

MSF CLIENT ALERT

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New York City Implements Workplace Vaccination Requirement

Following the December 6, 2021 announcement regarding New York City's private sector COVID-19 vaccine requirement, the New York City Commissioner of Health and Mental Hygiene issued an Order requiring employees in private workplaces to have at least one dose of vaccination as of December 27, 2021.

December 17, 2021

On December 15, 2021, New York City's Commissioner of Health and Mental Hygiene published an [order](#) ("Order") requiring New York City workplaces to implement a vaccination requirement for all workers, including staff members, employers, employees, interns, volunteers, contractors, and individuals who are self-employed or sole practitioners, present in-person at a workplace. The Commissioner also issued [Private Sector Vaccine Requirement: Frequently Asked Questions](#), which address the Order.

It is unknown whether these measures will be maintained or modified by incoming Mayor Eric Adams who takes office on January 1, 2022. It is expected that the measures will be subject to challenge. Nonetheless, virtually all private sector businesses must prepare to comply with the requirements starting December 27, 2021.

Who is Covered?

The Order applies to all workplaces in New York City where work is performed in the presence of another worker, or a member of the public, irrespective of the size of the workforce or the resident status of the worker ("Workplace").

Covered employers ("Covered Employers") include all non-governmental entities that maintain a Workplace in New York City, including offices, stores, co-working spaces, chain businesses, and self-employed individuals that interact with other persons (e.g., speech pathologists visiting clients in their home).

The Order does not apply to businesses that are already subject to a federal, state or city order requiring them to maintain or provide proof of vaccination, as well as individuals who are non-New York City resident performing artists, college or professional athletes, or anyone who

accompanies them when they travel to New York City to perform/compete.

Vaccination Requirement

As of December 27, 2021, Covered Employers must require workers in New York City who perform in-person work or interact with the public during the course of business to show (or have already shown) proof they have received at least one dose of a COVID-19 vaccine. Any Workers not fully vaccinated as of December 27, 2021, will then have 45 days from the first dose to show proof of having received their second vaccine dose (if the COVID-19 vaccine requires administration of a second dose).

Covered Employers who have previously checked workers' vaccination status before this Order was issued do not need to do so again so long as the Covered Employer has maintained records of proof of vaccination.

Any worker who has not provided such proof must be excluded from the Workplace unless they have been granted a reasonable accommodation due to a religious or medical exemption. A worker who refuses to show proof of vaccination must be excluded from the workplace and, according to the Frequently Asked Questions, it is up to the employer to determine whether to discipline or terminate such employee or to allow the employee to work remotely. Employees who do not meet the vaccination requirements and are not eligible for a reasonable accommodation may only enter a Workplace for very quick and limited purposes, such as to use the bathroom, making a delivery, or clocking in and receiving an assignment before leaving to begin a solitary assignment. Such individuals must wear face masks when indoors for such limited purposes. However, a business that has adopted a mandatory vaccination policy under recent New York State

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guidance is not required to allow unvaccinated individuals in the Workplace. [See MSF Client Alert: New York Requires All Persons to Wear Masks Indoors in Public Places \(Including Offices\) Unless There is a Vaccination Requirement for Entry.](#)

Reasonable Accommodations

Covered Employers must consider reasonable accommodation requests from workers, and provide a reasonable accommodation, unless doing so would cause a direct threat to customers or other employees or their business or impose an undue burden on the Covered Employer.

If an employee is unable to show proof of vaccination due to their own religious or medical reason, the Covered Employer must engage in a cooperative dialogue with the employee to determine if there is a reasonable accommodation that may be provided, such as weekly PCR testing and masking at all times when not eating or drinking, working remotely, or taking a leave of absence.

In connection with the issuance of the Order, [Guidance on Accommodations for Workers](#) has been published to assist Covered Employers with addressing accommodation requests. The Guidance includes checklists for Covered Employers to use in evaluating accommodation requests.

Record-Keeping and Posting Obligations

The Order requires Covered Employers to maintain a record of each worker's proof of vaccination, either by:

- Making a copy or taking a picture of their proof of vaccination; or

- Creating their own paper or electronic record, which must include each worker's name, vaccination status, and if a worker submitted proof of only one dose of a two-dose vaccine, the date that the second dose will be provided, which must be within 45 days after proof of the first dose.

If a Covered Employer grants any worker a reasonable accommodation based on their religion or medical condition, the Covered Employer must maintain a record of when the accommodation was granted, the basis for doing so, and any supporting documentation the worker provided. If a Covered Employer uses the checklist attached to the Guidance on Accommodations for Workers issued by New York City, they must maintain copies of the completed checklists for their records. According to the Frequently Asked Questions, use of the checklist will demonstrate that the employer handled the reasonable accommodation request appropriately.

All records must be treated confidentially, except as to any New York City agency that requests inspection of such records.

Covered Employers must affirm compliance with the Order by December 27, 2021 by signing the Department of Health and Mental Hygiene [attestation notice](#) and posting it in a conspicuous location at their Workplace. If Covered Employers have previously posted a notice of attestation per the "Key to NYC" requirements for indoor dining, fitness and entertainment locations, they do not need to post this attestation notice.

Please contact an attorney in MSF's Employment Group if you need assistance with respect to this information.



Andrea B. Neuman
Partner | Chair, Employment
(212) 655-3513 | abn@msf-law.com



Gregg M. Kligman
Counsel | Employment
(646) 273-8209 | gmk@msf-law.com



Samantha Frenchman
Associate | Employment
(212) 655-3580 | slf@msf-law.com

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