



The Top 10 Things NYC Employers Need to Know about the Vaccine Mandate After City Releases Workplace Guidance

Insights

12.15.21

New York City released details today of its previously announced vaccine mandate requiring that 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 vaccine mandate takes effect December 27, so employers do not have a lot of time to prepare to comply. Here are the top ten things NYC employers need to know about the vaccine mandate.

1. **The basics.** No later than December 27, NYC workers must provide proof of vaccination against COVID-19 to their employer. Employers must exclude from the workplace any employee who fails to provide such proof, unless an exception due to reasonable accommodation applies (more on that below) or the worker only enters the workplace for a quick and limited purpose (more on that below too).
2. **Covered businesses.** The vaccine mandate applies to all private sector workplaces in NYC where work is performed in the presence of another worker or a member of the public, including a vehicle. Businesses already covered by another federal, state, or local mandate requiring workers to be fully vaccinated are excepted from the order. However, employers that are subject to federal requirements that are currently stayed by court order (such as the OSHA vaccine mandate-or-test ETS or the federal contractor vaccine mandate) must comply with this order.
3. **Covered workers.** The vaccine mandate covers full-time and part-time employees, interns, volunteers, and contractors at New York City workplaces.
4. **Full vaccination ultimately required.** As initially announced by Mayor de Blasio, employees must provide proof of having received one dose of COVID-19 vaccine by December 27. However, employees will ultimately need to provide proof of being *fully* vaccinated. Employees who initially submit proof of one dose of a two-vaccine must get their second dose within 45 days. If the employee fails to submit proof of vaccination for the second dose, the employee must be excluded from the workplace.
5. **Reasonable accommodations.** Per the City's guidance, workers who have a sincerely held religious belief or a medical condition that prevents them from being vaccinated may request a reasonable accommodation from their employer by December 27. New York City law also requires employers consider reasonable accommodations for pregnancy or an employee's status as a victim of domestic violence, stalking, or sex offenses. Though not mentioned in the City's guidance, employers presumably must consider reasonable accommodations for those reasons

as well.

Though Mayor de Blasio previously stated that testing would not be available as an alternative to vaccination, the City appears to have reversed course. The City published checklists that employers can use to process reasonable accommodation requests. One of the potential accommodations includes weekly PCR testing for COVID-19 and masking at all times when not eating or drinking. Other potential accommodations may include remote work or a leave of absence. Employers do not need to provide an accommodation if the unvaccinated worker would likely pose a direct threat to themselves or others or if the accommodation presents an undue burden on the employer.

The accommodation checklists also indicate that the City takes a very narrow view on eligibility for accommodations. With respect to accommodations for medical reasons, the checklist suggests that a permanent medical exemption may be granted only if the worker had a severe allergic reaction after a previous dose or to a component of all three approved COVID-19 vaccines or a worker has a known diagnosed allergy to a component in all three approved COVID-19 vaccines. A temporary medical exemption can be granted only if a worker has presented medical documentation showing (1) they are within 90 days of monoclonal antibody or convalescent plasma treatment of COVID-19, (2) they recently underwent stem cell transplant, CAR Tcell therapy, or other therapy or treatment that would temporarily interfere with the worker's ability to respond adequately to vaccination or mount an immune response due to treatment, or (3) they have pericarditis or myocarditis.

With respect to religious accommodations, the City notes that personal, political, or philosophical preferences do not qualify a worker for a religious accommodation. This includes beliefs that the government should not force people to get vaccines or interfere with medical decisions, concerns the vaccine is not safe or effective, or the view that COVID-19 is a hoax. Moreover, a letter stating that a worker practices a particular religion is not sufficient to qualify for an accommodation. The worker must explain how their religious beliefs require the worker not to be vaccinated. If the worker has received other vaccinations, the worker needs to explain why those vaccines were not contrary to their religion. If the employee states they cannot take the vaccine because it was developed and/or tested using fetal cells, but the worker takes medications similarly developed or tested using fetal cell derivative lines (such as ibuprofen or acetaminophen), the employee is not eligible for a religious accommodation.

6. **Limited exceptions.** Workers who have not provided the requisite proof of vaccination can enter the workplace for a quick and limited purpose, such as using the bathroom, making a delivery, or clocking in and receiving an assignment before leaving to begin a solitary assignment.
7. **Acceptable forms of proof.** Employees can provide a photo or hard copy of their CDC vaccination card, the NYC COVID Safe App, the New York State Excelsior Pass, CLEAR's digital vaccine card or health pass, a photo or hard copy of an official vaccination record of a designated vaccine administered outside the United States, or any other official vaccine record.

8. **Recordkeeping requirements.** Employers must keep records of each employee's proof of vaccination, either by making a copy of their proof of vaccination or creating a record that includes the worker's name, whether the worker is fully vaccinated, and for those workers who submit proof of the first dose of a two-dose vaccine, the date by which proof of the second dose will be provided (which must be no later than 45 days after the proof of the first dose was submitted). Any information collected must be stored in a secure manner and accessed only by those with legitimate need.
9. **Posting.** Employers must fill out a one-page attestation sign to be posted in their business by December 27 affirming compliance with the order.
10. **Employees who refuse to comply.** Employers can decide whether to fire or discipline workers who fail to comply with the vaccine mandate.

Interaction with Statewide Mask Mandate

New York City business must also comply with the statewide mask or vaccinate mandate announced last week. As of Monday December 13, employees and patrons of all New York businesses must wear a mask indoors unless the business implements a vaccine mandate that requires all employees and customers present proof that they are fully vaccinated in order to enter. Importantly, compliance with the NYC vaccine mandate alone will not be sufficient for a business to forego masking, as the statewide policy requires *everyone* entering the worksite to be *fully* vaccinated (employees and non-employees), while the NYC mandate requires only employees present proof of at least one dose of vaccine, at least initially. Unless a business implements a broader vaccine requirement, the business must ensure that everyone on site wears a mask.

What Should You Do?

With less than two weeks to go until the vaccine mandate takes effect, you must take immediate steps to comply. You must begin collecting employees' proof of vaccination status. Additionally, you should develop a plan for handling accommodation requests. You should consider how you will handle employees who remain unvaccinated by the December 27 deadline but are not entitled to an accommodation, including how you will address any staffing shortages that result from such employees not being allowed to be present in the worksite. Finally, you must comply with the posting requirement by December 27.

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.

Related People



Melissa Camire

Partner

212.899.9965

Email

Service Focus

Workplace Safety and Catastrophe Management

Trending

COVID-19/Vaccine Resource Center

Related Offices

New York