

MSF CLIENT ALERT

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New York City Expands “Key to NYC” to Require Additional Vaccination

Following the December 6, 2021 announcement regarding New York City’s expansion of the vaccination requirements for certain indoor activities, an Executive Order was issued setting forth deadlines for additional vaccination and requirements for proof of vaccination, as well as record-keeping obligations for covered entities.

December 15, 2021

On December 15, 2021, New York City Mayor Bill de Blasio issued an [executive order](#) (the “Executive Order”) addressing new requirements for vaccination effective December 27, 2021.¹ This Executive Order superseded a prior executive order of the same subject issued on December 13, 2021. The “Key to NYC” [Frequently Asked Questions](#) have been updated to address the Executive Order. The Executive Order covers indoor dining, fitness, and entertainment establishments, such as Broadway shows, movie theaters, concerts, professional sports arenas and indoor stadiums, hotel meeting and event spaces, and recreational game centers (“Covered Premises”). Although prior announcements suggested these requirements might apply more broadly, for now they are limited to these Covered Premises.

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, Covered Entities that operate Covered Premises must comply with the requirements in effect and prepare to comply with required deadlines.

Proof of Vaccination for Children Ages 5-11

As of December 14, 2021, children ages 5-11 are required to show proof that they have received at least one dose of a vaccine against COVID-19 in order to enter Covered Premises. Those children will be required to show proof

that they received all required doses of a COVID-19 vaccine starting January 28, 2022. Children who turn 5 years old after December 13, 2021 will not be required to show proof of vaccination until 45 days after their 5th birthday.

Proof of Vaccination for Individuals 12 Years and Older

Individuals 12 years and older, who are currently required to show proof that they have received at least one dose of a COVID-19 vaccine to be allowed entry into a Covered Premises, will be required to show proof that they have received a full regimen of a COVID-19 vaccine starting December 27, 2021. This requirement applies to patrons, employees, interns, volunteers and contractors of the Covered Entity.

Failure to Show Proof of Vaccination and Reasonable Accommodations

Covered Entities must consider reasonable accommodation requests from customers and employees, and provide a reasonable accommodation, unless doing so would cause a direct threat to other customers or employees or their business.

¹ This Executive Order superseded a prior executive order of the same subject issued on December 13, 2021.

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Customers Seek Reasonable Accommodations

If a customer who wishes to enter a Covered Premises cannot show proof of vaccination due to their own disability, the Covered Entity must engage in a cooperative dialogue with the customer to determine if there is a reasonable accommodation that may be provided to the customer. For instance, the facility may be able to provide service to the customer outside, by phone or through an online platform. If a reasonable accommodation cannot be made without causing a direct threat to other customers or employees or the business, or causing an undue hardship on the business, the Covered Entity may refuse entry to the customer.

Businesses should not ask customers for evidence of their inability to show proof of vaccination due to a disability.

Employees Seeking Reasonable Accommodations

If an employee is unable to show proof of vaccination due to their own disability, pregnancy, religious belief, or status as a victim of domestic violence, stalking or sex offenses, the Covered Entity must engage in a cooperative dialogue with the employee to determine if there is a reasonable accommodation that may be provided, such as working remotely or outside. If a reasonable accommodation cannot be made without causing a direct threat to other customers or employees or the business, or causing an undue hardship on the business, the Covered Entity may place the employee on an unpaid leave of absence.

All Other Individuals Who Cannot Show Required Proof of Vaccination

An individual (employee, contractor, customer, vendor, etc.) who refuses to show proof of vaccination and is not eligible for a reasonable accommodation may not enter a Covered Premises except for very quick and limited purposes, such as to use the bathroom, pick up food, pay a bill or change in a locker room. Such individuals must wear face masks when indoors for such limited purposes.

A business that has adopted a mandatory vaccination policy under recent New York State guidance is not required to allow unvaccinated individuals on the Covered Premises. [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.](#)

Record-Keeping and Posting Obligations

The Executive Order requires Covered Entities to comply with the following record-keeping obligations:

- Maintain a copy of all workers' proof of vaccination or, if applicable, a record of a reasonable accommodation provided to that worker; or
- Maintain a record that includes: (i) the worker's name; (ii) whether the person is fully vaccinated; (iii) 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 proof of the first dose; and (iv) for a worker who does not submit proof of vaccination due to a reasonable accommodation provided to that worker, the accommodation that was provided to that worker, and the business must separately maintain records stating the basis for and supporting documents related to the accommodation; or
- Check the proof of vaccination before allowing a worker to enter the workplace and maintain a record of verification.

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

Covered Entities are required to develop and keep a written record describing the entity's protocol for implementing and enforcing the requirements of Key to NYC. See the [Key to NYC: Written Implementation Protocol Template](#).

Covered Entities are also required to [post a notice of the Key to NYC vaccine requirements](#) in a conspicuous place that is viewable by prospective patrons.

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



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