

New York City Issues Order, Guidance on COVID-19 Vaccine Requirement for Private Sector Businesses

By Richard I. Greenberg, Tania J. Mistretta & Henry S. Shapiro

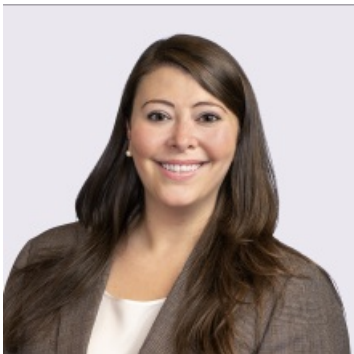
December 15, 2021

Meet the Authors



Richard I. Greenberg

(Rich)
Principal
(212) 545-4080
Richard.Greenberg@jacksonlewis.com



Tania J. Mistretta

(She/Her)
Principal
212-545-4070
Tania.Mistretta@jacksonlewis.com



Starting December 27, 2021, workers who are onsite in New York City or interact with the public during the course of business are required to show their employer proof of having received at least one dose of a COVID-19 vaccine, according to Mayor Bill de Blasio's [Emergency Executive Order 317](#). Workers will have 45 days to show proof of a second dose.

Any worker who cannot provide proof of receiving at least one vaccine dose by December 27 will have to be excluded from the workplace, unless an exception applies, or the worker only enters the workplace for a quick purpose.

Mayor de Blasio first [announced](#) the new vaccine mandate on December 6, 2021.

Who Is Covered

The Order applies to workplaces in New York City and includes any non-governmental entity that employs at least one worker.

A "workplace" is any place where work or business is conducted in the presence of another worker or a member of the public. "Worker" includes a full- or part-time staff member, employer, employee, intern, volunteer, or contractor of a covered entity, as well as a self-employed individual or a sole practitioner.

Individuals who are self-employed or sole proprietors are covered, unless they work at home or do not have in-person contact with any other person in the course of business.

Coworking spaces are also covered entities under the Order and must maintain a record of each worker's proof of vaccination when space is rented to individuals. Businesses with multiple locations also must comply with the Order, provided the locations are in New York City. Each qualifying location must post an individual attestation, but records may be stored in one central location.

If the business is not covered by "Key to NYC" and its existing vaccination requirements for indoor dining, entertainment, and fitness venues, the Order does not apply to customers, guests, or visitors. (Of course, if customers, guests, or visitors are unvaccinated, the business will need to analyze compliance with the New York state mask mandate.)

Exceptions

Businesses or individuals already subject to another order of the Commissioner of the Department of Health, the mayor, or a state or federal entity requiring them to maintain proof of vaccination are exempt from Emergency Executive Order 317.



Henry S. Shapiro

Principal

(631) 247-4651

Henry.Shapiro@jacksonlewis.com

Related Services

COVID-19

Disability, Leave and Health
Management

Workplace Safety and Health

However, businesses or individuals who are subject to federal requirements not currently in effect because of a court order must comply with the Order.

Workers may enter the workplace for a quick and limited purpose without needing to show proof of vaccination. Examples include using the restroom, making a delivery, or receiving an assignment before leaving to work alone.

Workers who received a reasonable accommodation also are exempt. Workers are entitled to reasonable accommodations for medical or religious reasons and must apply for accommodation by December 27, 2021. Businesses would have to maintain records of the accommodation and supporting documentation. The City has provided [sample](#) medical and religious accommodation checklists that employers can (but are not required to) use.

Performing artists and college or professional athletes who are not New York City residents, and anyone who accompanies them, also are exempt. Beyond this exception, however, the Order covers workers who work in New York City, regardless of their residency.

Verification

Each private business must verify and keep a record of workers' proof of vaccination. Records created or maintained must be treated as confidential.

There are three ways to track proof:

1. Businesses can keep copies of workers' proof of vaccination or, if applicable, record of a reasonable accommodation with supporting documentation; OR
2. Businesses can maintain a record of proof of vaccination as long as the record includes:
 - a. the worker's name;
 - b. whether the person is fully vaccinated; and
 - c. for workers who only submitted proof of a first dose of a two-dose vaccine, the date by which proof of the second dose must be provided (no later than 45 days after the proof of the first dose was recorded); and
 - d. for workers who do not have proof of vaccination due to a reasonable accommodation, a record of the accommodation provided and separate records stating the basis for the accommodation and supporting documentation provided by the worker; OR
3. Businesses can check the proof of vaccination before allowing a worker to enter and maintain a record of the verification.

For non-employee workers, such as a contractor, the business may ask the worker's employer to confirm proof of vaccination and maintain a record of the request and confirmation.

Affirmation and Penalties

Businesses must post an affirmation of compliance with the vaccine requirements in a public-facing location within the workplace no later than December 27, 2021. The certificate of affirmation is provided by the Department of Health. Businesses do not have to fire or discipline employees who fail to show proof of vaccination. These workers must only be kept out of the workplace. Businesses may be subject to a

\$1,000 fine for violations and escalating penalties if the violations continue.

Please do not hesitate to reach out to your Jackson Lewis attorney with any compliance inquiries.

©2021 Jackson Lewis P.C. This material is provided for informational purposes only. It is not intended to constitute legal advice nor does it create a client-lawyer relationship between Jackson Lewis and any recipient. Recipients should consult with counsel before taking any actions based on the information contained within this material. This material may be considered attorney advertising in some jurisdictions. Prior results do not guarantee a similar outcome.

Focused on employment and labor law since 1958, Jackson Lewis P.C.'s 1,000+ attorneys located in major cities nationwide consistently identify and respond to new ways workplace law intersects business. We help employers develop proactive strategies, strong policies and business-oriented solutions to cultivate high-functioning workforces that are engaged and stable, and share our clients' goals to emphasize belonging and respect for the contributions of every employee. For more information, visit <https://www.jacksonlewis.com>.