

# 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 without posing an undue hardship to your business or a direct threat to your other customers or employees. You do not have to allow the customer into the indoor portion of your premises for anything beyond a quick and limited purpose. However, when possible, the NYCHRL requires you to accommodate customers who are unable to show proof of vaccination because of a disability by, for example, providing service outside, by phone, or through an online platform.

### Sample scenario:

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.

## 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 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

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

the indoor portion of your premises, or work in an area separated from other employees and customers. 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. 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 supporting their inability 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 provide them with a reasonable accommodation? 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. If you want to allow an unvaccinated employee who is not entitled to a reasonable accommodation to continue working for your business, you can only allow them into the interior portion of your premises only if it is for a quick and limited purposes, such as changing clothes in a locker room, and if they 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.