

FREQUENTLY ASKED QUESTIONS FOR COVERED ENTITIES

**ORDER OF THE COMMISSIONER
OF HEALTH AND MENTAL HYGIENE**

TO REQUIRE COVID-19 VACCINATION IN THE WORKPLACE

To help stop the spread of COVID-19, New York City is requiring workers in the private sector to provide proof of vaccination against COVID-19 before entering the workplace. This requirement goes into effect on December 27, 2021.

The order of the Commissioner of Health and Mental Hygiene to Require COVID-19 Vaccination in the Workplace is available here: www.nyc.gov/vaxtowork
These FAQ are designed to help employers and self-employed individuals covered by the order better understand their responsibilities. This FAQ is current as of 12/23/21; questions that have been added since this FAQ was last updated on 12/20/21 are **highlighted** in yellow below.

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What the Order Requires

What does the order require covered entities to do?

On December 27, 2021, workers must provide or have provided proof of vaccination against COVID-19 to their employers, and a business (a “covered entity”) must exclude from the workplace any worker who has not provided such proof, unless an exception due to a religious or medical accommodation applies, or a worker only ever enters the workplace for a quick and limited purpose.

Please see below question, “Which businesses are covered by the order?” to learn which businesses are covered entities. For exceptions, see below questions, “Can an unvaccinated worker enter the workplace for any reason?” and “What if a worker says their religion or a medical condition prevents them from getting vaccinated?”

Do I need to keep a record of each worker’s proof of vaccination?

It is easiest and most efficient to keep a record of each worker’s proof of vaccination. You can do so by either: 1) making a copy or taking a picture of their proof of

vaccination, or 2) creating your own paper or electronic record that includes the following information for each worker:

1. the worker's name; and
2. whether the worker is fully vaccinated; and
3. for a worker who submits proof of the first dose of a two-dose vaccine, the date by which proof of the second dose will be provided, which must be no later than 45 days after the proof of the first dose was submitted.

If you hire a contract worker, you do not need to keep a record of the contractor's vaccination status. You can instead request that the contractor's employer confirm that the contractor is vaccinated, and you must maintain a record of both your request and the confirmation.

Do I need to keep a record of any reasonable accommodations?

Yes, if any of your workers do not get vaccinated because you approved a reasonable accommodation for them based on their religion or medical condition, you will need to have a record of when you granted the reasonable accommodation, the basis for doing so, and any supporting documents the worker provided for the reasonable accommodation. Please see below question, "What if a worker says their religion or a medical condition prevents them from getting vaccinated?" for more information about reasonable accommodations and record-keeping.

If a worker only submits proof of one dose of a two-dose vaccine by December 27th, do I need to make sure they get their second dose?

The requirement for December 27th is proof of ONE DOSE. Workers need to get their second dose within 45 days. If they do not have proof of a second dose within that timeframe, you must exclude them from the workplace until they can display proof of vaccination for their second dose.

What happens if a worker received the first dose of a two-dose vaccination more than 45 days ago, but never received the second dose? Do I need to exclude them from the workplace starting on December 27th?

If a worker received a first dose of a two-dose vaccination more than 45 days ago and has not yet received their second dose they should be excluded from the workplace until such time as they receive their second dose or submit a request for a reasonable accommodation from the second dose requirement. CDC guidance provides that while it is advisable to get the second dose as close to the recommended 3-week or 4-week interval as possible, a person who receives their second dose of a COVID-19 vaccine at any time after the recommended date does not have to restart the vaccine series.

Can an unvaccinated worker enter the workplace for any reason?

Yes, workers may enter for a quick and limited purpose even if they have not shown the required proof of vaccination. Some examples of a quick and limited purpose include:

using the bathroom, making a delivery, or clocking in and receiving an assignment before leaving to begin a solitary assignment.

Are there any other requirements?

The Department of Health and Mental Hygiene (DOHMH) has created a one-page attestation sign that you must fill out and post in a conspicuous location at your business by December 27, 2021. The attestation sign affirms that you are complying with the order. You must post this official attestation sign even if you previously had your own signage about employee vaccination status.

The official DOHMH attestation sign is available online at www.nyc.gov/vaxtowork. The sign is available in multiple languages.

If you previously posted a notice per the “Key to NYC” requirements for restaurants, fitness centers, and entertainment venues, you do not need to post the additional DOHMH attestation sign.

What do I need to do if I previously checked my workers’ vaccination status before this order was issued?

That's all you need! You are all set if you have the records required by the order, and have posted the DOHMH attestation sign in a conspicuous location.

What Businesses and Individuals Are Covered by the Order

Which businesses are covered by the order?

