

## Guidance for Businesses on Equitable Implementation of Key to NYC

The New York City Commission on Human Rights is a resource to help you strengthen your business, become a more inclusive employer, and conform your employment practices to comply with the New York City Human Rights Law (NYCHRL). This document provides information regarding how to equitably implement Key to NYC, which requires customers and employees to show proof of vaccination before engaging in certain indoor activities.

Starting August 17, 2021, people 12 and older will be required to show proof that they have received at least one dose of a COVID-19 vaccine authorized for emergency use by the FDA or WHO for indoor dining, indoor fitness, and indoor entertainment.

When implementing this new rule, business owners:

1. Cannot treat **customers or employees** differently because of their race, national origin, disability, gender, religion/creed, age, or [any other characteristic protected by the NYCHRL](#). For example, business owners cannot:
  - Scrutinize proof of vaccination more closely when it is provided by people of a particular race, national origin, or religion based on the perception that people in those groups are less likely to be vaccinated;
  - Require proof of vaccination only for older people or people with disabilities based on the belief that COVID-19 is more dangerous for them; or
  - Refuse to accept certain types of valid proof of vaccination, such as official immunization records from countries outside the United States or photographs of CDC vaccination cards.
2. Must provide reasonable accommodations to customers who need them because of a disability.
  - If a customer is unable to show proof of vaccination due to a disability, you must engage with them in a cooperative dialogue, or a good faith discussion, to see if a reasonable accommodation is possible.
  - Reasonable accommodations can take many forms. For example, a customer could purchase food to take with them, join a virtual exercise class, or speak with a sales representative by phone.
  - You do not have to provide a reasonable accommodation if it would cause a direct threat to other customers or employees of your business, or impose an undue hardship on your business.
3. Must provide reasonable accommodations to employees who require them because of a disability, pregnancy, religious belief, or their status as a victim of domestic violence, stalking, or sex offenses.
  - If an employee requests an exception to the vaccine requirement or additional time to provide their proof of vaccination for one of the reasons listed above, you must engage with them in a cooperative dialogue, or a good faith discussion, to see if a reasonable accommodation is possible.
  - Reasonable accommodations can take many forms. For example, an employee could work remotely, perform their job duties outside or isolated from other employees or customers, or take a leave of absence.
  - You do not have to provide a reasonable accommodation if it would cause a direct threat to other customers or employees of your business, or impose an undue hardship on your business.

## Does the NYCHRL cover my business?

All businesses that offer goods or services to the public in New York City have responsibilities to customers under the NYCHRL.

All employers that have four<sup>1</sup> or more employees in New York City have responsibilities to their employees, interns, and independent contractors under the NYCHRL.

## What should I do if a customer without sufficient proof of vaccination asks for service?

Customers under the age of 12 are excused from showing proof of vaccination. You can allow customers without proof of vaccination who are 12 years of age and older into the indoor portion of your premises for quick and limited purposes (for example, to use the bathroom, place a food order, or pick up membership information) as long as they wear a face mask at all times they are unable to maintain 6 feet of distance from other people.

If a customer who is 12 years of age or older wishes to enter the indoor portion of your premises for more than a quick or limited purpose but states that they are unable to show proof of vaccination because of a disability, you must engage with the person in a cooperative dialogue, or a good faith discussion, to see if there is a reasonable accommodation that would enable the customer to access your goods or services. You cannot allow the customer into the interior portion of your premises for anything beyond a quick and limited purpose, even as a reasonable accommodation. However, when possible, the NYCHRL requires you to accommodate customers who are unable to show proof of vaccination because of a disability outside the interior portion of your premises by, for example, providing service outside, by phone, or through an online platform.

### Sample Scenario 1:

A customer approaches a restaurant and walks inside, where they are greeted by a server. The server requests to see the customer's proof of vaccination. In response, the customer states that they are unable to get vaccinated because of a medical condition. The server explains that the restaurant is not able to serve the customer inside the restaurant, but that they would be happy to seat the customer in their outdoor seating area, or place a take-out order that the customer can bring home with them. The customer accepts a take-out menu, then returns home and places an order by phone, which the restaurant staff delivers to the customer's residence, which is 2 blocks from the restaurant. The business has provided a reasonable accommodation by delivering the customer's food rather than serving them in the interior portion of the restaurant. The business has complied with the law by finding a way to accommodate the customer without allowing them into the interior portion of the restaurant for anything more than a quick and limited purpose.

