

Blog Post

No Vaccination, No Service For Indoor Dining, Entertainment, and Fitness in NYC

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Enforcement begins soon of New York City's new executive order requiring certain indoor establishments to verify that staff and patrons have received at least one dose of the COVID-19 vaccine before entering the establishment. The executive order took effect on August 17 and inspectors will begin enforcing its requirements until September 13. This mandate is the first of its kind in the country.

The indoor establishments covered by the executive order are: food service establishments (restaurants, bars, and coffee shops); entertainment settings (movie theaters, concert venues, museums, indoor sports arenas, performing arts theaters, bowling alleys, and event venues); and fitness establishments (gyms, dance studios, indoor pools, and gyms inside hotels and high-education institutions). If an establishment has both indoor and outdoor portions, the executive order only applies to the indoor portion. If a food service establishment only offers take-out, delivery, or outdoor dining, any tables or chairs indoors must be blocked off so that they are unavailable for use.

Employees, patrons, interns, contractors, and volunteers of these establishments must display proof of vaccination as well as show identification if they are over 18 years old. Proof of vaccination can

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be demonstrated by displaying a photo or copy of a CDC vaccination card, official vaccine record, including official records of certain listed vaccines administered outside of the United States, NYC COVID Safe App, or New York State Excelsior App. Individuals under age 12 are permitted to enter these establishments as long as they wear a face mask whenever they are unable to maintain social distancing. The vaccination requirement does not apply to customers entering for a quick and limited purpose, for example, to use the restroom.

Covered establishments are required to consider appropriate reasonable accommodations for employees or customers who are unable to be vaccinated due to a disability, pregnancy, sincerely held religious belief, or status as a victim of domestic violence, stalking, or sex offenses. For example, if an employee of a restaurant is unable to be vaccinated due to a sincerely held religious belief, they could work in the outdoor portion only or if a patron of a gym is unable to be vaccinated due to a disability, they could join a virtual exercise class instead of an indoor in person one. With respect to how this will work with a patron in a restaurant-setting, it is unclear. The guidance issued by the NYC Commission on Human Rights only states that the restaurant must engage in a good faith discussion with the patron to see if a reasonable accommodation (such as taking their food to go) is possible.

By September 13, covered establishments must also develop and keep a written record of their protocol for complying with the requirements of the executive order as well as display a sign notifying employees and patrons of the vaccination requirement. Prior to this date, businesses should also determine who will be responsible for checking proof of vaccination and identification and develop a plan for what to do in the event that a customer refuses to show proof of vaccination.

Akerman labor and employment attorneys are here to help covered entities develop an appropriate protocol and answer any questions regarding implementing and complying with requirements of the executive order.

This information is intended to inform firm clients and friends about legal developments, including recent decisions of various courts and administrative bodies. Nothing in this Practice Update should be construed as legal advice or a legal opinion, and readers should not act upon the information contained in this Practice Update without seeking the advice of legal counsel. Prior results do not guarantee a similar outcome.