently asked questions about vaccination mandates and other vaccine-related policies, as well as government-issued mandates that may affect nonprofits operating in New York City.

DISCLAIMER: COVID-19-related practices and policies may continue to change. New orders and legal decisions released after the publication of this Legal Alert may make the information below no longer fully accurate. For that reason and as a best practice, Lawyers Alliance encourages nonprofits interested in answers to questions about their individual vaccination-related policies to seek the advice of legal counsel. We will update this Legal Alert as frequently as necessary.

This update reflects changes to the following topics:

- Removal of the vaccine mandate for federal employees and contractors and in New York City for private sector employees, New York City employees and school staff
- Expiration of paid leave for employees taking children to get the COVID-19 vaccine and/or to care for their children who are experiencing temporary side effects from the vaccine

What are the current legal mandates regarding vaccinations in New York City?

All Private Sector Employers in New York City

The workplace vaccine mandate for all private businesses in New York City ended on November 1, 2022.

¹ While there is currently no workplace vaccine mandate for private businesses in New York City, businesses may still require proof of vaccination or masking indoors if they choose.

Federal and NYC Government Employees and Contractors

On February 6, 2023, Mayor Adams announced that the previous vaccine mandate for current and perspective City employees has been rescinded. As of February 10, 2023, the COVID-19 vaccine is optional for City employees.²

¹ <https://www.nyc.gov/office-of-the-mayor/news/686-22/mayor-adams-launches-covid-19-booster-campaign-additional-flexibility-nyc#/0>

² <https://www.nyc.gov/assets/dcas/downloads/pdf/guidelines/faq-vaccine-mandate.pdf>

The Biden-Harris Administration also announced that COVID-19 vaccine mandates for federal employees and federal contractors end on May 11, 2023, the same day that the COVID-19 public health emergency ends.³

NYS Healthcare Workers

On May 24, 2023, the New York State Department of Health announced an end to the COVID-19 vaccine mandate for workers at regulated health care facilities. Nevertheless, health care facilities are permitted to implement their own internal policies.⁴

NYC Schools, Preschools, Day Care, After-school, and Private Schools

As of February 2023, COVID-19 vaccination is no longer required for staff at public schools, charter schools, private schools and child care and after school programs.⁵

What are the current legal mandates regarding masks in New York City?

On March 2, 2022, the State-wide universal mask mandate in schools was lifted. Nevertheless, school districts and private schools are encouraged to consult with local health departments and local health departments may implement more restrictive masking policies if county COVID-19 community level is high.⁶ On March 7, 2022, the City-wide mask mandate for K-12 schools was lifted.⁷ On June 13, 2022, Mayor Adams lifted the City-wide mask mandate in schools and daycare centers for 2- to 4-year old children.⁸

As of February 12, 2023, the New York State Department of Health (NYDOH) also no longer requires masks in healthcare settings and operators should follow guidelines from the CDC for appropriate mask policies based on Transmission Levels⁹. As of March 1, 2023, City employees are no longer required to wear face coverings in the workplace, except if the employee is returning to work site during the period that is six to ten days after infection and is medically able to tolerate a face covering.¹⁰

³ <https://www.whitehouse.gov/briefing-room/statements-releases/2023/05/01/the-biden-administration-will-end-covid-19-vaccination-requirements-for-federal-employees-contractors-international-travelers-head-start-educators-and-cms-certified-facilities/>

⁴ [https://www.health.ny.gov/press/releases/2023/2023-05-24_statement.htm#:~:text=\(May%2024%2C%202023\)%20%2D,at%20regulated%20health%20care%20facilities.](https://www.health.ny.gov/press/releases/2023/2023-05-24_statement.htm#:~:text=(May%2024%2C%202023)%20%2D,at%20regulated%20health%20care%20facilities.)

⁵ <https://www.nyc.gov/assets/dcas/downloads/pdf/guidelines/faq-vaccine-mandate.pdf>

⁶ <https://www.governor.ny.gov/news/governor-hochul-announces-plan-end-state-mask-requirement-schools-starting-march-2>. For current State guidance, see <https://coronavirus.health.ny.gov/schools-youth>.

