

Policies You Need Now | Complying with NYC's New Vaccination Requirement

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Agenda

- Overview of Key to NYC Vaccination Requirements
- Obligations to Accommodate
- Key Considerations and Next Steps
- Questions

Overview: Key to NYC Requiring COVID-19 Vaccination For Indoor Dining

The Basics

- Effective August 17, 2021 Covered Food Establishments must:
 - Require patrons, employees, interns, volunteers and contractors to produce proof of vaccination and identification to enter covered premises
 - Develop a written protocol available for inspection and post conspicuous signage
 - Provide reasonable accommodations to patrons because of a disability
 - Provide reasonable accommodations to non-patrons consistent with the NYCHRL because of a disability, pregnancy, religious belief or status as a victim of domestic violence, stalking or sex offenses
- Each person a Covered Food Establishment fails to proof will constitute a separate violation for which a fine may be assessed
- Enforcement, inspections and fines will not start until September 13, 2021
 - \$1,000+ for the first violation, \$2,000+ for the second, and \$5,000+ for any third or subsequent violations issued within 12 months of a prior violation

Resources

- Key to NYC Website
 - <https://www1.nyc.gov/site/doh/covid/covid-19-vaccines-keytonyc.page>
- Emergency Executive Order 226 – Key to NYC: Requiring COVID-19 Vaccination for Indoor Entertainment, Recreation, Dining and Fitness Settings
 - <https://www1.nyc.gov/assets/home/downloads/pdf/executive-orders/2021/eeo-226.pdf>
- NYC Frequently Asked Questions
 - <https://www1.nyc.gov/assets/counseltothemayor/downloads/Key-to-NYC-FAQ.pdf>
- NYC Vaccination Required Poster for Businesses
 - <https://www1.nyc.gov/assets/doh/downloads/pdf/covid/posters/covid-19-vaccine-required-poster.pdf>
- Key to NYC Business Flyer
 - <https://www1.nyc.gov/assets/doh/downloads/pdf/covid/covid-19-key-to-nyc-business-flyer.pdf>
- NYC Commission on Human Rights Guidance for Businesses on Equitable Implementation
 - https://www1.nyc.gov/assets/cchr/downloads/pdf/materials/KeyToNYC_FactSheet-Business.pdf
- NYC Commission on Human Rights Guidance for Customers and Employees on Equitable Implementation
 - https://www1.nyc.gov/assets/cchr/downloads/pdf/materials/KeyToNYC_FactSheet-CustomerEmployee.pdf

Coverage: Which Food Service Establishments Are Covered?

- All food service establishments part of the NYC Department of Health and Mental Hygiene grading system, including:
 - Restaurants, bars, coffee shops, night clubs
 - Dining in hotels, colleges, universities and malls
 - Businesses with indoor seating at food courts or on-premises catering
 - Grocery stores, food markets, bodegas and food retailers regulated by the NYS Department of Agriculture and Markets if offering indoor on-site dining areas

Coverage: Which Food Service Establishments Are Not Covered?

- Outdoor Dining, Take-Out and Delivery only Food Establishments (must remove or block off indoor tables, chairs or furnishings so unavailable for use)
- Food Establishments that do not have indoor spaces (3 or more walls and a roof)
 - Structures on a sidewalk or roadway if one side facing the sidewalk is entirely open are not considered “indoors”
 - Individual outdoor dining structures (i.e., plastic domes) are not considered “indoors” provided there is adequate ventilation
- Indoor dining in private residential buildings, office buildings, Pre-K through grade 12, senior centers, community centers and child care programs

Coverage: Who has to provide proof of vaccination?

- Employees, patrons, interns, volunteers and contractors over the age of 12 (regardless of residency)

Coverage: Who does *not* have to provide proof of vaccination?

- Anyone under the age of 12
 - They must wear a face covering when unable to maintain 6+ feet of social distance, except when eating and drinking
- Performers or persons accompanying performers as part of their regular employment if they are not NYC residents
- Anyone accessing the premises for very quick and limited purposes (placing an order, picking up food, deliveries, repairs, paying a bill, changing in a locker room, using the restroom – e.g. less than 10 mins)
 - Individuals accessing indoor spaces for limited purposes must wear a face covering when unable to maintain 6+ feet of social distance
 - ****Guidance suggests anyone indoors for a quick and limited purpose may not dine indoors*

What Constitutes Proof of Vaccination to Permit Indoor Access?

