



## NYC issues private employer vaccination mandate, effective December 27

### Employment Alert

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With COVID-19 cases surging in New York and the federal vaccine mandates for private employers and government contractors stayed until further notice, New York City has issued a vaccine mandate for private employers that takes effect on December 27, 2021.

The mandate applies to all private employer workplaces in New York City with more than one worker, with the exception of those entities that are subject to another government mandate that requires proof of full vaccination of all workers. Workers are defined to include employees, interns, volunteers or contractors that provide services at the workplace.

### Workers must provide proof of vaccination

By December 27, workers who provide in-person services at a New York City workplace must provide employers proof of **at least one** dose of an approved COVID-19 vaccine. Acceptable forms of proof include the CDC vaccination card, NYC COVID Safe App, New York State Excelsior Pass, CLEAR's Digital Vaccine Card, CLEAR Health Pass, or other official vaccine record from a medical provider.

Approved vaccines are Johnson & Johnson, Pfizer/BioNTech, Moderna, or for those workers with a vaccine administered outside the United States: AstraZeneca/SK Bioscience, Serum Institute of India/COVISHIELD and Vaxzevria, Sinopharm,

or Sinovac. For those vaccines that require a two-dose regimen, workers who are not fully vaccinated by December 27 must submit proof of a second dose within 45 days. Unless an exception applies, workers who fail to comply with the vaccination requirement may not enter the workplace.

The vaccine requirement does not apply to workers who receive a reasonable accommodation due to a medical condition or sincerely held religious belief (see below), or workers who enter the workplace for a “quick and limited purpose” such as “making a delivery,” “using the bathroom,” or “clocking in and receiving an assignment before leaving [the workplace] to begin a solitary assignment.”

## Employers must maintain proof of vaccination

Employers are required to maintain records of workers’ proof of vaccination, by either:

1. Making a copy or taking a picture of the worker’s proof of vaccination; OR
2. Creating a paper or electronic record that includes the following information for each worker:
  - a. Worker’s name;
  - b. Whether the worker is fully vaccinated. (NOTE: for a worker who only has received one dose of a two-dose vaccine by December 27, the employer must record the date by which proof of the second dose will be provided, which must be no later than 45 days after proof of the first dose.)

Employers should store an employee’s proof of vaccination as a confidential record separate from an employee’s personnel file. Proof of an employee’s vaccination should only be accessed by those employees or other individuals with a legitimate need to access such information for purposes of complying with the New York City order or other government orders, laws, or regulations.

For contractors who provide services at a company’s workplace in New York City, the company need not keep a record of the contractor’s vaccination status. The company may instead confirm proof of vaccination from that contractor’s employer. Companies that choose this option must keep a record of the request to the contractor’s employer and such employer’s confirmation of the contractor’s vaccination status.

## Reasonable accommodations for a medical condition or sincerely held religious belief

Workers who contend that a medical condition or a sincerely held religious belief prevents them from being vaccinated must apply for a reasonable accommodation by December 27. Should a worker apply for such an accommodation, an employer must engage in a cooperative dialogue with the worker to determine whether the worker qualifies for an accommodation, and if so, whether there is a reasonable accommodation that would permit the worker to continue to work at the workplace or remotely. While a worker’s request for a reasonable accommodation is pending, employers may permit such workers to enter the workplace so long as the worker wears a mask and takes other appropriate safety precautions such as social distancing and frequent handwashing. (Indeed, New York State issued an order mandating that in any indoor workplaces in which not all individuals are vaccinated, all individuals must wear masks).

New York City provides guidance to employers on how to handle reasonable accommodation requests as well as a checklist that employers can use to process reasonable accommodation requests, available at: [www.nyc.gov/vaxtowork](http://www.nyc.gov/vaxtowork). Employers who follow the checklist and maintain it on file is evidence that the employer “handled the reasonable accommodation request appropriately.”

## Employers must post affirmation of compliance by December 27

Employers must complete, and post conspicuously, a certificate affirming compliance with the vaccine mandate. See the certificate [here](#).

New York City agencies have indicated that they will conduct compliance inspections beginning on December 27. Businesses that fail to comply are subject to an initial fine of \$1,000, with escalating penalties for any continuing

violations.

We will continue to monitor developments related to the NYC mandate, as well as other federal and state vaccine mandates and restrictions.

If you have any questions regarding employer vaccination requirements, please contact the authors, any member of the DLA Piper Employment group or your DLA Piper relationship attorney.

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