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Action Required by December 27, 2021 for New York City's Vaccination Mandate for Private Employers

On December 13, 2021, the Commissioner of the New York City Department of Health and Mental Hygiene issued an [Order](#) mandating that all New York City private employers require employees to be vaccinated against COVID-19.

Please note that this Alert only addresses basic compliance with the New York City Vaccination Mandate. For our construction clients, this Alert is not intended to address matters related to the potential for related added project cost or delay.



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What to Do With Your Own Employees

Beginning December 27, 2021, New York City employers with one or more employees must prohibit employees from entering their workplace unless the employee provides proof of having received at least one dose of a COVID-19 vaccine by that date. Proof of the second dose must be provided within 45 days (i.e., by February 10, 2022).

Notably, there is no weekly testing option alternative available under the mandate. The only exemption from the mandate is for employees who seek a reasonable accommodation based on a disability under the Americans with Disabilities Act or for a sincerely held religious belief, observance, or practice under Title VII of the Civil Rights Act. An accommodation request should be granted unless doing so would cause undue hardship on the employer. [Accommodations](#) can include remote work, reassignment, weekly testing combined with masking and social distancing, and as a last resort, unpaid leave.

Employers should take prompt steps to adopt a mandatory vaccination policy that is compliant with the Order. Beginning December 27, 2021, all New York City employers must publicly post an [affirmation of compliance](#) with the Order's requirements.

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What to Do With Subcontractors

In the context of the construction industry, while general contractors are not required to collect written proof of vaccination from its subcontractors' employees, general contractors are responsible for ensuring that subcontractors are making efforts to comply. Accordingly, a communication should be sent to subcontractors stating what is expected from the Order and requesting written confirmation of receipt. The reason for this recommendation is that the Order expressly requires that employers must "maintain a record of such request and confirmation."

Record Keeping Requirements

Employers are required to keep written proof of vaccination for all employees confidential in a file separate from the employee's personnel file in the event of an audit by the city agencies enforcing the mandate.



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If an employee is subject to an accommodation, the employer must maintain a written record that the accommodation was granted, including information related to the basis on which it was granted, and such record should also be kept confidential in a file separate from the employee's personnel file. Fines begin at \$1,000.00 (and escalate from there) for noncompliance if an employer does not post the affirmation or maintain adequate records of vaccination and/or accommodation status.

Delayed Compliance & Other Considerations

Concerns have already been raised with respect to supply and demand issues because some employees have expressed that they are unable to obtain a vaccination appointment prior to the December 27 deadline. To this end, the City has released guidance stating that it will work with employers to achieve compliance and does not expect to issue civil penalties to employers who can demonstrate that they are engaging in good faith efforts to comply. Such efforts would include evidence that the employer has adopted and distributed a mandatory vaccination policy, has written documentation that an unvaccinated employee has an appointment for a COVID-19 vaccination in the near future and is engaging in weekly testing and masking in the meantime, and that the employer has begun the interactive process with employees who may be seeking an accommodation.

It is also important to recognize that with New York City Mayor-elect Eric Adams' incoming administration, the Order may be modified in the coming weeks. We will continue to monitor this situation and expect to be issuing additional Client Alerts should the above recommendations require adjustment based on the City's enforcement measures.

Final Thoughts

As the lawfulness of employer-mandated vaccinations may implicate multiple federal, state, and local laws, as well as other existing policies and agreements, employers are encouraged to consult with qualified counsel knowledgeable in this area of law as they address this issue or consider broad based vaccine mandates. If you have any questions, please feel free to reach out via email to Lauren Rayner Davis, Esq. at ldavis@pecklaw.com or to Aaron C. Schlesinger, Esq. at aschlesinger@pecklaw.com.

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