



All NYC Employers Must Prepare for Sweeping COVID-19 Vaccination Mandate

Insights
12.06.21

All private sector employees in New York City will need to be vaccinated in order to work in person effective December 27, per a sweeping [announcement by Mayor Bill de Blasio](#) earlier today. Dubbed the first such requirement in the nation, the mandate is being touted as a preemptive strike against the Omicron variant, especially with the increased risks associated with cold weather and holiday gatherings on their way. This impending vaccine mandate expands upon the existing “[Key to NYC](#)” requirements that have been in effect since mid-August, pursuant to which both employees and customers of [indoor dining, fitness facilities and entertainment venues need to have at least one dose of vaccine in order to work at or patronize the business](#). It comes during Mayor de Blasio’s final weeks in office and in the wake of [ongoing legal challenges](#) to OSHA’s Emergency Temporary Standard (ETS), the stalled federal rule blocked by court order that aims to require companies with 100 or more employees to ensure that those employees are either fully vaccinated or produce a weekly negative test for COVID-19. Here’s what NYC employers need to know about the vaccine mandate.

What Do You Need to Know?

At this point, the impending citywide vaccination mandate for private sector employees is short on details, though Mayor de Blasio indicated that additional guidelines would be forthcoming no later than December 15. The mayor also promised that city would work closely with the business community in crafting the contours of the vaccine mandate. Here’s what we know so far.

The Basics

Effective December 27, all private sector employees must have received at least one dose of COVID-19 vaccine in order to be present at an in-person NYC workplace. The city estimates this will impact roughly 184,000 businesses.

Reasonable Accommodations

In accordance with NYC law, employers will need to implement a process for employees to request a reasonable accommodation if they are unable to be vaccinated because of a disability, pregnancy, [religious beliefs](#), or the employee’s status as a victim of domestic violence, stalking, or sex offenses. Employers will not need to provide a reasonable accommodation to an employee if doing so would

Employers will not need to provide a reasonable accommodation to an employee if doing so would cause a significant risk of substantial harm to the health and safety of other employees or customers, or would otherwise impose an undue hardship on the business.

No Testing Alternative

Mayor de Blasio stated that testing will *not* be available as an alternative to vaccination, sharply limiting potential reasonable accommodations – particularly for employees who are unable to perform their job tasks remotely.

Expanded Mandate for Business Visitors

In addition to the universal vaccine mandate for private employers, Mayor de Blasio announced expansions of the existing Key to NYC vaccination requirements. Since August 17, employees and customers age 12 or older of indoor dining, fitness facilities and entertainment venues are required to provide proof they have received at least one dose of COVID-19 vaccine. By December 27, employees and customers of these facilities will be required to show proof they have received at least *two* doses of vaccine. Additionally, effective December 14, the Key to NYC requirements will expand to children age 5 to 11 who are now eligible for the vaccine; children in this age range will need proof of at least one dose vaccine to patronize indoor restaurants, fitness facilities and entertainment venues.

What Does the Future Hold?

The mayor and the city's legal counsel expressed confidence that the mandate would withstand any legal challenges. Of course, President Biden and federal workplace safety officials made similar comments as they rolled out [the national mandate-or-test program](#) – and the [federal contractor mandate](#), and the [CMS healthcare employer mandate](#) – and yet all these vaccine rules have been seriously dented by federal court orders and face an uncertain future. Only time will tell how New York courts will treat any challenges that arise to this new citywide mandate.

The vaccine mandate is slated to take effect just days before Mayor de Blasio leaves office. He indicated that he discussed the mandate with Mayor-elect Eric Adams, and says he understood the mayor's responsibility to take steps to protect New Yorkers. But a representative of the incoming mayor issued a statement in which he did not commit to continuing the mandate: "The Mayor-elect will evaluate this mandate and other COVID strategies when he is in office and make determinations based on science, efficacy and the advice of health professionals."

What Do You Need to Do?

With the effective date just three weeks away, you must prepare now to put yourself in the best position to comply with the forthcoming vaccine mandate. Some steps you can begin to take now:

- You should prepare to implement a system for asking employees whether they have been vaccinated and maintain confidential records of employee vaccination status.
- Additionally, you should develop a plan for handling accommodation requests, as well how you will handle situations where you conclude there are no accommodations that will allow the employee to safely perform their job duties without being vaccinated (keeping in mind that testing will not be permitted as an alternative to vaccination).
- Finally, you should consider how you will handle employees who remain unvaccinated by the deadline for reasons unrelated to a disability, pregnancy, religious belief, or status as a victim of domestic violence, stalking, or sex offenses.
 - Such employees are not legally entitled to any reasonable accommodation and employers will be permitted to fire such employees who are unable to show proof of vaccination.
 - If you choose not to fire them, you cannot let them work inside any work site where they will be around other employees or customers.
- You should also determine how you will deal with any resulting staffing shortages.

We will continue to monitor developments impacting New York employers, and will provide an update once more details about the mandate emerge, so make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information. If you have questions about how to ensure that your vaccine policies comply with workplace and other applicable laws, visit our [Vaccine Resource Center for Employers](#) or contact your Fisher Phillips attorney, the author of this Insight, or any attorney in our [New York City office](#) or on our [FP Vaccine Subcommittee](#).

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