

Guidance for Customers and Employees on Equitable Implementation of Key to NYC

This document provides information regarding your right to equitable treatment by businesses covered by 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.

As a customer or employee of a business covered by Key to NYC, you have the right under the New York City Human Rights Law (NYCHRL) to:

1. Be free from discrimination or harassment based on your race, national origin, disability, gender, religion/creed, age, or [any other characteristic protected by the NYCHRL](#) when patronizing a business or going to work. For example, business owners covered by Key to NYC cannot:
 - Scrutinize your proof of vaccination more closely than proof provided by other people based on the perception that people of your race, national origin, or religion are less likely to be vaccinated;
 - Require proof of vaccination only from 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. As a customer, you have the right to a reasonable accommodation to enable you to access the services of the business if you are unable to show proof of vaccination due to a disability. However, the business does not have to provide a reasonable accommodation if doing so would create a direct threat to other customers or employees of the business, or impose an undue hardship on the business.
 - If you are unable to show proof of vaccination because of a disability, the business must engage with you 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.
3. As an employee, you have the right to a reasonable accommodation to enable you to perform your job if you are unable to show proof of vaccination because of a disability, pregnancy, religious belief, or your status as a victim of domestic violence, stalking, or sex offenses. However, your employer does not have to provide a reasonable accommodation if doing so would create a direct threat to other customers or employees of the business, or impose an undue hardship on the business.
 - If you need an exception to the vaccine requirement or additional time to provide proof of vaccination due to one of the reasons listed above, your employer must engage with you 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 the indoor portion of the premises or in an area isolated from other employees, or take a leave of absence.

Who is protected by the NYCHRL?

Customers are protected if they patronize a business that offers goods or services to the public in New York City.

Employees are protected if they work for or are applying to work for an employer in New York City that has four¹ or more employees. Employees are protected whether they work full-time or part-time; whether they are employees, interns, or independent contractors; and regardless of their immigration status.

If I am a customer and I cannot show proof of vaccination because of a disability, what should I do?

Customers under the age of 12 are excused from showing proof of vaccination. Customers who are 12 years of age or older and do not have sufficient proof of vaccination can still go into the indoor portion of a business's premises for quick and limited purposes (for example, to use the bathroom or place a food order) as long as the customer wears a face mask at all times they are unable to maintain 6 feet of distance from other people.

If you are 12 years of age or older and wish to enter the indoor portion of the premises of a business covered by Key to NYC but you are unable to show proof of vaccination because of a disability, you should speak with the business owner or its employees to see if there is a reasonable accommodation that would enable you to access the business's goods or services without entering the interior portion of the premises for anything beyond a quick and limited purpose. The business must engage with you in a cooperative dialogue, or a good faith discussion, about your needs and potential accommodations. The business cannot allow you to enter the indoor portion of its premises for anything beyond a quick and limited purpose. However, the business may be able to serve you outside, by phone, or through an online platform rather than inside the indoor portion of its premises.

As a customer, what kind of evidence can businesses require of my inability to show proof of vaccination because of a disability?

Businesses should not ask you for proof that you have a disability, or ask you invasive questions about the nature or your disability. Instead, the businesses should engage with you in a cooperative dialogue to see if a reasonable accommodation exists that would enable you to be served without posing a direct threat or an undue hardship to the business, its employees, or other customer.

If I am a customer and I am unable to show proof of vaccination for a reason other than my own disability, am I entitled to a reasonable accommodation?

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

If I am an employee and I cannot show proof of vaccination, what should I do?

Speak with your employer and let them know that you are unable to show proof of vaccination and the reason why. If the reason is due to a disability, pregnancy, religious belief, or your status as a victim of domestic violence, stalking, or sex offenses, your employer is required to engage with you in a cooperative dialogue, or a good faith discussion, about your needs and potential accommodations. Your employer is not required to provide you with a reasonable accommodation that would cause a significant risk of substantial harm to your health or safety, or to the health or safety of other employees or customers. However, you and your employer should work together to see if there is a way that you can continue to perform your job without posing a direct threat or undue hardship to the business. For example, you may be able to work remotely, work outside the indoor portion of the premises, or work in an area separated from other people. Masking and/or testing are not a sufficient alternative to vaccination and cannot be provided as a reasonable accommodation if you will still be in regular contact with other employees or customers while performing your job duties. If there is no reasonable accommodation that would allow you to safely perform your job duties, your employer may offer you a leave of absence until you are able to show proof of vaccination or it is otherwise safe for you to resume work.

¹ The NYCHRL protects all employees against discrimination based on gender, including sexual harassment, regardless of the size of their employer.

If you have lost your proof of vaccination and need assistance getting a replacement, you can order a copy of your vaccination record [here](#).

As an employee seeking a reasonable accommodation, what kind of proof can my employer require?

- If you are seeking a reasonable accommodation because of a medical condition or due to pregnancy, your employer can request a note from a medical provider confirming your inability to show proof of vaccination. However, the note does not have to specify your medical condition or reveal that you are pregnant.
- If you are seeking a reasonable accommodation because of your religious beliefs, your employer can request supporting documentation if they have an objective basis to question the sincerity of the stated religious basis for your inability to show proof of vaccination.
- If you are seeking a reasonable accommodation because of your status as a victim of domestic violence, sex offenses, or stalking, your employer can request a note from a related service provider supporting your inability to show proof of vaccination.

If I am an employee and I do not want to get vaccinated, am I entitled to a reasonable accommodation?

No. 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. If you are unable to show proof of vaccination for any other reason, your employer can fire you, or require you to perform your job outside the interior portion of the premises, if possible.

What should I do if I believe a business covered by Key to NYC did not follow the rules described here?

Call the Commission on Human Rights at (212) 416-0197 or submit an inquiry at [NYC.gov/HumanRights](https://nyc.gov/HumanRights). You can leave an anonymous tip, or you can file a complaint about what happened to you.