

New York City Issues Guidance on Vaccine Mandate for Private Employers

On December 6, 2021, Mayor Bill de Blasio announced a COVID-19 vaccine [mandate](#) for all private employers in New York City, which goes into effect on December 27, 2021. Yesterday, the City issued additional [guidance](#) related to the mandate.

Under the new guidance, employers may not allow any unvaccinated workers—aside from individuals who have requested reasonable accommodations for medical or religious reasons by December 27 or fall within another exception, discussed below—to come into their workplace. For these purposes, a “workplace” is defined broadly as “any location—including a vehicle—where you work in the presence of at least one other person.”

Application of the Vaccine Mandate

The mandate applies to all workplaces located in New York City with one or more workers. According to the City’s guidance, all New York City workers—defined as full- or part-time staff members, employers, employees, interns, volunteers or contractors of a covered entity—who perform in-person work or interact in-person with others in the course of their work must have received at least one dose of a COVID-19 vaccine by December 27, regardless of whether the employee actually lives in New York City. Employees will then have 45 days to receive a second dose of a two-dose vaccine, such as the Pfizer or Moderna vaccines.

Non-employee workers, such as independent contractors, must also provide proof of vaccination to their own employers, and businesses may request that an independent contractor’s employer confirm such proof of vaccination.

The mandate does not apply to individuals who work alone—at home or otherwise—and have no in-person contact with co-workers or others in the course of their business. This includes sole proprietors and self-employed individuals who do not work at a workplace, do not interact with other workers in-person, and do not interact with the public in-person in the course of their work. However, the mandate does apply to those who work alone but use a coworking space, such as WeWork. The mandate also does not apply to people who only enter a workplace for a quick and limited purpose, such as to use the bathroom, make a delivery, or “clock[] in and receiv[e] an assignment before leaving to begin a solitary assignment.” Nor does it apply to “non-NYC resident performing artists, college or professional athletes,” and anyone who accompanies such individuals.

Reasonable Accommodations

Employees who have sincerely held religious beliefs or a medical condition that prevents them from being vaccinated may apply for a reasonable accommodation by December 27. Employers may permit such employees to continue coming into the workplace while their reasonable accommodation request is pending. City agencies may, however, review a company’s reasonable accommodation process and records to ensure that it is handling requests promptly and appropriately.

Reasonable accommodations that employers may consider include weekly PCR testing and masking, working remotely, and permitting a leave of absence. Nevertheless, employers may deny an accommodation that imposes an undue burden on the business or where the unvaccinated worker would likely pose a direct threat to themselves or others. The City issued a [checklist](#) that employers may use to evaluate accommodation requests.

If any employee does not receive the vaccine because an employer approved a reasonable accommodation for medical or religious reasons, the employer must maintain a record of when it granted the reasonable accommodation, the basis for doing so, and any supporting documentation the employee provided.

Recordkeeping Requirement

Employers are required to verify and keep a record of each employee's proof of vaccination by December 27. Employers can meet this requirement in one of three ways:

- First, businesses can make and keep a copy of an employee's proof of vaccination or a record of a reasonable accommodation with supporting documentation.
- Second, businesses can create their own paper or electronic record that includes the following information for each employee: the worker's name; whether the worker is fully vaccinated; for a worker who submits proof of the first dose of a two-dose vaccine, the date by which the worker can provide proof of a second dose (which must be within 45 days of submitting proof of the first dose); and for a worker who does not submit proof of vaccination because of a reasonable accommodation, a record of the reasonable accommodation with supporting documentation.
- Third, businesses may check each employee's proof of vaccination before they enter the workplace each day. If they do so, the employer must also keep of record of each verification.

Employers need not keep a record of an independent contractor's vaccination status, but rather, can request that the contractor's employer confirm that he or she is vaccinated. Employers must, however, maintain a record of both their request to the contractor's employer and the subsequent confirmation.

Steps Employers Should Take

A business's noncompliance with the mandate may result in a fine of \$1,000 and escalating penalties thereafter if violations persist. Accordingly, to ensure compliance with the vaccine mandate, all private employers with New York City employees working in-person should revise their policies—to the extent that they have not already done so—to require that such employees have at least one dose of the COVID-19 vaccine (or the single dose of the Johnson & Johnson vaccine) by December 27, 2021. Employers should also develop and implement a plan to maintain worker vaccination records and process reasonable accommodations, and should be prepared to make their records available for inspection upon request by a City agency.

By December 27, employers must also complete a [certificate](#) affirming that they are in compliance with the vaccine mandate, and post the certificate in a public area of the workplace.

Since the mandate does not go into effect until December 27, it is possible that legal challenges may arise between then and now. We will provide additional updates as they develop.

This alert is for general informational purposes only and should not be construed as specific legal advice. If you would like more information about this alert, please contact one of the following attorneys or call your regular Patterson contact.

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