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Further Updates to the Key to NYC Vaccination Requirements – Fast Food Workers, Houses of Worship, Outdoor Dining

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Surprising no one, New York City again updated the requirements of the Key to NYC vaccination mandate for indoor dining, fitness and entertainment venues.

On August 25, 2021, Mayor Bill de Blasio issued [Emergency Executive Order No. 228](#), which supersedes all prior executive orders creating the Key to NYC program. This updated executive order, among other things:

- Exempts houses of worship from the definition of “covered premises” (meaning employees and visitors need not show proof of vaccination, provided they wear a face mask at all times when they cannot maintain six feet of distance from others); and
- Amends the Fair Workweek Law’s definition of “just cause” to permit fast food employers to terminate fast food employees who fail to provide proof of vaccination.

The city also updated the [Frequently Asked Questions](#) related to the Key to NYC program to address establishments with both indoor and outdoor portions.

Executive Order 228’s Amendment to the Fair Workweek Law

In December 2020, as detailed in a prior [alert](#), New York City passed amendments to the Fair Workweek Law that eliminated the “at-will”

employment relationships for fast food employees. As a result, a fast food employer can terminate an employee only for “just cause,” which is defined as “a failure to satisfactorily perform job duties or misconduct that is demonstrably and materially harmful to the fast food employer’s legitimate business interest” or due to a bona fide economic reason.

Executive Order 228 modified the definition of “just cause” under the Fair Workweek Law to state:

“[A] fast food employer shall be deemed to have just cause when a fast food employee has failed to provide proof of vaccination required by an emergency executive order issued in response to the COVID-19 pandemic. . . , provided that the employee shall have 30 days from the date when the employer notified the employee of the requirement to submit such proof and the employee shall be placed on leave following such notification until such proof is provided. This provision shall not excuse the employer from the responsibility to provide a reasonable accommodation where required by law.”

Under this amendment, fast food employers can terminate employees who fail to provide proof of vaccination as long as the worker was given 30 days from the date their employer notified them of the requirement to provide proof of vaccination

and the employee was placed on an unpaid leave until submitting such proof. Nevertheless, this amendment does not excuse employers from their obligation to provide a reasonable accommodation to employees when required by law.

Key to NYC Does Not Apply to Outdoor Portions of Establishments

Separately, the Frequently Asked Questions have been updated to clarify when the Key to NYC requirements apply to covered establishments that have both indoor and outdoor portions:

What if an establishment has both indoor and outdoor portions?

If an establishment has both indoor and outdoor portions (for example, an indoor fitness center with an outdoor pool or a museum with indoor and outdoor spaces for patrons), only the indoor portion is covered by the Key to NYC requirements.

Although the examples in the FAQ address fitness centers and museums, the update also clarifies for food establishments that the Key to NYC requirements do not apply to any outdoor portions of the establishment. In other words, if a food establishment can limit an employee's work area to only the outdoor portion of the establishment, or seat guests outside, those employees and guests do not need to show proof of vaccination.

The Key to NYC requirements continue to evolve and these changes have not been well-publicized by New York City. Businesses must keep aware of these changes, consulting with counsel on any developments to ensure compliance with the Key to NYC mandate.

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