



COVID 19 RESOURCES FOR NONPROFITS

UPDATED GUIDANCE FOR THE RETURN TO THE WORKPLACE

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SECTION 1: NEW YORK CITY VACCINE MANDATE & VACCINE POLICIES

1. NEW YORK CITY VACCINE MANDATE

What is required?

As of December 27, 2021, all businesses, including non-profit organizations, that employ more than one employee in New York City and/or who have a workplace in NYC, must require that NYC workers who perform in-person work or interact with the public in the course of business show proof of vaccination and a matching form of personal identification.

What qualifies as adequate proof of vaccination?

The following are acceptable forms of vaccination proof under the NYC mandate:

- Photo or hard copy of CDC vaccination card (including a photo maintained using the NYC COVID Safe App)
- New York State Excelsior Pass
- CLEAR Digital Vaccine Card
- CLEAR Health Pass
- Another official vaccine record (e.g., a hospital or healthcare provider record of immunization)

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- 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, Vaxzevria, Sinopharm, or Sinovac.

Which workers must prove vaccination status?

Any worker who works in the presence of other workers or with members of the public in NYC must show proof of vaccination. Workers who work remotely are not required to be vaccinated if they do not interact with other workers or customers in the course of their remote work. Employers may allow unvaccinated workers into the workplace for a quick and limited purpose such as making a delivery or using a restroom, to discipline and/ or terminate non-compliant employees, or to facilitate the employee's remote work. Employers must also verify the vaccination status of non-employee contractors, but they can do so by asking a contractor's employer to confirm vaccination status.

How should employers maintain records of vaccination proof?

According to NYC guidance, employers may maintain proof of employee vaccination in one of three ways:

1. Keeping a copy of proof of vaccination from each employee;
2. Creating a paper or electronic record that lists the following information for each employee:
 - 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 (must be within 45 days after submitting proof of the first dose)
 - For employees who received a reasonable accommodation and remain unvaccinated, a record of the reasonable accommodation with supporting documents;

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3. Creating a paper or electronic record confirming that the employer has verified proof of vaccination each day before each employee enters the worksite.

For contractors, employers should maintain a record of requests for the contractors' proof of vaccination, as well as the responses to those requests.

What should employers do going forward?

Organizations should consider taking the following actions:

- Develop and implement a vaccine policy. (see below!)
- Create a system to record employees' vaccine status.
- Post the [attestation sign](#) (required under the law) in a conspicuous location showing the organization is in compliance with the vaccine mandate.
- Develop a process and policy for employees who request an accommodation to remain unvaccinated and/or who do not comply with the mandate. (see below!)

What happens if an employer does not comply with the mandate?

NYC has stated that inspectors from various city agencies will enforce the order. Organizations found to be in violation may be subject to a fine of \$1,000 per violation and escalating penalties thereafter.

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2. CONSIDERATIONS FOR IMPLEMENTING A COVID-19 VACCINE POLICY

Have you collected relevant vaccination status data for your workforce?

Consider implementing surveys for employees to identify vaccination status and vaccination plans. If you will or must require vaccination, consider using the data collected to anticipate the number of employees who will not be able to work due to vaccination status.

Do you want to require boosters?

Currently, the definition of “fully vaccinated” does not include booster doses, and most government vaccine mandates do not require booster doses. However, the CDC and New York State strongly urge individuals to get boosted when they are eligible, and organizations can require eligible employees to be boosted.

Do you have a communication plan?

Consider how you will communicate the policy and its details to your workforce, and how you will handle follow up questions from employees as they arise. For example, consider preparing an internal Q&A document for managers to address common questions.

- *DO*: Communicate routine and specific reminders regarding vaccination deadlines, and related deadlines for submitting accommodation request forms.
- *DO NOT*: Pressure employees, retaliate against employees who request an accommodation, or make inquiries as to why an employee is unvaccinated that could elicit disability-related information. Instead, tell employees that they can contact Human Resources (or another designated individual/department) to request an accommodation. Note that in New York, employers are required to engage in an interactive cooperative dialogue when they knew or should have known about the need for an accommodation.

