

8 THINGS BOSTON EMPLOYERS NEED TO KNOW ABOUT THE CITY'S INDOOR VACCINATION MANDATE

Insights
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Boston Mayor Michelle Wu just announced the city will require proof of COVID-19 vaccination for entry into indoor dining, entertainment, recreation, and fitness establishments. Other municipal leaders in Greater Boston have also announced plans to implement proof-of-vaccine mandates as part of a collective regional effort to address high rates of COVID-19 cases while preserving indoor gatherings. Phase I of Boston's proof-of-vaccine mandate, announced on December 20 and taking effect on January 15, does not provide businesses much time to prepare. Here are eight things Boston employers need to know about the mandate:

- 1. Who's Covered:** The Mayor's [Order](#) requires that the following Boston entities verify proof-of-vaccine status of full-time and part-time employees, interns, volunteers, on-site contractors, and patrons prior to permitting their entry into the indoor spaces of:
 - **Food services establishments**, including restaurants and bars but excluding charitable food service settings such as soup kitchens, or businesses offering food and/or drink exclusively for off-premises or outdoor consumption;
 - **Indoor entertainment, recreational, and event venues**, including movie theaters, music and concert venues, commercial event and party venues, museums and galleries, professional sports arenas and indoor stadiums, convention centers and exhibition halls, performing arts theaters, and bowling alleys; and

Related People



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- **Gyms and fitness establishments**, including commercial gyms, fitness, yoga/Pilates/barre/dance studios, boxing/kickboxing gyms, fitness boot camps, indoor pools, and other facilities used for conducting group fitness classes.

For purposes of the Order, a space will be considered “indoors” if it has a roof or overhang and is enclosed by at least three walls.

Service Focus

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2. **When:** Prior to entry into the indoor portions of covered entities, individuals will have to prove vaccination status in accordance with the following, phased schedule.

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- **Phase 1:** Beginning on **January 15**, individuals 12 and over must prove they have received at least one dose of COVID-19 vaccine, in either a one-dose or a two-dose series;
- **Phase 2:** Beginning on **February 15**, individuals 12 and over must prove they have received two doses of a two-dose COVID-19 vaccine series or one dose of a one-dose series;
- **Phase 3:** Beginning on **March 1**, individuals ages 5 to 11 must prove they have received at least one dose of COVID-19 vaccine, in either a one-dose or a two-dose series; and
- **Phase 4:** Beginning on **May 1**, individuals ages 5 and over must prove they have received two doses of a two-dose COVID-19 vaccine series or one dose of a one-dose series.

3. **Proof of Vaccination:** Acceptable forms of vaccination proof are: (i) a CDC COVID-19 Vaccination Record card, or a digital image or digital or physical photograph of the card; (ii) any other official immunization record from the jurisdiction, state, or country where the vaccine was administered, or a digital or physical photograph of the record; (iii) a letter, digital image, or report from a healthcare provider, pharmacy, or vaccination site establishing proof of COVID-19 vaccination; or (iv) any vaccine verification smartphone application developed by the Commonwealth of Massachusetts or developed or endorsed by the City of Boston. Mayor Wu’s administration has stated it intends to develop its own smartphone application for this purpose.

4. **Signage Requirement:** All covered entities must post a sign, which will be available at [boston.gov](https://www.boston.gov) or available for pick up at city locations, at their entrances. The sign will inform patrons and other individuals that they must be vaccinated in order to enter the covered entity's indoor spaces.
5. **Consequences of Non-Compliance:** Each instance in which a covered entity fails to check an individual's vaccination status will be deemed a separate violation of the Order. The Order states that "all reasonable efforts" will be made to secure entities' voluntary compliance through outreach and education, as well as written warnings. However, it also warns that the consequences of noncompliance may include fines of \$300 per violation and cease and desist orders from the Boston Public Health Commission.
6. **Limited Exceptions:** The following categories of individuals will be permitted to enter indoor portions of covered entities without presenting proof of vaccination, although only if wearing face masks: (i) individuals entering a covered entity for quick and limited reasons, such as using a restroom, placing or picking up an order or service, making a delivery, or performing necessary repairs; (ii) performing artists not regularly employed by a covered entity who are on the premises to perform; (iii) professional athletes/sports teams who enter a covered entity as part of their regular employment and to compete; and (iv) individuals accompanying a performing artist or professional athlete/sports team into a covered entity as part of their regular employment, as long as the performing artist or professional athlete/sports team are performing or competing in the covered premises.

Importantly, the Order also does not apply to pre-kindergarten through grade 12 public and non-public schools and programs, child care programs, senior centers, community centers, locations within residential or office buildings which are limited to use by residents, owners or tenants, colleges or universities that have a vaccine requirement covering staff and students, or any other site that is otherwise not open to the general public.

7. **Employee Accommodations:** The Order is conspicuously silent on the subject of disability or [religious](#) objections to the mandate. However, covered entities are reminded that a mandate does not absolve them of their obligations

under state and federal law to provide accommodations to eligible employees. Employers are reminded that they should engage in the interactive process to determine whether and how they can provide a reasonable accommodation where needed. Each decision should be based on the facts of the employer's workplace and other factors, such as whether the employee can work remotely, whether the employee can work by themselves, and the nature of the work and its interaction with other employees or customers.

- 8. Customer Accommodations:** Importantly, an employer's obligation to customers differs substantially from their obligation to employees. As noted in our prior [insight](#), accommodation situations with customers are full of pitfalls for the unwary. In its [FAQs](#), the City reminds covered entities that it should engage in a dialogue with a customer seeking an accommodation, but that it may exclude an unvaccinated customer if the customer is a "direct threat." Employers covered by the Order would be wise to train their staff and have a plan in place for when the first customer requests an accommodation—or is otherwise non-complaint with the Order.

What Should You Do?

With less than one month to go until the proof-of-vaccine mandate takes effect, you must take immediate steps to comply. This means ensuring that, if the Order applies to your business, people working in your locations — including not just your employees, but also interns, volunteers, and on-site contractors — have received their vaccines. It also means posting the signage discussed above and preparing your employees to verify the vaccination statuses of patrons and other individuals entering the indoor spaces of your business, beginning on January 15, 2022.

The Boston Public Health Commission is expected to publish additional written guidance on the proof-of-vaccine mandate. We will continue to monitor further developments and provide updates on this and other labor and employment issues affecting Massachusetts employers, so make sure you are subscribed to [Fisher Phillips' Insight system](#) to gather the most up-to-date information. If you have questions, please contact your Fisher Phillips attorney, the authors of this alert, or any attorney in our [Boston](#) office.