First, the order only applies to workplaces in New York City. Many different types of businesses are covered by the order. Any non-governmental entity that employs more than one worker in New York City is covered. So is any non-governmental entity that maintains or operates a workplace in New York City. A “workplace” is any place where work is performed in the presence of another worker, or a member of the public. Individuals who are self-employed or sole proprietors are not covered by the order unless they work at a workplace, or interact with other workers in-person, or interact with the public in-person in the course of their work.

Some examples of covered entities are:

- A clothing store
- A grocery store
- A taxicab or rideshare owner-operator, such as an Uber driver
- A speech therapist who visits clients in their homes
- A writer who rents a desk in a shared workspace

The order does not apply to covered entities or individuals who are already subject to another Order of the Commissioner of the Department, Board of Health, the Mayor, or a State or federal entity that requires them to maintain or provide proof of full vaccination, or to individuals who have been granted a reasonable accommodation pursuant to such requirement. Covered entities or individuals who are covered by the OSHA rule that

allows either employee vaccination or testing must comply with this order – their workers must be vaccinated if they do not have a reasonable accommodation.

What if I am self-employed or a sole proprietor?

Individuals who are self-employed or sole proprietors are not covered unless they work at a workplace, interact with other workers, or interact with the public in the course of their work. If they are covered by the order, then they have the same obligations as a covered business, and must post the official DOHMH attestation sign confirming their compliance with the order in a conspicuous location in their workplace. If they do not have a fixed workplace or their workplace is a vehicle, they may keep their own proof of vaccination with them at all times in lieu of posting the attestation sign.

Are coworking spaces covered by the order?

Yes, coworking spaces such as WeWork are covered entities under the order, and must check each individual worker's proof of vaccination when they rent space to individuals.

Coworking spaces where small companies rent space regularly can instead request that a small company confirm that all of their workers entering the shared workspace are vaccinated. However, the coworking space does need to keep a record of these requests, and the companies' confirmations that their workers are vaccinated.

The coworking space must additionally post the official DOHMH attestation sign confirming compliance with the order in a conspicuous location at each coworking space.

If you are a covered business renting workspace in a coworking space, it is your responsibility to verify and maintain the appropriate vaccination records for your workers as required of all covered businesses.

Please note that commercial landlords who do not operate coworking spaces are not covered by the order except in regards to their own employees.

What if my business is one of multiple locations, such as a chain restaurant?

Each individual business location is covered by the order, and must post the official DOHMH attestation sign in a conspicuous location that affirms the business is in compliance with the order. However, a business with multiple locations may store employee vaccination records in one central location, as well as reasonable accommodation records, if any, instead of having such records available at each location. Each business location should have contact information available to offer to City inspectors to put them in touch with the business representative who is centrally storing such records for the business.

Verifying Proof of Vaccination for Your Workers

Who must display proof of vaccination?

All your workers must show proof of vaccination, unless an exception applies. For exceptions, see above question, “Can an unvaccinated worker enter the workplace for any reason?” and below question, “What if a worker says their religion or a medical condition prevents them from getting vaccinated?”

A “worker” means a full- or part-time staff member, employer, employee, intern, volunteer or contractor of a covered entity. A “worker” is not:

- Someone who only ever enters your workplace for a quick and limited purpose
- A performing artist or athlete who is not required to be vaccinated per the Key to NYC program – www.nyc.gov/keytonyc

What kind of records do I need to keep when I check for proof of vaccination?

See above question, “Do I need to keep a record of each worker’s proof of vaccination?”

How should I handle the documents I need to maintain?

Any vaccination information should be collected and stored in a secure manner to ensure the privacy and security of the information is protected. Such information should only be accessed by employees or other individuals who have a legitimate need to access such information for purposes of compliance with this order, or other governmental orders, laws, or regulations. Vaccination information should not be used for any other purpose.

Do I need to verify proof of vaccination for workers who do not live in New York City?

Yes, the requirement is specific to New York City workplaces, and where the worker lives is not relevant to the order.

Do I need to verify proof of vaccination for workers who are fully remote?

The order does not cover employees who are fully remote, or only ever come into the office for a quick and limited purpose. However, if these employees are in the office beyond a quick and limited purpose – for example, if they occasionally come in for meetings – they are covered by the order.

Are there any exceptions for workers in certain industries, or whose work is essential to my business?

To best protect all workers, there are no exceptions for workers based on their industry or job duties.

Do I need to check proof of vaccination for contractors visiting my workplace who are employed by another company?

Yes, but if you wish to avoid checking each contract worker individually, you can instead request that the contractor’s employer confirm that the contractor is vaccinated. However, you do need to keep a record of your request, and the contractor’s employer’s confirmation that the contractor is vaccinated.

Do I need to check proof of vaccination for customers or visitors before they enter my workplace?