- Proof of an FDA authorized or WHO authorized vaccine must include:
 - An official, photo or copy of a CDC vaccination card or other international record that shows at least one dose has been administered
 - International records must include: (1) first and last name; (2) date of birth; (3) identify the vaccine; (4) date it was administered; and (5) the site or person who administered
 - NYS Excelsior App
 - NYC COVID Safe App
- Individuals over 18 must present identification confirming identity matches proof of vaccination
 - Identification must include the name of the individual and either a photo or date of birth
- Covered food service establishments must be consistent in approach when verifying proof
 - The NYCCCHR guidance makes clear businesses may not scrutinize proof of vaccination in a discriminatory manner
 - Examples: more closely scrutinizing proof based on race, national origin, religion or any other protected category; refusing to accept valid proof from countries outside the U.S., or requiring proof from only individuals with disabilities or older individuals

Key to NYC Written Implementation Protocol

- Covered Businesses must develop a written implementation protocol detailing how they plan to implement and enforce the Key to NYC COVID-19 requirements
- The City developed a template protocol which businesses may use, which includes the following three questions:
 - Describe how your business is verifying proof of receipt of **at least one dose of a COVID-19 vaccine and proof of identification** (where necessary) for any employees, interns, volunteers, or contractors who enter your establishment
 - Describe how your business is verifying proof of receipt of **at least one dose of a COVID-19 vaccine and proof of identification** for any patrons 12 years of age or older who patronize, enter, attend an event in, or purchase goods from your establishment
 - Describe the **location where required signage is posted**

Obligation to Accommodate

Accommodating Patrons

- NYCHRL applies regardless of size
- Covered businesses must provide reasonable accommodations to customers who cannot produce proof of vaccination because of a disability
 - Businesses should not request documentation of a disability from patrons
- Reasonable accommodations may include: outdoor seating, permitting only quick and limited access to order food for take-out, or arranging for delivery
- Covered businesses do not need to provide a reasonable accommodation if it would cause a direct threat to customers, employees or the business or would pose an undue hardship
- ****Guidance suggests a reasonable accommodation would not include permitting an unvaccinated patron to participate in indoor dining*
- ****Guidance suggests patrons are not entitled to accommodations for reasons other than disability*

Accommodating Non-Patrons

- The NYCHRL applies to all employers with 4+ employees (provisions on gender and harassment regardless of size)
- The NYCHRL applies to employees, interns, volunteers and contractors
- Covered businesses must provide reasonable accommodations to non-patrons who cannot produce proof of vaccination because of a disability, religion, pregnancy, or status as a victim of domestic violence, stalking or other sex offenses
 - Businesses *may* request documentation from a healthcare provider to support an accommodation request for disability or pregnancy
 - Businesses *may* request documentation for accommodation requests to support status as a victim of domestic violence, stalking or sex offenses
 - *****Guidance suggests businesses may not request documentation for an accommodation based on religion unless there is an objective basis to question the sincerity of the religious belief**
- Reasonable accommodations may include: assignments outdoors, isolation from other employees or customers, or a leave of absence
- *****Guidance suggests businesses may not permit weekly testing as a means of accommodating**

Key Considerations and Next Steps

Required Measures

- Post signage that is easily visible to patrons before entering the indoor area
- Prepare a written implementation protocol to verify how proof of vaccination for staff and patrons will be verified, which must be produced upon request by inspectors
- Request proof of vaccination from individuals seeking access to indoor spaces
- Engage in an interactive dialogue with individuals, as applicable, if they request an accommodation
 - Accommodation requests by employees, interns, volunteers and contractors must be concluded in writing

Best Practices

- Develop an internal policy for employees which outlines process for seeking accommodations
- Evaluate whether to adopt more restrictive policies and whether to require full vaccination
- Assist employees with identifying potential sites for vaccination and communicate paid time off entitlements
- Identify what areas constitute “indoor spaces” and evaluate whether to continue to provide indoor dining or limit to take-out and delivery in indoor spaces
- Remove and/or block off furnishings otherwise used by patrons if only offering take-out and delivery
- Identify customer-facing staff to handle proof of vaccination and provide training to recognize vaccination proof, ensure consistency in approach, and address strategies for de-escalation for non-compliant patrons
- Ensure compliance with recent unrelated NYS and NYC updates (NY HERO, FCA, NYPSL, MRTA)

Questions?

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Thank you.