⁷ <https://www.nyc.gov/office-of-the-mayor/news/110-22/transcript-mayor-eric-adams-makes-announcement-covid-mandates>. For current City guidance, see <https://www.schools.nyc.gov/school-life/health-and-wellness/covid-information/health-and-safety-in-our-schools>; and

<https://www.nyc.gov/assets/doh/downloads/pdf/covid/school-guidance-2022-23.pdf>

⁸ <https://www1.nyc.gov/office-of-the-mayor/news/377-22/mayor-adams-on-mask-requirements-2-4-year-olds>

⁹ https://health.ny.gov/professionals/hospital_administrator/letters/2023/docs/dal_23-02.pdf

¹⁰ https://www.nyc.gov/assets/dcas/downloads/pdf/agencies/directive_2020_1.pdf

Can nonprofit employers still require employees and visitors to mask?

Yes. Even if not required by state or local mandate, employers may generally require employees and other individuals in their spaces to continue wearing masks. However, employers should engage in an interactive process with any employee who requests an accommodation related to mask-wearing.

Can nonprofit employers require employees to be vaccinated?

Employers of all kinds generally may require employees to be vaccinated and boosted against COVID-19, so long as such a requirement is justified and the employer makes reasonable accommodations to employees who cannot be vaccinated for certain reasons.

According to guidance issued by the federal Equal Employment Opportunity Commission (EEOC), which was updated as of July 12, 2022,¹¹ employers may require employees to be vaccinated when unvaccinated employees would pose a “significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation.”¹² Further, an employer seeking to take any action toward an unvaccinated employee—such as excluding unvaccinated employees from the workplace—may only do so if there is no way to provide a reasonable accommodation that would eliminate or reduce the risk of direct threat to others that an unvaccinated employee might pose. This is especially likely, and especially important, in the case of employees who cannot be vaccinated due to disability or who object on religious grounds, who are protected by anti-discrimination laws, such as Title VII of the Civil Rights Act¹³ and the Americans with Disabilities Act.¹⁴ The Department of Justice’s Office of Legal Counsel (OLC) reinforced this interpretation of the law, stating in an opinion released in July 2021 that the Emergency Use Authorization under which several of the COVID-19 vaccines are currently available to the public does not prevent public and private entities from imposing vaccine requirements.¹⁵ (The opinion does not address whether other federal, state, or local laws or regulations might restrict an organization’s right to mandate the vaccine. While OLC opinions are not binding on courts, they often carry significant weight in litigation.) Though New York State law has not yet definitively allowed employer vaccine mandates, many New York employers are requiring employees to be vaccinated.¹⁶

Employers should know that inquiring about an individual employee’s health status is generally prohibited, and the prescreening questions that the CDC recommends be asked before administering a COVID-19 vaccine are “medical examinations” that employers generally may not conduct.

¹¹ <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>

¹² Employers may only conclude that such a direct threat to safety exists after conducting an individualized assessment of four factors—(1) the duration of the risk; (2) the nature and severity of the potential harm; (3) the likelihood that the potential harm will occur; and (4) the imminence of the potential harm—and making a determination that an unvaccinated individual will expose others to the virus at the worksite. *Id.*

¹³ <https://www.eeoc.gov/statutes/title-vii-civil-rights-act-1964>

¹⁴ <https://www.ada.gov>

¹⁵ <https://aboutblaw.com/YNR>

¹⁶ <https://www.nytimes.com/2021/03/05/health/coronavirus-vaccination-elder-facilities.html>

Employers in other states should look into the state-level legislation and executive guidance where they are, especially since legislators in a number of states have introduced legislation that would restrict employers' abilities to set vaccine requirements.

Must employers provide paid time off for employees to be vaccinated?

Employers in New York State must provide employees with paid time off to receive a COVID-19 vaccine and booster shot. Under a law passed in March 2021,¹⁷ employers must provide employees with “a sufficient period of time, not to exceed four hours” per vaccine dose, and employers may not discriminate or retaliate against employees who request or take a leave of absence to be vaccinated. In October 2021, the New York State Department of Labor updated its FAQs on the vaccine leave law to clarify that the law applies to any COVID-19 vaccine, including booster shots.¹⁸ The leave taken to receive a vaccine must be paid at the employee’s regular rate of pay for the entire leave period, and according to the governor’s office’s statement about the law,¹⁹ may not be charged against any other leave the employee has earned or accrued, such as vacation or standard sick leave. This law will be in effect until December 31, 2023.²⁰

Must employers provide paid time off for employees to take their children to get vaccinated?