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Have you drafted a clear vaccine policy which sets forth relevant deadlines?

A vaccine policy should reflect the scope of any vaccine mandate and which employees will be covered. It should also make clear the date by which the mandate will become effective, and whether that date applies to the first or second dose of a vaccine (or a booster dose if the employer chooses to require boosters and/or if a governmental mandate is amended to require boosters). Consider the following questions:

- What method of proof of vaccine will your organization accept? For example, scanned photos of vaccine cards, employee attestations, etc.
- How will employee vaccine information be submitted and stored? Who will have access? **Remember, vaccine cards are considered medical records and should be maintained separately from personnel files and with limited access. Consider having the records uploaded or emailed securely and keeping those records under the digital equivalent of “lock and key.”*
- What is the deadline by which accommodation requests should be submitted? What will the accommodation process be? (see below!)
- How will the organization handle individuals who refuse to disclose their vaccination status, indicate that they will not get vaccinated, and/or do not submit a request for accommodation? For example, will these individuals be separated by a certain date or placed on unpaid leave and eventually separated for a failure to comply?

Have you communicated the policy?

Consider distributing the policy and making it available in the same places as the organization’s other workforce safety policies (for example, on the organization’s intranet or on a share drive). Internal communications regarding the policy should reflect key deadlines and functioning links to the relevant policy documents.

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SECTION 2: EXPIRATION OF NEW YORK STATE MASK MANDATE

When are employees required to wear masks in NY State?

Effective February 10, 2022, New York State [lifted its mask mandate](#) applicable to most organizations. Mask requirements remain in effect for public transit, homeless shelters, correctional facilities, nursing homes, healthcare, group homes, and other sensitive settings.

- The New York State Department of Labor issued [new guidance](#) on February 10, 2022 taking the position that organizations do not need to require masks as part of HERO Act safety plans (discussed below). Organizations should still address mask wearing in their safety plans and may consider recommending mask wearing in accordance with CDC guidance.
- Organizations retain the option to implement a mask requirement and make decisions based on their determination of what is best for their organizations.
- Unvaccinated employees in New York City who work in person (such as those with an approved reasonable accommodation from the City's vaccine requirements) are not technically required to wear masks, but New York City guidance strongly recommends that they do so.
- *DO:* Communicate routine reminders regarding any mask requirements or recommendations.

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SECTION 3: SETTING UP AN EFFECTIVE ACCOMMODATIONS PROCESS

Employers should create a process for employees to apply for religious or medical accommodations for COVID-19 policies, including, for example, vaccine mandates, testing policies, and mask requirements. In designing and implementing an effective accommodations process, organizations should consider the following:

Do you have a centralized accommodations committee, or have you identified the individuals who will review accommodations requests?

Having a centralized committee or designated individuals (preferably with accommodations experience, often individuals with HR and/or Legal functions) to handle accommodations requests may help to ensure consistency in the process for intake and review of accommodations requests.

- *DO:*
 - Evaluate each accommodation request on an individualized basis.
 - Make consistent decisions when evaluating accommodation requests of the same type.
 - Document objective business reasons for distinguishing between requests where decisions may differ.
 - Seek input from appropriate organizational representatives who understand the nature of the various jobs at issue and can provide factual information regarding, e.g., ability to maintain social distance and essential functions of the job.

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- To the greatest extent possible, maintain the confidentiality of the individual requesting the accommodation, as well as the nature of the request. This information should only be shared on a “need to know” basis.
- Refrain from involving high-level organization management in accommodation decisions, to the extent possible, in order to avoid having them act as decision-makers on individual requests. Frequently individuals with HR and/or Legal functions participate in these determinations.
- Seek outside counsel support for challenging requests, specific counseling, and second opinions.
- Document who was involved in decision making, date of the decision, and bases for decision making. Maintain all records.

Do you have accommodation request forms?

