



NEW YORK CITY PRIVATE SECTOR WORKPLACE VACCINE MANDATE
EFFECTIVE DECEMBER 27, 2021:

FREQUENTLY ASKED QUESTIONS

On December 13, 2021, the New York City Commissioner of Health and Mental Hygiene issued an Order (the "Order") requiring COVID-19 vaccination in the workplace effective as of December 27, 2021. Guidance was issued by the city on December 15, 2021 and can be found at: [Workplace-FAQ.pdf \(nyc.gov\)](#).

Here are some answers to frequently asked questions:

1. What are the requirements for those who work in NYC?

The city has given all who perform work in New York City until **December 27, 2021** to provide proof that they have received at least one dose of a COVID-19 vaccine to their employer. All employers are required to keep a record that proof was received and to post an Affirmation of Compliance in public view. All employers who have workers that interact with other workers or interact with the public in the course of their work within New York City are required to comply.

2. What is acceptable proof of vaccination?

Acceptable proof of your vaccination can be (1) a photo or copy of the CDC vaccination card; (2) NYC COVID Safe App; (3) NYS Excelsior Pass; (4) CLEAR's Digital Vaccine Card/Health Pass; (5) Official vaccine record; or (6) a photo or copy of an official vaccination record administered outside the US.

3. Can I still come to work if I am not vaccinated by December 27?

If you have **not** received at least one dose of a COVID-19 vaccine, you can continue to work as of December 27, 2021 **only** if:

- (1) You have made a request for a medical or religious exemption from your employer.
 - a. The Order permits employees to continue to come to work as normal while their accommodation request is being reviewed by their employer. Employers are required to make decisions "promptly".
 - b. If your employer grants you a reasonable accommodation for your medical or religious need, you will need to abide by the conditions set by the employer for the accommodation to enter the workplace (such as submitting proof of weekly PCR testing/wearing a mask while working).
- (2) Your work does not require you to interact with other workers or with the public within New York City; or

(3) You only enter your workplace for a “quick and limited purpose” such as making a delivery or clocking in and receiving an assignment to leave and work by yourself.

4. What should I do if my religion or medical condition prevents me from getting vaccinated?

Workers who are seeking an exemption from this vaccine mandate based on a medical or religious need should notify their employer **as soon as possible**, but no later than December 27, 2021. This will begin the reasonable accommodation process where your employer will ask you questions about your request. Your employer may also ask for documentation to support your request. The employer is required to decide on your accommodation request “promptly.”

5. My employer has not disputed that I am eligible for an accommodation based on my religious or medical need but has still denied my request for an accommodation. What now?

Even if your employer does not dispute that you are entitled to an accommodation based on your medical or religious needs, the employer may still lawfully deny your request for an accommodation if providing an accommodation would impose an “undue burden” on the business. Certain factors such as the nature and the costs of the accommodation needed, the financial resources of the employer, the type of operation of the employer, including the functions of the workforce, and the impact of the accommodation on the operation of the work are considered by the court or government agency when evaluating whether the employer lawfully denied an accommodation.¹

6. I believe my employer’s denial of my accommodation was unlawful. What can I do about it?

If you believe that your employer’s denial of your accommodation violated the law, you can pursue a discrimination claim against your employer. You may contact an attorney, or file a free complaint with the following agencies:

- The New York State Division of Human Rights: call 1-888-392-3644 or file a complaint here: <https://dhr.ny.gov/sites/default/files/pdf/nysdhr-employment-complaint-form-fillable.pdf> ; or
- The New York City Commission on Human Rights: call (212) 416-0197 or file a complaint here: <https://www1.nyc.gov/site/cchr/about/report-discrimination.page>

7. Are employers required to confirm that its contractors have complied with the Order?

Yes. If an employer hires a contractor, it must maintain a record that it requested and received confirmation from the contractor that the contractor’s employees are vaccinated.

¹ The Equal Employment Opportunity Commission’s guidance on this issue can be found here: <https://www.eeoc.gov/laws/guidance/enforcement-guidance-reasonable-accommodation-and-undue-hardship-under-ada#undue>

8. If I do not have a fixed work location, will I be required to comply?

Yes. If you interact with other workers **or** with the public within the city during the course of your work, your employer must prohibit you from performing that work unless you confirm you have been vaccinated or have been approved for a religious or medical exemption.

9. Will I be terminated if I do not submit my proof of vaccination by the deadline?

The Order does not require an employer to terminate employees who do not submit proof. An employer is only required to prohibit the employee from coming to the workplace or performing work in the presence of others within the city. However, an employer is within its right to terminate an employee who cannot perform their job duties.

10. If I am terminated for failing to submit proof of my vaccination, will I be eligible to collect unemployment?

Although their guidance is not yet updated to address this Order, the NYS Department of Labor (“NYS DOL”) has addressed this issue with respect to prior vaccine mandates and stated as follows:

“If a worker refuses to get vaccinated, will they be eligible for UI benefits?

Like all UI claims, eligibility will depend on the circumstances as each claim is unique and reviewed on a case-by-case basis. Workers in a healthcare facility, nursing home, or school who voluntarily quit or are terminated for refusing an employer-mandated vaccination will be ineligible for UI absent a valid request for accommodation because these are workplaces where an employer has a compelling interest in such a mandate, especially if they already require other immunizations. Similarly, a public employee who works in a public setting and is subject to a local government mandate to submit proof of vaccination or negative testing may be disqualified from the receipt of UI if they refuse to get vaccinated or tested. In contrast, a worker who refuses an employer’s directive to get vaccinated may be eligible for UI in some cases, if that person’s work has no public exposure and the worker has a compelling reason for refusing to comply with the directive.”²

As stated above, the NYSDOL will review each claim on a case-by-case basis to determine eligibility. Your benefits determination will depend on whether or not your employer will contest your unemployment, as well as your reasons for not complying.

² This guidance can be found here: <https://dol.ny.gov/unemployment-insurance-top-frequently-asked-questions>