

EMPLOYER ALERT: NEW YORK CITY ISSUES ADDITIONAL GUIDANCE ON THE “KEY TO NYC” PASS FOR PRIVATE SECTOR EMPLOYERS

All New York City workers must now provide proof of vaccination of at least 1 dose of the vaccine before entering a workplace and all businesses must exclude any worker who has not provided such proof.

The mandate applies to all businesses with more than one employee that maintain or operate a workplace in New York City. Individuals who are self-employed or sole proprietors are also covered by the order if they work at a shared workspace or interact with the public in-person to perform their work.

Documentation and Tracking Requirements

The mandate includes extensive documentation and tracking requirements of employee data. Specifically, businesses must either:

(1) maintain a copy of each worker’s proof of vaccination by making a copy or taking a picture of each worker’s proof of vaccination; or

(2) maintain their own electronic or paper record that includes the following information:

- the worker’s name;
- whether the worker is fully vaccinated; and
- if a worker only has 1 of 2 doses of the 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.
- Workers who fail to show proof of full vaccination status before the 45-day window closes must be excluded from the workplace or work remotely if remote work is an option.

Businesses must also keep a record of any accommodations provided to workers if they did not get vaccinated for religious or medical reasons. The records should be stored in a secure location and only made accessible to individuals who have a legitimate need to access the information for purposes of compliance.

New York City has released checklists to assist in responding to accommodation requests relating to medical and religious exemptions to the mandate. These checklists can be downloaded from the following link: [vaccination-workplace-accommodations.pdf](https://www.nyc.gov/vaccination-workplace-accommodations.pdf) (nyc.gov). The second page in the linked document is the checklist for a medical accommodation request and the third page is the checklist for a religious exemption request. According to guidance set forth by New York City, “[i]f an employer chooses to follow this checklist and keeps it on file, that will demonstrate that the employer handled the reasonable accommodation request appropriately.”

Public-Facing Affirmation

As a reminder, by December 27, 2021, all business must have completed and posted a one-page attestation affirming their compliance with the mandate. The attestation must be conspicuously posted inside the business. The attestation may be accessed using the

following link to the NYC website:

<https://www1.nyc.gov/assets/doh/downloads/pdf/covid/covid-19-vaccination-workplace-requirement-affirmation.pdf>

For businesses with multiple locations, such as restaurant chains, a separate attestation must be posted in each location; however, employee vaccination and reasonable accommodation records may be stored in one location.

Independent Contractors

Proof of vaccination is not required for contract workers. However, a business may request that the contract worker's employer confirm the employee's vaccination status. In that case, the business must maintain a record of both the date of the request and the date of the confirmation.

Exceptions

There are 4 exceptions to the Mandate:

1. Unvaccinated employees may enter a 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.
2. People who work alone and do not have in-person contact with co-workers or other members of the public do not need to comply with the Mandate.
3. Performing artists, college or professional athletes who do not reside in NYC, and anyone who accompanies them into NYC do not need to comply with the Mandate.
4. Employees who have requested a reasonable accommodation for medical or religious reasons do not need to comply with the Mandate. However, businesses must maintain a record with the basis for the accommodation and all supporting documentation.

Enforcement

The mandate will be enforced by inspectors from various City agencies. Monetary penalties may be assessed in the amount of \$1,000 for a first offense and escalating penalties for persistent violations. Before leaving office, Mayor Bill de Blasio said if a violation is detected, he did not intend to slap on fines, but to "educate and correct" and only levy fines against those that "flatly refused" to abide by the mandate. Incoming NYC Mayor Eric Adams, who was sworn in on January 1, 2022, announced that his focus with respect to this Mandate is similarly placed on compliance and not on punishment.

For workers who refuse to comply with the mandate, and who do not meet any of the exceptions noted above, it is in the employer's discretion whether to discipline or fire such workers.

New York City published guidance on the mandate as well as Frequently Asked Questions, which may be accessed here:

<https://www1.nyc.gov/site/doh/covid/covid-19-vaccine-workplace-requirement.page> (Guidance)

<https://www1.nyc.gov/assets/counselltothemayor/downloads/Workplace-FAQ.pdf> (FAQ)

KD IS HERE TO HELP

The experienced labor and employment law attorneys at Kaufman Dolowich & Voluck, LLP are available to assist you and your business in navigating the New York City's private sector vaccine mandate and other COVID-19 related employment issues. For more information, contact Keith Gutstein at kgutstein@kaufmandolowich.com, Rashmee Sinha at rsinha@kaufmandolowich.com, Matthew

Cohen at mcohen@kaufmandolowich.com, Solomon Abramov at sabramov@kaufmandolowich.com, or any other experienced member of KD's Labor and Employment Law Practice Group.