



New COVID-19 Vaccine or Masking Requirements for New York Businesses

On December 10, 2021, Governor Hochul announced a new mandate that businesses must either require all employees and patrons to be vaccinated, or require masks for all employees and patrons regardless of vaccination status. This new announcement is supported by a Commissioner's Determination on Indoor Masking effective December 13, 2021 (the "Commissioner's Determination"). This new measure is in effect until January 15, 2021, at which time it will be reevaluated, and possibly extended.

The mandate applies to all "indoor public places," including office spaces. The Frequently Asked Questions (FAQs) posted by the New York State Department of Health makes clear that if a business does not require proof of vaccination as a condition of entry, it must require everyone to wear masks at all times, regardless of vaccination status, except when eating, drinking, or while alone in an enclosed room. Additionally, the FAQs provide that a business cannot "mix and match" — meaning that a business cannot allow vaccinated individuals to be unmasked, while unvaccinated individuals are masked. A business must choose to implement either a full vaccine requirement or a mask requirement (although, of course, a business may elect to be more conservative and require vaccination and masking).

Additionally, the FAQs make clear that this new mandate does not supersede the requirements set forth in the NYS HERO Act. The Commissioner's Determination will act as the prevailing guidance relating to face coverings under the HERO Act. Employers must ensure they are following all requirements set forth in both the Commissioner's Determination and the HERO Act. For more information regarding the NYS HERO Act, please see our previous articles: HERO ACT: COVID-19 Now Requires Hero Act Plans to be Activated, Important Upcoming Employment Deadlines: NYS HERO Act and COBRA Subsidy Final Notice, and HERO ACT Guidance Published By NY Department of Labor.

As the penalties for non-compliance with the Commissioner's Determination are up to \$1,000 per violation, employers that have not already done so, must immediately determine if they will require vaccination as a condition of entry into the workplace, or instead require all employees and patrons to be masked. Employers must continue to monitor federal, state and local COVID-19 requirements to ensure they are up-to-date with the constantly evolving rules and regulations.

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