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New York City Issues Vaccine Mandate Guidance

On December 15, 2021, New York City issued its promised [guidance](#) regarding how employers in New York City must manage the vaccination mandate taking effect on December 27, 2021. Employers with employees in New York City must immediately review this new guidance and create a compliance program to ensure they are prepared for the quickly approaching deadline.

Timing of Vaccination

By December 27, 2021, employees must show proof of at least one dose of a COVID-19 vaccine. Employees will then have 45 days to show proof they received their second dose (for the Pfizer or Moderna vaccines). Employers must not allow any unvaccinated employee into their worksites after the December 27, 2021 deadline, subject only to limited accommodation requirements. Please note, under the guidance a worksite is any location where an employee works in the presence of another person – including a vehicle.

Proof of Vaccination

Employers must obtain and keep a record of each employee's proof of vaccination by December 27, 2021. The following types of proof are acceptable under the guidance:

- CDC Vaccination Card – A digital photo or photocopy is acceptable;
- NYC Vaccination Record;
- NYC COVID Safe App;
- CLEAR Health Pass; or
- Excelsior Pass and Excelsior Pass Plus.

Pursuant to the guidance, there are three options for how employers may meet their record keeping requirement:

1. Keep a copy of an employee's proof of vaccination or a record of a reasonable accommodation with supporting documentation.
2. Employers can create their own paper or electronic record that includes the following information for each employee:
 - Employee's name.
 - Whether the employee is fully vaccinated.
 - For employees who submitted proof of the first dose of a two-dose vaccine, the date by which they can provide proof of a second dose (no later than 45 days after submitting proof of the first dose.)
 - Record of reasonable accommodation with supporting documentation.

3. Businesses may check each employee's proof of vaccination before they enter the workplace each day. They must keep a record of each verification.

New York City has also stated that employers should be prepared for and have their records prepared for inspection.

Non-Employees and Independent Contractors

Employers must also verify the vaccination status of non-employee workers, such as contractors or independent contractors utilized by a business. An employer may also request that a contractor's employer confirm that the contractor coming to an employer's worksite is vaccinated. An employer must keep a log of these types of requests and the confirmations that they receive.

Affirmation of Compliance

By December 27, 2021, employers must also complete [a certificate provided by New York City](#) and post it in a public place at the worksite.

Exceptions and Reasonable Accommodations

The vaccine mandate does not apply to the following:

- People who work alone and do not have in-person contact with co-workers or others in the course of their business.
- People who enter a workplace briefly for a limited purpose, such as to use the bathroom.
- Non-NYC resident performing artists, college or professional athletes, and anyone who accompanies them.
- People who have requested reasonable accommodations for medical or religious reasons. If a worker is granted a reasonable accommodation, businesses must record the basis for the accommodation and keep supporting documentation in accordance with the below guidance.

To assist employers in evaluating accommodation requests they may receive, New York City has created [Guidance on Accommodations for Workers](#). This guidance includes checklists of the documents/information an employer should gather from an employee during the accommodation process. It also provides details regarding the types of accommodations that can be offered to employees for qualifying religious or medical/disability related reasons. Employers must maintain records of accommodations requested and granted, including completed checklists.

Employers must move swiftly to ensure they meet the fast approaching December 27, 2021 deadline. In addition, 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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