

## New York City Employee Vaccination Mandate

### Nearly All Employees Must Be Vaccinated

Beginning December 27, 2021, *all* New York City employers must *exclude* from the workplace any employee (including interns and contractors) who has not provided proof of vaccination, unless the employee is entitled to a *medical* or *religious* exemption. (Unvaccinated employees may also enter the workplace for a “quick and limited purpose” such as using the bathroom, making a delivery, or clocking in or out.) As of December 27, only one dose of the vaccine is required, but employers must ensure that employees receive a second dose within 45 days of December 27.

### Exemptions from Mandatory Vaccination: Reasonable Accommodations for Medical and Religious Reasons

Employees who cannot be vaccinated because of either a *medical* condition or a sincerely held *religious* belief may be entitled to a “reasonable accommodation.” Guidance on how to handle reasonable accommodation requests, as well as questionnaires that employers can use in the decision-making process, can be found at: <https://www1.nyc.gov/assets/doh/downloads/pdf/covid/vaccination-workplace-accommodations.pdf>.

An employee might be entitled to a permanent or temporary *medical* exemption based on:

- A severe allergic reaction to a previous dose or to a component of all three vaccines;
- A known diagnosed allergy to a component of all three vaccines;
- Receipt of monoclonal antibody or convalescent plasma treatment within the past 90 days;
- Receipt of therapy (such as stem cell transplant) that

would interfere with the ability to respond to vaccination; or

- Pericarditis or myocarditis.

To obtain a medical exemption, an employee may be required to present medical documentation from his or her treating physician. If the condition is temporary, the employee must be vaccinated as soon as possible after the condition is resolved.

New York City's questionnaire for requesting a religious accommodation provides a list of reasons why an employee may be entitled to a *religious* exemption:

- The employee has explained/documentated how the belief requires the employee not to be vaccinated;
- The employee has not taken other kinds of vaccinations previously;
- The employee maintains that religious belief prevents them from allowing certain substances to enter their body; or
- The employee maintains that he or she cannot take the vaccine because it was developed and/or tested using fetal cells that the employee is concerned may have been the result of an abortion.

The New York City Guidance provides suggestions for how employers can test the veracity of each of these reasons, but it remains to be seen how effective those strategies will be.

Even if the employee qualifies for an accommodation, however, the employer can refuse to accommodate the employee if doing so would pose an “undue hardship” on the employer (because of expense, impact on the employer's operations, or other factors, which are generally the same as any other undue hardship

analysis). The employer can also deny the accommodation if it determines that permitting unvaccinated employees in the workplace would likely pose a direct threat to those employees or others.

If the employer determines that an accommodation is warranted, possible accommodations the employer can choose from include:

- Weekly PCR testing for COVID-19 and masking at all times when not eating or drinking;
- Telework or remote work that does not expose others to the accommodated employee; or
- A leave of absence, either paid or unpaid.

When an employee is granted a reasonable accommodation, the employer must record the basis for the accommodation and keep supporting documentation.

Employers should keep in mind that under the New York State mask mandate currently in effect, if the employer provides a reasonable accommodation to one or more unvaccinated employees by allowing them to report to work masked, then *all* employees in the workplace, whether vaccinated or not, will have to wear masks as well.

**Employees who claim either a medical or religious exemption from the vaccination requirement must apply for an accommodation by December 27, 2021 – so employers should notify their workforce of the vaccination requirement and the accommodation deadline as soon as possible.**

Employees who have requested an accommodation can be permitted to come into the workplace while the employer considers the accommodation. However, under the New York State mask mandate, they and all other employees in the workplace will have to be masked.

## Unvaccinated Employees

Employers have essentially three options for dealing with unvaccinated employees who do not qualify for an exemption: 1) they can be permitted to work remotely, 2)

they can be placed on a paid or unpaid leave of absence, or 3) their employment can be terminated – but they cannot come into the workplace, even if they are masked or even if they produce negative COVID test results on a weekly or even more frequent basis.

## Penalties

Employers who fail to comply with the law are subject to monetary penalties, starting at \$1,000 and escalating if violations persist.

## Recordkeeping

Employers must keep a record – either paper or electronic – of each employee's proof of vaccination. Employees can provide proof of vaccination using any of the following documents:

- A photo or hard copy of their CDC vaccination card;
- NYC COVID Safe App;
- New York State Excelsior Pass;
- CLEAR's Digital Vaccine Card, CLEAR Health Pass;
- Official vaccine record; or
- A photo or hard copy of an official vaccination record of a vaccine administered outside the United States for one of the following vaccines: AstraZeneca/SK Bioscience, Serum Institute of India/COVISHIELD and Vaxzevria, Sinopharm, or Sinovac.

All information should be collected and stored in a secure manner to safeguard the employees' privacy.

Employers must also fill out and *post* an affirmation that the workplace is in compliance with the new vaccination rule. A sample affirmation form can be found at: <https://www1.nyc.gov/assets/doh/downloads/pdf/covid/covid-19-vaccination-workplace-requirement-affirmation.pdf>.

## Conclusion

In New York City, all employees must submit a proof of vaccination by December 27, or they cannot come into the workplace. Unvaccinated employees who are *not* entitled to a reasonable accommodation but refuse to be

vaccinated may be allowed to work remotely, placed on a leave of absence, or have their employment terminated. Employees who have *successfully* claimed entitlement to a *reasonable accommodation for medical or religious* reasons can be accommodated by being allowed to work remotely, being placed on a leave of absence, or being allowed to enter the workplace, so long as they are masked at all times and tested weekly. Under New York *state* law, the presence of one unvaccinated employee in the workplace, even a masked employee, means that everyone in the workplace must be masked.

There is a comprehensive explanation of this new law on New York City's website: [www.nyc.gov/vaxtowork](http://www.nyc.gov/vaxtowork).

## For questions relating to this client alert, please contact:



**Randi May**  
212.689.8808  
rmay@hnrklaw.com

On behalf of employers, Randi's counseling experience includes advising a broad range of clients concerning all aspects of the employment relationship to avoid litigation. She advises employers about hiring and termination of employment, policies, and practices, employee misconduct, restrictive covenants, leaves of absence, and compliance with federal, New York state, and New York City laws governing employment. Randi also regularly drafts, reviews, and negotiates employment and executive compensation agreements, restrictive covenants, and separation agreements.



**Kathleen Lowden**  
212.689.8808  
klowden@hnrklaw.com

Kathleen's practice focuses on employment matters on behalf of both employees and employers, and also includes general commercial litigation. She advises employers on compliance with federal, state, and local employment statutes. She has defended mass transit agencies, as well as other U.S. and foreign defendants, in suits by employees alleging sex, race, and disability discrimination, civil rights violations, violations of the Family and Medical Leave Act, and violations of the Fair Labor Standards Act.



**Amory McAndrew**  
212.689.8808  
amcandrew@hnrklaw.com

Amory represents employers and executives in all aspects of the employment relationship with a focus on counseling, litigation avoidance and, when necessary, litigation. Her counseling experience on behalf of a broad range of employers includes advice on issues ranging from discrimination and retaliation to wage-and-hour issues to compensation. She also regularly drafts, updates, and negotiates agreements and policies on behalf of clients concerning executive employment agreements, separation agreements, and other business arrangements.

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