

The New Vaccine Mandate for New York City Employers: What We Know, What We Expect, and What Employers Should Do Now

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On December 6, 2021, Mayor Bill de Blasio [announced](#) that New York City would be adding new rules and requirements for vaccination against COVID-19, including a “universal” vaccine mandate affecting all private employers—about 184,000 entities doing business in the city. The mayor also announced changes to the city’s [“Key to NYC”](#) program, which requires patrons of most dining and entertainment venues to show proof of vaccination prior to entering any indoor facility. So far, very little has been formally issued in writing, but we are closely monitoring these developments.

What We Know So Far

Private Employer Vaccine Mandate

A [press release](#) from the mayor advises that a vaccine mandate for private employers in New York City will take effect on December 27, 2021, by order of the New York City Commissioner of Health and Mental Hygiene (“City Health Commissioner”). Details about the mandate, including guidance on its enforcement and implementation, will be provided on December 15, according to the [city’s vaccination information website](#) and Mayor de Blasio’s remarks at a December 6 [press conference](#).

During that press conference, the mayor stated that the mandate would apply to any employee who works in person with at least one other person, but that it would not apply to fully remote workers. He also indicated that the enforcement provisions are likely to include penalties for noncompliance, but that the city’s focus is on education and awareness.

New Rules for the “Key to NYC”

The “Key to NYC” program was established pursuant to a mayoral [emergency executive order](#), issued on September 24, 2021. The program requires proprietors of indoor entertainment and recreational settings, indoor establishments serving food and/or beverages, and indoor gyms and fitness centers to verify that any individual aged 12 or older has been vaccinated prior to entering enclosed premises.

Starting on December 14, 2021, Key to NYC rules will apply to all children aged 5 and older. Beginning on December 27, 2021, however, anyone aged 5 or older seeking to enter covered establishments in the city must show proof of being fully vaccinated to satisfy Key to NYC requirements. Businesses covered by the Key to NYC policy must continue to verify their customers’ vaccination status prior to admitting them to any indoor space. The city has provided industry-specific guidance for operators of [entertainment venues](#), [fitness facilities](#), and [dining establishments](#) in more than a dozen languages to help business owners comply with the Key to NYC rules, which also require businesses to maintain [written procedures](#).

Vaccine Rules for “High Risk” Student Activities Expanded

On September 15, 2021, the City Health Commissioner issued an [order](#) requiring students aged 12 or older who participate in certain “high risk” activities to be fully vaccinated as a prerequisite to their participation in such activities. In his December 6, 2021 [announcement](#), the mayor expanded that September order to apply to all children age 5 and older who participate in such activities effective December 14, 2021. Covered activities are generally those that involve increased exhalation, including most musical and theatrical activities as well as sports and other team activities, such as cheerleading.

What Remains Unknown

The New York City vaccine mandate—the first like it to be issued in any municipality (and in the nation)—will likely impact most private employers in New York City. While the mayor has remarked publicly that enforcement measures would probably include fines for noncompliance, nothing is known yet about how employers will be required to demonstrate compliance. Such details may be included in forthcoming guidance, slated for release on December 15, only 12 days before the mandate would take effect. Until the city provides further information, we can only speculate about the details—including collecting proof of vaccination, testing options, managing reasonable accommodations, masking, and the like.

Based on the types of guidance issued for the Key to NYC, the guidance is likely to address documentation and reporting requirements, if any, and may include forms, “Frequently Asked Questions,” required notices or posters, and/or checklists for compliance. The guidance also should address parameters for providing reasonable accommodations based on a disability or sincerely held religious beliefs, as required under federal law.

It is also possible that there will be legal challenges to the mayor’s authority to unilaterally impose a vaccine mandate and require private employers to enforce such a mandate against individuals. Such a lawsuit could seek a stay of the mandate’s enforcement, similar to the stays imposed in numerous cases challenging various vaccine-related rules issued at the federal level under the Biden administration.

Finally, it is notable that the city’s vaccine mandate effective date of December 27, 2021, is just a

few days prior to the inauguration of a new mayor. The mayor-elect has not indicated whether or not he would continue the current administration's policies and strategies.

What New York City Employers Should Do Now

Although much remains unclear, employers can take the following steps now to ensure an easier compliance process:

- Collect information from employees regarding their vaccination status, maintaining the information in accordance with [confidentiality requirements](#) as required under the Americans with Disabilities Act (ADA).
- Consider whether a vaccine requirement or similar policy makes sense for your business, whether or not mandated by a government entity. Many employers were already contemplating such policies in light of the Occupational Safety and Health Administration's COVID-19 Vaccination and Testing Emergency Temporary Standard, but paused plans due to the nationwide stay. As many health and safety protocols include eased requirements for face covering and social distancing when all parties present are fully vaccinated, proof of vaccination as a condition of employment could make sense in certain settings.
- If your employees are represented by a union, do not make any unilateral policy decisions until more is known regarding the city's vaccine mandate and any accompanying regulations or guidance. The National Labor Relations Board has [opined](#) that, where an employer has "significant flexibility and/or discretion in implementing" a statutorily mandated vaccination policy, it is bound by the duty to bargain and may not act unilaterally in changing the terms and conditions of employment if its employees' representative requests bargaining over the subject.
- Consider alerting employees now of the potential legal requirement that they receive at least one dose of a COVID-19 vaccine by December 27, 2021. The holiday season is a busy time of year, and, with many New Yorkers lining up for booster shots, the unvaccinated may not have an easy time finding a walk-in vaccination site or available appointments.
- Review guidance regarding reasonable accommodations if you have employees who may request them due to a medical or religious issue preventing their compliance with a vaccination requirement. In addition to federal requirements to consider accommodations for employees with a disability or sincerely held religious belief, the New York City Human Rights Law requires employers to engage in a [cooperative dialogue](#) with employees seeking reasonable accommodations.
- Be prepared to provide employees with [paid leave](#), both to receive a vaccine and to recover from any side effects.
- Review collective bargaining agreements and other understandings and agreements with

employees' union representatives to assess what obligations may exist once the additional guidance is issued.

- Stay tuned for further details from New York City about the vaccine mandate, which are expected on December 15, 2021 (according to the city's [vaccine information website](#) and the mayor's December 6 [press conference](#)).

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