Consider developing customized template religious/medical accommodation request forms, including an outline of the type of medical conditions that would warrant an accommodation (e.g., a known contraindication a known diagnosed allergy to a component in all three approved COVID-19 vaccines or a recent stem cell transplant, CAR Tcell therapy, or other therapy or treatment that would temporarily interfere with the worker’s ability to respond adequately to vaccination, or mount an immune response due to treatment).

Consider planning for how the organization intends to respond to the most common types of requests, for example: Fetal cell lines, “Body is a Temple,” Religious Beliefs Dictate Following Conscience/Moral/Ethical Opposition to All Vaccines/ Medical Treatment, etc.

Consider having streamlined “follow-up” questions for testing sincerity of religious beliefs. These follow-up questions can be included in a “form” document. For example:

- Please provide the name of your denomination or church/religious organization and the number of years that you have been a member.

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- Please explain how the religious belief that prevents you from receiving the COVID-19 vaccine affects other areas of your life. For example, have you received vaccines or other medical treatment in the past? If so, please explain how your religious belief prevents you from getting the COVID-19 vaccine but not other vaccines, etc.

For medical accommodation requests, organizations may request documentation from a medical provider explaining why they do not recommend vaccination despite CDC guidance. Consider developing template request forms, but allowing for review of cases on individualized bases as needed. Further, consider using a third-party vendor to assess claims, so as to avoid having the organization make medical determinations.

- *DO:*
 - Keep forms confidential as required by the Americans with Disabilities Act.
 - Prepare internal, privileged protocols for analyzing sincerity and qualification of medical conditions and/or sincerely held religious beliefs where there is an objective basis for doing so.
 - Train decisionmakers on the protocols before reviewing requests to ensure consistency.
 - Seek legal counsel for difficult or “close call” requests.

Have you thought through confidentiality issues?

When evaluating your organization’s accommodations process, consider determining what information regarding accommodations requests will the organization provide to management, and which specific managers, about vaccination data and anticipated separations (or unpaid leaves).

- *DO:*
 - Consider limiting any information that is actually confidential to only those who truly need-to-know for business planning purposes.
 - Train managers on what they can and cannot do with confidential information.

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- During planning phase, distribute general information – without identifying specific employees – to other managers about the vaccination numbers in their departments or teams (e.g., 80% of the Accounting Department is vaccinated, 10% have requested accommodations, and 10% have said they do not intend to be vaccinated and do not need an accommodation).

Have you identified who is responsible for ensuring compliance with approved accommodations?

For example, if using testing, consider who will monitor approved testing accommodations and tracking other measures for approved accommodations, such as distancing and masking. Consider:

- If testing is an approved accommodation, consider preparing written protocols setting forth who will receive test results, how they will be submitted, ensure completion, and that confidentiality is maintained.
- Determining testing logistics, for e.g. at-home test kits, on-site testing, third-party tests. Also consider pay issues for any time spent taking at-home or other tests outside of normal business hours and compensability of tests themselves.
- Determining how the organization intends to handle noncompliance with approved accommodations. For example, progressive discipline, unpaid leave, etc.

POST-DECISION PROTOCOLS

Consider taking steps now to ensure consistency and proper recordkeeping of accommodation requests and decisions. For example:

- Consider drafting template letters to employees documenting accommodation decisions. Templates can require minimal customization to ensure consistency.

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- Approval letters should identify the specific accommodation that is approved (e.g., routine testing, plus masking and physical distance, remote work, etc.) and ask for the employee to send acknowledgement that they will comply. Consider having the letter note that accommodation will be reconsidered on a regular basis.
 - *DO NOT* disclose the existence of an accommodation to the employee's manager unless necessary (which it may be). If the organization does need to disclose, *DO NOT* identify whether the accommodation is religious/medical.
 - *DO* emphasize to the manager the importance of maintaining confidentiality and avoiding treating the employee differently/evaluating them more harshly on the basis of the accommodation.
- Denial letters should identify in general terms the reason for the denial, and next steps administratively. For example, whether staying on unpaid leave or separation.
- Consider having a plan in place regarding how to respond to employees who ask more questions or threaten litigation after a denial decision.
- Consider determining how to categorize employment status after a denial of accommodation.
 - Typical options are unpaid leave, termination, or voluntary resignation.
 - Before deciding, consider reviewing relevant plans that may be implicated, for example, severance agreements, benefit plans, and employment contracts.
 - Consider determining whether the organization is willing to pay severance to obtain a release for individuals who are denied accommodations.
 - Consult outside counsel for assistance on specific questions and circumstances.

