

New York City Vaccine Mandate

What is the Coronavirus?

Coronavirus Disease 2019 (COVID-19) is a respiratory disease caused by the Severe Acute Respiratory Syndrome (SARS)-CoV-2 virus. The current mutation is a new strain of the SARS virus and no individual has any immunity prior to an exposure. The CDC has reported that testing has begun on a vaccine but for now, everyone should prepare and plan for possible impacts resulting from COVID-19. It has spread from China to many other countries around the world, including the United States.

Eric J. Conn, *Conn Maciel Carey LLP* (www.connmaciell.com)

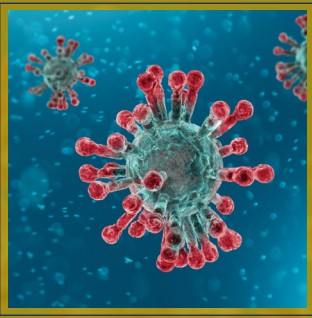
For those of you with establishments in New York City, note that this week, Mayor Bill de Blasio and the New York City Commissioner of Health and Mental Hygiene issued a private employer vaccinate [mandate](#), and yesterday published this implementation [guidance](#) for employers. The key provisions of the mandate include:

1. **Beginning December 27, 2021, workers must provide proof of vaccination against COVID-19 to a covered entity before entering the workplace, and a covered entity must exclude from the workplace any worker who has not provided such proof, unless they are provided an accommodation for a disability or religious reason.**
 - ◆ “Covered entity” means:
 - » a non-governmental entity that employs more than one worker in New York City or maintains a workplace in New York City; or
 - » a self-employed individual or a sole practitioner who works at a workplace or interacts with workers or the public in the course of their business.
 - ◆ “Worker” means an individual who works in-person in New York City at a workplace. Worker includes a full- or part-time staff member, employer, employee, intern, volunteer, or contractor of a covered entity, as well as a self-employed individual or a sole practitioner.
 - ◆ Worker does not include:
 - » an individual who works from their own home and whose employment does not involve interacting in-person with co-workers or members of the public;
 - » an individual who enters the workplace for a quick and limited purpose (such as to use the bathroom, make a delivery, or clocking in and receiving an assignment before leaving to begin a solitary assignment); or
 - » non-City residents who are performing artists, college or professional athletes, or individuals accompanying such performing artists or college or professional athletes who do not have to display proof of vaccination pursuant to the Key to NYC program, Emergency Executive Order No. 316 and successor Orders.
 - ◆ “Workplace” means any location, including a vehicle, where work is performed in the presence of another worker or member of the public.
 - ◆ “Proof of vaccination” means one of the following documents demonstrating that an individual has (1) been fully vaccinated against COVID-19; (2) received one dose of a single-dose COVID-19 vaccine; or (3) received the first dose of a two dose COVID-19 vaccine, provided that a worker providing proof of only such first dose provides proof of receiving the second



1201 Pennsylvania Ave. NW
Suite 1200
Washington, DC 20004
202-991-6300 • www.necanet.org

published 12/16/2021



dose of that vaccine within 45 days after receiving the first dose:

- » A CDC COVID-19 Vaccination Record Card or other official immunization record from the jurisdiction, city, state, or country where the vaccine was administered, or from a healthcare provider or other approved immunizer who administered the vaccine, that provides the person's name, vaccine brand, and date of administration. A digital photo or photocopy of such record is also acceptable.
- » New York City COVID Safe App showing a vaccination record;
- » A valid New York State Excelsior Pass/Excelsior Pass Plus;
- » CLEAR Health Pass; or
- » Any other method specified by the Commissioner as sufficient to demonstrate proof of vaccination.

2. Workers in New York City who perform in-person work or interact with the public in the course of business must show proof they have received at least one dose of a COVID-19 vaccine by December 27th.

- ♦ Workers will then have 45 days to show proof of their second dose (for Pfizer or Moderna vaccines).

3. Covered entities are required to: verify workers' proof of vaccination by either:

- ♦ maintaining a copy of each worker's proof of vaccination and, if applicable, a record of reasonable accommodation(s); **OR**
- ♦ maintaining a record of such proof of vaccination, provided that such record shall include:
 - » the worker's name; and
 - » whether the person is fully vaccinated; and
 - » for a worker who submits proof of the first dose of a two-dose vaccine, the date by which proof of the second dose must be provided, which must be no later than 45 days after the proof of first dose was submitted; and
 - » for a worker who does not submit proof of COVID-19 vaccination because of a reasonable accommodation, the record must indicate that such accommodation was provided, and the covered entity must separately maintain records stating the basis for such accommodation and any supporting documentation provided by such worker; **OR**
- ♦ checking the proof of vaccination before allowing a worker to enter the workplace and maintain a record of the verification.

4. For a non-employee worker, such as a contractor, a covered entity may request that the worker's employer confirm the proof of vaccination in lieu of maintaining the above records. A covered entity shall maintain a record of such request and confirmation.

5. No later than December 27, 2021, a covered entity shall affirm on a [form](#) provided by the Department compliance with the requirements of the



Commissioner's Order and post the affirmation in a conspicuous location in the workplace.

The private employer vaccine mandate does not apply to covered entities or individuals who are already subject to another Order of the Commissioner of the Department, Board of Health, the Mayor, or a State or federal entity that requires them to maintain or provide proof of full vaccination, or to individuals who have been granted a reasonable accommodation pursuant to such requirement. Of note, Mayor de Blasio also issued [Executive Order 317](#) this morning, which expands the existing vaccine mandate for employers operating 1) indoor entertainment and recreational settings, and certain event and meeting spaces; 2) indoor food services; and 3) indoor gyms and fitness settings. The private employer vaccine mandate issued by the Health Commissioner is similar in many respects to EO 317, but there are some key differences. Specifically, employers covered by EO 317 have an obligation to develop and maintain a written plan describing the protocols for implementing and enforcing the requirements of EO 317. Furthermore, starting December 27th, New Yorkers aged 12 and older will be required to show proof of TWO DOSES, instead of one, except for those who have received the Johnson & Johnson vaccine.

Finally, it is important to remember that **all** New York employers remain subject to the NY HERO Act, which requires employers to implement a written airborne infectious disease plan and certain exposure controls whenever the Health Commissioner declares a public health emergency involving an airborne infectious disease. The State Health Commissioner issued such a declaration in September 2021 with respect to COVID-19 and has extended that designation several times since then. Yesterday, the New York State Commissioner of Health extended the [designation](#) of COVID-19 as a highly contagious communicable disease until January 15, 2022, at which time it will be reevaluated.

We have not seen that any legal challenges have been filed yet, but they are expected any day now. Several attorneys have already indicated that they were preparing to file legal challenges prior to the mandate being issued, and they will almost certainly seek an emergency temporary restraining order to prevent the December 27th vaccine deadline from going into effect. The mandate really does not provide much of a runway for employers to come into compliance, as employers need to make sure employees have their first vaccine dose by December 27th—just eleven days from now. The mandate will also remain in effect until it is rescinded by the Board of Health.

This material is for informational purposes only. The material is general and is not intended to be legal advice. It should not be relied upon or used without consulting a lawyer to consider your specific circumstances, possible changes to applicable laws, applicable CBAs, prime contracts, subcontracts, rules and regulations and other legal issues. Receipt of this material does not establish an attorney-client relationship.