### Sample Scenario 2:

A customer approaches a concert venue and walks inside, where they are greeted by an employee. The customer requests to purchase a ticket for that evening's event, which is being held live and will not be recorded. The employee asks to see the customer's proof of vaccination, but the customer explains that they are unable to get vaccinated because of a medical condition. The employee states that unfortunately there is no way for the customer to experience the performance outside the interior portion of the premises or remotely, but invites the customer to visit the venue's website, where recordings of other performances are available for viewing. The business has complied with the law by engaging with the customer in a cooperative dialogue, even though no reasonable accommodation was available.

### Sample Scenario 3:

A customer approaches a gym and walks inside, where they are greeted by an employee. The customer asks to register for an exercise class. The employee asks to see the customer's proof of vaccination, but the customer explains that they are not vaccinated because vaccination conflicts with their religious beliefs. The employee states that unfortunately only vaccinated customers are allowed to participate in indoor exercises classes because the gym is covered by Key to NYC. The customer leaves the gym. The business has complied with

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<sup>1</sup> The NYCHRL's prohibitions against discrimination based on gender, including sexual harassment, apply to all employers regardless of size.

the law because this customer is not entitled to a reasonable accommodation for their inability to show proof of vaccination.

### **What kind of documentation should I require from customers who state they are unable to show proof of vaccination because of a disability?**

Businesses should not ask customers for evidence of a disability if the customer states that they are unable to show proof of vaccination due to a disability. Instead, businesses should engage these customers in a cooperative dialogue to see if a reasonable accommodation exists that would not pose a direct threat or an undue hardship to their business.

### **Do I have to provide a reasonable accommodation to a customer who is unable to show proof of vaccination for a reason unrelated to their own disability?**

No. Only customers who are unable to show proof of vaccination because of their own disability are entitled to a reasonable accommodation under the NYCHRL.

### **What should I do if an employee does not have sufficient proof of vaccination?**

Speak with your employee to find out the reason why they do not have the required proof. If the reason is related to a disability, pregnancy, religious belief, or their status as a victim of domestic violence, stalking, or sex offenses, you must engage with your employee in a cooperative dialogue, or a good faith discussion about potential reasonable accommodations. For example, the employee may be able to work remotely, work outside the indoor portion of your premises, or work in an area separated from other employees and customers. However, you are not required to provide an employee with a reasonable accommodation if doing so would cause a significant risk of substantial harm to the health and safety of other employees or customers, or would otherwise impose an undue hardship on your business. For example, masking and/or testing are not a sufficient alternative to vaccination and cannot be provided as a reasonable accommodation if the employee will still be in regular contact with other employees or customers.

If there is no reasonable accommodation that would enable the employee to continue performing their job duties without posing a direct threat or an undue hardship, you can offer your employee a leave of absence until they are able to provide proof of vaccination, or until it is otherwise safe for them to return to work. You do not need to pay your employee during their leave of absence unless you pay other workers who are unable to work for similar reasons.

### **What kind of documentation should I require from employees who are seeking a reasonable accommodation?**

- If your employee is seeking a reasonable accommodation because of a disability or pregnancy, you can request a note from their medical provider. The note does not have to specify the employee's particular medical condition or pregnancy status but should confirm that the employee is currently unable to show proof of vaccination.
- If your employee is seeking a reasonable accommodation because of their religious beliefs, you can request supporting documentation only if you have an objective basis to question the sincerity of the stated religious basis for the employee's inability to show proof of vaccination.
- If your employee is seeking a reasonable accommodation because of their status as a victim of domestic violence, sex offenses, or stalking, you can request a note from a related service provider supporting their inability to show proof of vaccination.

### **One of my employees is unvaccinated, but not because of a disability, pregnancy, religious belief, or status as a victim of domestic violence, stalking, or sex offenses. Can I fire them? Do I have to?**

Under the NYCHRL, employees are only entitled to reasonable accommodations for needs related to their own disabilities, pregnancies, religious beliefs, or status as a victim of domestic violence, stalking, or sex offenses. You do not have to provide a reasonable accommodation to any employee who falls outside of these categories and can fire them if they are unable to show proof of vaccination. If you choose not to fire them, you cannot

allow them to work in the interior portion of your premises and can only allow them to enter for a quick and limited purpose, such as changing clothes in a locker room, during which time they must wear a face mask at all times they are unable to maintain 6 feet of distance from other people.

**How can I get more information about equitable implementation of Key to NYC?**

Visit [NYC.gov/HumanRights](https://nyc.gov/HumanRights). You can learn more about your responsibilities as a business owner under the NYCHRL and sign up for a free workshop.