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SECTION 4: NEW YORK HERO ACT REQUIREMENTS

The designation of COVID-19 as an airborne infectious disease triggering the safety plan requirements of the New York State Health and Essential Rights Act (“HERO Act”) expired on March 17, 2022. However, the HERO Act still requires that employers have a safety plan in the event of a future airborne infectious disease declaration.

What are the safety plan requirements?

Even though COVID-19 is no longer designated as an airborne infectious disease pursuant to the HERO Act, employers must still maintain an inactive safety plan meeting minimum requirements and addressing (1) daily health screening and quarantine/isolation; (2) mask usage; (3) social distancing; and (4) cleaning and disinfection protocols. The safety plan should be attached to the employee handbook and posted in the workplace. Further detail about the specifics of the required safety plan can be found the [Airborne Infectious Disease Exposure Prevention Standard](#) (the “Standard”), i.e. the binding law for the HERO Act. Note that while the inactive safety plan should still be attached to the employee handbook and posted in the workplace, it can be “inactive” — meaning the safety plan will only be implemented in the event of a future designation of an airborne infectious disease.

What should an employer do when an employee tests positive for COVID-19 and was at the workplace while infected?

There are no longer requirements for employers to notify state or local health boards regarding a positive employee case. However, as a best practice, employers may consider notifying either all employees who were at the worksite on the same day as the infected employee, or a subset of employees who would have been in close contact with the employee (for e.g. share a working space, a floor, work in close proximity with, and so forth). Under no circumstances should an employer

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identify the name (or other identifying information) of the employee who has reported a positive test. The purpose behind informing other employees is solely to encourage them to follow CDC guidelines with respect to testing, quarantining and isolating and to stop or slow the transmission of COVID-19 at the workplace.

What are the current quarantine and isolation requirements?

While the HERO Act designation has expired, New York has adopted the CDC's quarantine and isolation guidelines. Currently, that information can be found at the links below, but employers should continue monitoring federal, state and local guidance for any updates.

- Current quarantine and isolation tables can be found [here](#).
- Frequently asked questions for employers about quarantine and isolation can be found [here](#).
- Updated isolation and quarantine guidance can be found [here](#).

What about workplace safety committees?

Pursuant to Section 2 of the HERO Act (which remains in effect even though the Section 1 designation has expired), employers with 10 or more employees in New York State must “permit” employees to establish and administer workplace safety committees. At least two-thirds of committee members must be non-supervisory employees, selected by non-supervisory employees. Committee members authorized to: (1) Raise safety and health concerns, to the employer – who must respond; (2) Review and provide feedback related to workplace safety and health issues; (3) Review the adoption of any workplace safety and health policy; (4) Participate in government site visit on workplace safety and health compliance; (5) Review employer-filed reports on workplace safety and health; (6) Regularly schedule a meeting during work hours at least once a quarter for up to two hours; and (7) Attend a paid training of up to four hours on the function of the committee, the workplace safety committee provisions of the HERO Act, and an introduction to occupational safety and health.¹

¹ On December 22, 2021, the New York Department of Labor released a new proposed regulation setting forth the workplace safety committee requirements. The [proposed regulation](#) is subject to a notice and comment period and a public hearing was held on February 9, 2022. The proposed regulation clarifies that this requirement only applies to employers with ten or more employees in New York State, and confirms that employers do not need to proactively form a committee; rather, they only need to form a committee after receiving two written requests to do so from non-supervisory employees. A final regulation has not yet been issued.

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