New York City’s Earned Safe and Sick Time Act was previously amended to provide essentially all employees of private sector New York employers (including nonprofits) additional paid time off to take their children to get the COVID-19 vaccine and/or to care for their children who are experiencing temporary side effects from the vaccine.²¹ However, this amendment expired on December 31, 2022.²²

Can employers ask employees whether they have been vaccinated?

Employers may ask employees whether they have been vaccinated. They should, however, avoid asking any related or follow-up questions, since those run the risk of soliciting information that employers are not legally allowed to ask of employees. For example, an employer may ask an employee whether she has been vaccinated, but, if she answers that she has not, the employer may not ask why she has not been vaccinated.

Can employers ask job applicants whether they have been vaccinated?

Employers may generally ask job applicants about their vaccination status so long as they follow the same standards for job applicants and employees. For example, an employer who has implemented a vaccination requirement for employees may ask prospective employees whether they have been vaccinated and received a booster.

¹⁷ <https://www.nysenate.gov/legislation/laws/LAB/196-C>

¹⁸ <https://dol.ny.gov/system/files/documents/2022/10/cd6-paid-leave-for-covid19-vaccinations-10-13-22.pdf>

¹⁹ <https://www.governor.ny.gov/news/governor-cuomo-signs-legislation-granting-employees-time-receive-covid-19-vaccination>

²⁰ <https://dol.ny.gov/system/files/documents/2022/10/cd6-paid-leave-for-covid19-vaccinations-10-13-22.pdf>

²¹ See Lawyers Alliance’s recent Legal Alert: [New York City’s Earned Safe and Sick Time Act Updated to Comply with State Requirements](#) (January 7, 2021) for more information on certain nonprofit employees not subject to ESSTA.

²² <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=5209882&GUID=760C4EFA-B5FD-4256-B842-4B821A3C221C&Options=ID|Text|&Search=2448>

Can nonprofits that provide direct services require clients or program participants to be vaccinated in order to receive services or participate in programming in person?

Likely yes in some circumstances, although nonprofits may want to consult with legal counsel before implementing their own non-employee vaccine requirements.

On March 8, 2022, the New York City Commission on Human Rights released guidance for businesses that offer goods or services to the public and wish to impose their own COVID-19 vaccine requirements on customers or other non-employees.²³ The guidance indicates that the enforcement of any customer vaccine requirement must be done in a non-discriminatory way (e.g., not singling out individuals of a certain age or race when requiring proof of vaccination) and that businesses must provide reasonable accommodations to customers on the basis of disability. However, under the guidance, there is no requirement to provide accommodations for a customer's religious beliefs (unlike in the employment context).

In other settings, a large number of universities have required vaccinations and even booster shots for students, while accommodating a subset of students with medical or religious reasons for not being vaccinated.²⁴ And some long-term care facilities have provided for all residents to be vaccinated as a matter of policy, with individual exceptions as required.

Can companies require employees who aren't vaccinated to take COVID-19 tests?

Employers may require employees to take COVID-19 tests. Note, however, that as discussed above, a number of mandates that apply to New York City organizations (including, notably, the broad private sector mandate) do *not* allow for testing as an alternative to vaccination.

Are there any particular requirements regarding vaccines for nonprofits providing child care?

No. As of August 2022, New York State has adopted the CDC guidance for schools and childcare programs, which encourages schools and early care and education to promote vaccination by providing information and on-site clinics.^{25 26}

This memo is meant to provide general information only, not legal advice. Please contact Ciarra Chavarria at Lawyers Alliance for New York at cchavarria@lawyersalliance.org, Jonal Hendrickson at jhendrickson@lawyersalliance.org, or visit our website, www.lawyersalliance.org, for further information.

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²³ <https://www1.nyc.gov/assets/cchr/downloads/pdf/publications/Vax-Public-Accommodations-Guidance.pdf>

²⁴ See: <https://www.chronicle.com/blogs/live-coronavirus-updates/heres-a-list-of-colleges-that-will-require-students-to-be-vaccinated-against-covid-19>.

²⁵ <https://ocfs.ny.gov/programs/childcare/provider-letters/2022/Dear-Provider-2022Aug22-New-Quarantine-Guidance.pdf>;

²⁶ [Operational Guidance for K-12 Schools and Early Care and Education Programs to Support Safe In-Person Learning | CDC](#)

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