



December 2021

Major Updates Made to the Key to NYC Vaccination Requirements

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New York City has made significant changes to its Key to NYC mandatory vaccination requirements for indoor dining, gyms and entertainment venues. As of December 14, 2021, children between the ages of five and eleven must show proof of COVID-19 vaccination to enter a business covered by the Key to NYC requirements. And as of December 27, 2021, all individuals 12 years old and older, including employees, must show proof of having received a full COVID-19 vaccine series as a condition of entry. Covered businesses also have new record-keeping obligations, including requirements they maintain records of employee vaccination status.

These changes were made in an [Executive Order](#) issued by Mayor Bill de Blasio on December 13. The City also updated its [Frequently Asked Questions](#) about the Key to NYC requirements.

Children Between 5 and 11 Must Show Proof of Vaccination

As of December 14, any child five years of age or older who enters a restaurant, gym, entertainment venue or other indoor business subject to the Key to NYC requirements must show proof that they have received at least one dose of a COVID-19 vaccine. Those children will be required to show proof starting January 28, 2022, that they received all required doses of a COVID-19 vaccine – i.e., two doses of the Pfizer vaccine, which at this time is the only vaccine

approved for children between five and eleven. Children who turn five after December 13, 2021, will not be required to show proof until forty-five days after their fifth birthday. Businesses are not required to verify the identity of any children under 18.

Proof of Full Vaccination Required as of December 27, 2021

Previously, individuals, including employees, only needed to show proof that they received one dose of a COVID-19 vaccine to be allowed entry to a Key to NYC business. As of December 27, 2021, all individuals twelve years old and older, including employees, will be required to show proof that they have received a full regimen of a COVID-19 vaccine – i.e. two doses of the Pfizer or Moderna COVID-19 vaccine or one dose of the Johnson & Johnson vaccine.

New Employer Recordkeeping Obligations

The new Executive Order creates new record keeping obligations for employers concerning the vaccination status of “workers” who enter their premises. Key to NYC businesses must now:

1. Maintain a copy of their workers’ proof of vaccination or, if applicable, a record of a reasonable accommodation provided to that worker; or
2. Maintain a record of such proof of vaccination that includes
 - a. The worker’s name;

- b. Whether the person is fully vaccinated;
 - c. For a worker who submits proof of the first dose of a two-dose vaccine, the date by which proof of the second dose must be provided, which must be no later than 45 days after the proof of first dose was submitted; and
 - d. For a worker who does not submit proof of COVID-19 vaccination because of a reasonable accommodation, the record must indicate that such accommodation was provided, and the covered entity must separately maintain records stating the basis for such accommodation and any supporting documentation provided by such worker; or
3. Check the proof of vaccination before allowing a worker to enter the workplace and maintain a record of the verification.

Businesses must treat these records as confidential. However, the Executive Order requires that a business make these records available for inspection to a New York City agency upon request.

The Executive Order defines the “workers” for whom a business must maintain records as “an individual who works in-person in New York City at a workplace in New York City. Worker includes a full- or part-time staff member, employer, employee, intern, volunteer or contractor of a covered entity, as well as a self-employed individual or a sole practitioner.” A covered “workplace” includes any location, including a vehicle, where work is performed in the presence of another worker or member of the public.

For a non-employee worker, such as a contractor, a covered entity may request that

the worker's employer confirm the proof of vaccination in lieu of maintaining the required records, but the covered entity must maintain a record of any such requests and confirmations. Businesses do not need to maintain records of the vaccination status of individuals who work from their own home and whose employment does not involve interacting in-person with co-workers or members of the public, or individuals who only enter the workplace for a quick and limited purpose.

As of December 27, 2021, businesses will be required to have a representative execute and post in a conspicuous location an [Affirmation of Compliance With Key to NYC Worker Vaccination Requirements](#). In the Affirmation of Compliance, a representative of the business must affirm that they have checked the vaccination status of the business’ workers pursuant to the Key to NYC Emergency Executive Order issued on December 13, 2021, and that the business is in compliance with the requirements of the Order.

Businesses are still required to post a notice of the Key to NYC vaccine requirements in a conspicuous place that is viewable by prospective patrons. New York City has updated its [model poster](#) to include the requirement that all patrons five years old and older show proof of vaccination. As of December 14, the City had not yet updated the template for the Written Implementation Protocol that businesses are also required to maintain and make available for inspection. The New York City Commission on Human Rights had also not updated its Guidance for Businesses on Equitable Implementation of Key to NYC, which, among other things, discusses business’ reasonable accommodation obligations to guests and employees.

Businesses must take immediate steps to ensure they follow these new Key to NYC requirements. Employers should inform their

employees of the new requirement that they submit proof that they received a full regimen of a COVID-19 vaccine by December 27. Businesses also must review their current records of employee vaccinations to determine if these records need to be updated to comply with the new Key to NYC recordkeeping requirements. