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Order Requires New York City Employees to Get Vaccinated Against COVID-19

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On December 6, 2021, New York City Mayor Bill de Blasio [announced](#) that, as part of his Key to NYC Program, the City is mandating that all private-sector employers in New York City require their employees to be vaccinated against COVID-19—the first such measure in the country. Following up on that announcement, Dave A. Chokshi, the City’s Commissioner of the Department of Health and Mental Hygiene, has issued an [Order](#) requiring all New York City workers to be vaccinated against COVID-19, with limited exceptions, by December 27, 2021.

What does the Order require?

The Commissioner’s Order requires that all workers provide “proof of vaccination” to their employers by December 27. While employers are not required to fire workers who refuse to comply with the Order, they must exclude all unvaccinated workers from the workplace. Notably, the Order contains no exception for workers to proffer regular negative COVID-19 tests in lieu of obtaining the vaccine. But the Order’s proof of vaccination requirement does exclude workers with a religious or medical accommodation, as explained further below.

Must workers be fully vaccinated by December 27, 2021?

No. “Proof of vaccination” means workers can show proof that they are fully vaccinated or have received one dose of a two-dose regimen. Those workers showing proof of just one dose of a two-dose regimen have 45 days from the date they showed proof of the first dose to provide proof of the second; otherwise, the employer must exclude them from the workplace. Employers may adopt stricter vaccination policies, if they prefer.

What are the recordkeeping and posting requirements?

Employers must keep written records describing their protocols for implementing and enforcing the Order and make those records available for inspection. Moreover, employers must either (i) check workers’ vaccination status each time they enter the workplace and maintain a record of the verification, (ii) maintain copies of their workers’ proof of vaccination (or reasonable accommodation), or (iii) maintain their own paper or electronic records reflecting the worker’s name, vaccination status, date by which the worker can provide proof of a second dose (if applicable), or reasonable accommodation (if applicable).

For non-employee workers, such as contractors, the covered entity can request that the worker’s employer confirm proof of vaccination in lieu of maintaining the above records, but must keep a record

of that request and confirmation. All records for workers and contractors must be maintained confidentially.

Employers must also post an affirmation (a sample of which is available [here](#)) in a conspicuous place stating they are in compliance with the Order.

Does this apply only to NYC residents?

No. Even workers who do not reside in New York City are covered if they work for covered employers in New York City.

Which employers are covered by the Order?

The Order applies to all non-governmental entities that employ more than one worker in New York City and maintain or operate a workplace (even a shared workspace) in New York City. The Order defines “workplaces” broadly; it means any location, including a vehicle or coworking space, where work is performed in the presence of another worker or a member of the public.

The Order does not apply to covered entities already subject to another Order of the Commissioner, the Board of Health, the Mayor, or a State or federal entity that is in effect and requires them to maintain or provide proof of vaccination.

Accordingly, the Order also does not apply to those employers covered by [Mayor de Blasio’s December 15 Executive Order](#), which covers most employers operating indoor entertainment and recreational settings (and certain event and meeting spaces), indoor food services, and indoor gyms and fitness settings and requires them to ensure workers and patrons show proof of vaccination and identification upon entry. But substantively, as applied to *workers*, the Order and the Mayor’s Executive Order impose the same requirements: employers covered under either of those orders must exclude unvaccinated workers from the workplace subject to reasonable medical and religious accommodation requests, maintain workers’ vaccination records, and post a sign in compliance.

Likewise, OSHA’s emergency temporary standard and the federal contractor mandate have been stayed by federal courts, and are therefore not currently “in effect,” so employers subject to them must still comply with the Order.

What are the exceptions?

The Order does not require certain persons to show proof of vaccination when entering the workplace, including: (i) individuals entering for a quick and limited purpose (e.g., using the restroom or making a delivery), (ii) individuals who work from their home and do not interact in-person with co-workers or the public, and (iii) non-City residents who are performing artists or college or professional athletes (and those accompanying the artists and athletes).

The Order also does not apply to workers who have obtained or seek reasonable accommodations for medical or religious reasons. [Guidance](#) promulgated with the Order states employers may deny a request for a reasonable accommodation where it would impose an undue hardship, and lists several factors relevant to that determination. If the requested reasonable accommodation would, in fact, impose an undue hardship on the employer, or if the unvaccinated worker would pose a direct threat to others, then the employer can offer a leave of absence until the worker is able to provide proof of vaccination, or until it is otherwise safe for them to return to work. Employers do not need to pay employees during a leave of absence unless the employer pays other workers who are unable to work for similar reasons.

The guidance also provides a checklist to help employers determine whether the worker qualifies for a medical or religious accommodation. For medical accommodations, employers may ask for a doctor's note, but employers may only ask for supporting documentation in the case of religious accommodations if they have an "objective basis to question the sincerity of the religious" belief. Workers may seek religious accommodations based on sincerely held religious, ethical, or moral beliefs, even if those beliefs are not associated with organized religions, but the Order does not protect "social, political, or economic views, or personal preferences." Employers should also [be careful](#) not to treat workers differently based upon a protected characteristic in considering requests for reasonable accommodations.

What are the penalties for violating the Order?

If a business refuses or fails to comply, fines for violations of the Order begin at \$1,000 and escalate for repeated violations.

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Given the scope and nature of the Order, legal challenges are expected in the coming weeks and months. It also is unclear whether the Mayor-Elect Eric Adams, who takes office on January 1, 2022, will follow or rescind the Order. Nevertheless, employers should begin collecting vaccination information for their employees and ensuring employees are aware of the vaccination requirement by December 27.

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