

NO SHIRT, NO VAX, NO SERVICE: TIPS ON ENFORCING VACCINE MANDATES WITH GUESTS TO STAY OUT OF HOT WATER

Insights
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On the heels of the FDA's full approval of the Pfizer vaccine, several major U.S. cities are requiring vaccines for entry to restaurants, shops, and entertainment facilities – and some businesses are instituting their own vaccine requirements for guests. Those restaurants, hotels, and other businesses being forced to comply with another law have questions about how to best handle this potentially touchy situation, but even those businesses introducing their own guest vaccine mandate on their own need guidance in this area. This article provides businesses tips on how to comply with or roll out vaccinated-only mandates and avoid some legal pitfalls in doing so.

Tip No. 1: Understand the Law in Your Local Jurisdiction

While some U.S. cities like New York City, San Francisco, New Orleans and Honolulu require proof of vaccination to enter indoor dining, fitness, or entertainment venues, other states like [Florida](#) have prohibited business owners from implementing vaccinated-only policies and excluding unvaccinated patrons. It is key that you review and understand the law in the locality where you operate so you can comply.

For example, in [New York](#), guests over the age of 12 must show proof of having received at least one dose of a COVID-19 vaccine, and businesses will be required to hang [specific posters](#) describing the mandate near entrances. Businesses that don't comply can look forward to fines as enforcement begins on Sept. 13. In [San Francisco](#), on the other hand, guests over the age of 12 must be fully vaccinated to go

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inside the same kind of establishments. Some cities, like [New Orleans](#), will provide businesses with greater flexibility by permitting evidence of a negative COVID-19 PCR test taken no more than 72 hours before entry in lieu of proof of vaccination. Because these rules are rapidly changing month over month, companies operating in multiple states should consult a local Fisher Phillips attorney to determine how best to navigate their particular situation.

Tip No. 2: Prepare for the Public Pushback

Operating any business during a global pandemic is difficult. Add various (and everchanging) legal mandates directed at requiring compliance from a politically polarized public and it may start to seem impossible. But it is possible; here are some tips:

■ Train Your Staff

Your staff and public-facing employees will be handling compliance with the mandates. It is crucial to train your employees on how to politely inform patrons of the requirements in your jurisdiction (either proof of vaccination and/or proof of a negative PCR test) if they wish to enter your premises.

Prepare staff to alert a designated manager to handle non-compliant patrons and ensure that a designated manager is prepared to calmly and effectively deescalate the situation.

■ Provide Notice to Patrons

While you may assume everyone knows of any government-required mandate or your businesses' own requirement, it is important for you to provide as much notice as possible to customers concerning the local vaccination mandate prior to their arrival. Doing so can help reduce confusion and prevent an uncomfortable situation. Personal service providers (such as spas and salons) and hospitality businesses (such as hotels and restaurants) should provide notice of the policy when confirming reservations. A simple message to visitors and guests is best, not only confirming the reservation but highlighting your efforts to keep them and your staff safe by sharing your policy of requiring proof of vaccination for indoor entry.

You can also post notices on your public-facing website, apps, and social media platforms to notify visitors of the vaccination mandate ahead of time. Another common strategy is posting conspicuous signs in prominent places at your entrances. The notices should include a statement that you have the right to refuse entry or service to anyone not complying with your new vaccination policy for indoor activities, particularly where required by local law.

■ **Communicate Clearly and Calmly to Non-Compliant Patrons**

Your establishment is bound to encounter non-compliant guests as so many people have strong feelings regarding vaccination mandates. The first step in such an unfortunate situation is to ensure that staff have a prepared in advance, scripted request for patrons who do not comply. If the patron does not respond positively, the employee should notify the designated manager to handle the situation.

The designated manager should share either the legal requirements of the jurisdiction and/or your businesses' policies. The manager should then inform the guest that they will not be permitted indoors if they continue to refuse to comply. Consider offering to-go or outdoor dining service if possible. If the guest does not cooperate, the manager should inform them that they are welcome to return if they comply with the policy or when the need for proof of vaccination is gone. Where possible, your manager should offer to reschedule an appointment or reservation.

If the situation escalates, the manager should know to call on the business' security personnel or local authorities in the same manner you would handle a trespassing situation. Regardless of how the situation concludes, the manager should immediately document the incident in objective, non-emotional terms. They should be instructed to provide the documentation to key personnel (human resources, legal, etc.) as soon as possible, and your business should retain the report in the event you are required to later demonstrate what happened.

Tip No. 3: Prepare for Accommodation Questions

It's also likely that your business will encounter guests who claim they should be exempt from the government mandate or your business policy because of a medical or religious reason. Be prepared to deal with both situations.

- ***What happens when a patron claims they cannot be vaccinated because of a disability?***

Title III of the Americans With Disabilities Act prohibits places of public accommodation from applying eligibility criteria that screen out or tend to screen out a person with a disability, or any class of people with disabilities, unless they qualify as legitimate safety requirements necessary for the safe operation of the facility. While the Department of Justice has not issued any guidance for vaccination mandates by public accommodations, it is unlikely that a vaccine requirement would qualify as an ADA-eligibility criterion. Furthermore, given the significant data on the effectiveness of the COVID-19 vaccine reducing transmissibility and severe disease, there is a strong argument that unvaccinated individuals pose a significant risk of harm to others indoors.

With that said, businesses are still required under the ADA to make reasonable modifications to procedures to provide individuals with disabilities with access to their goods, services, and facilities, unless such modifications would present a direct threat to the health and safety of others, or fundamentally alter the business. The modifications will vary from business to business and locality to locality. For example, New York recommends offering unvaccinated guests an opportunity to order take-out or join a virtual exercise class. Meanwhile, San Francisco suggests businesses seat unvaccinated customers in an outdoor area or try to connect guests with similar services in the area that host outdoor options. If your businesses can determine workable modifications for unvaccinated guests in advance, it should post details on its website.

- ***What about patrons who claim they cannot be vaccinated because of their religious beliefs?***

Title II of the Civil Rights Act of 1964 prohibits discrimination in public accommodations such as restaurants and hotels on the basis of race, color, religion or national origin. The law is less clear when it

comes to vaccine or mask mandates. The current consensus among courts suggests businesses are not unlawfully discriminating by generally enforcing a government-mandated vaccination requirement, and this standard seems likely to also apply to business-created mandates. Further, at least two courts have decided that businesses need not accommodate religious beliefs to comply with Title II. This may change as appeals work their way through the courts, so it is important to be aware of the developing law in your area.

No matter how such appeals turn out, businesses should keep a record of accommodation requests, resolutions, and compliance efforts to show they are doing their best to satisfy the requirements of local and federal laws.

Conclusion

We encourage businesses to consult with a local Fisher Phillips attorney to determine how to limit your exposure in complying with the new rules or rolling out your own vaccine policies for guests. We will monitor these developments and provide updates as necessary. Make sure you are subscribed to [Fisher Phillips' Insight system](#) to get the most up-to-date information. If you have questions, visit our [Vaccine Resource Center for Employers](#) or contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in our [Hospitality Industry Practice Group](#).