The order only applies to workers, not customers or visitors. A “worker” is a full- or part-time staff member, employer, employee, intern, volunteer or contractor of a covered entity.

Customers may be covered by the separate Key to NYC program that is specific to certain indoor activities. More information about that program is available at www.nyc.gov/keytonyc.

How do I verify my workers’ proof of vaccination?

You should ask to view one of the types of proof of vaccination below, and a form of identification. Acceptable forms of identification include:

- Driver’s license
- Non-driver government ID card
- IDNYC card
- Passport
- School or work ID card

Individuals may also show copies of their identification document, including a picture on their phone or by using an app like NYC Covid Safe that allows them to display a copy of the document.

What types of proof of vaccination are sufficient?

Sufficient proof may be demonstrated by displaying:

- A photo or hard copy of their CDC vaccination card
- NYC COVID Safe App
- New York State Excelsior Pass
- CLEAR’s Digital Vaccine Card, CLEAR Health Pass
- Official vaccine record
- A photo or hard copy of an official vaccination record of a vaccine administered outside the United States for one of the following vaccines: AstraZeneca/SK Bioscience, Serum Institute of India/COVISHIELD and Vaxzevria, Sinopharm, or Sinovac.

What if a worker refuses to show proof of vaccination?

If a worker is in the workplace for more than a quick and limited purpose, and has not applied for a reasonable accommodation, then you must not allow them to enter the workplace.

What if a worker says their religion or a medical condition prevents them from getting vaccinated?

Workers who have a sincerely held religious belief (not a social or political belief), or a medical condition that prevents them from being vaccinated may apply for a reasonable accommodation. They must apply for a reasonable accommodation by December 27, 2021, and that begins the reasonable accommodation process. Employers may permit

workers to continue coming into the workplace while their reasonable accommodation request is pending. However, City agencies may review a covered entity's reasonable accommodation process and records to ensure the entity is handling requests promptly and appropriately.

Guidance on how to handle reasonable accommodation requests as well as a checklist that employers can use to process reasonable accommodation requests is available here: www.nyc.gov/vaxtowork. If an employer chooses to follow this checklist and keeps it on file, that will demonstrate that the employer handled the reasonable accommodation request appropriately. The checklist is available here: <https://www1.nyc.gov/assets/doh/downloads/pdf/covid/vaccination-workplace-accommodations.pdf>

What if a worker says they cannot get a vaccine dose because of limited availability?

There is no exception for workers who state that they have been unable to get a vaccine appointment. To find a vaccination site anyone may go online to www.nyc.gov/VAX4NYC, where there are always first dose appointments available or call 877-VAX-4NYC (877-829-4692). For a list of all vaccine sites citywide, go to nyc.gov/vaccinefinder.

Do I need to fire or discipline employees who refuse to comply with the order?

No. As long as you keep the worker out of the workplace, it is your decision whether to discipline or fire such worker, or if the worker can contribute to your business while working remotely.

Are employers required to pay employees if they do not submit proof of a COVID-19 vaccine dose or a request for a reasonable accommodation by December 27th?

Employers must engage employees in a cooperative dialogue even if they submit their reasonable accommodation request after the deadline. Employers may allow employees to enter the workplace while their reasonable accommodation request is pending. Employers are not required to pay employees who have been put on leave or terminated because they haven't provided proof of vaccination or requested a reasonable accommodation request by December 27, 2021.

Can I adopt a policy regarding vaccination that is stricter than what is required under the order?

Yes, as long as it is not discriminatory or otherwise unlawful.

Resources

Where can I find additional guidance about how to comply with the order?

You can find information about the order at www.nyc.gov/vaxtowork.

How will the order be enforced?

Inspectors from various City agencies will begin enforcing the order on December 27, 2021. All inspectors, no matter which agency they are from, will be inspecting for compliance with the same requirements.

Are there any penalties for noncompliance?

Our goal is always to educate and work with businesses to help them achieve compliance. It's always our preference to ensure compliance and to avoid fines and penalties.

If a business refuses to comply, they are subject to a fine of \$1,000 and escalating penalties thereafter if violations persist.

Who can I call with questions or concerns about inspections?

Call the Small Business Services hotline at 888-SBS-4-NYC.

Where may workers make complaints about discrimination?

People have a right to be free from discrimination or harassment from businesses. Contact the NYC Commission on Human Rights at nyc.gov/HumanRights or via 311.

Where can I learn more about the COVID-19 vaccine?

The COVID-19 vaccine is safe, effective and free. Learn more at nyc.gov/covidvaccine or by calling 311.

Where can my employees be vaccinated?

To find a vaccination site go to Vaccine Finder, nyc.gov/vaccinefinder or call 877-VAX-4NYC (877-829-4692) to find a location near you or schedule an appointment.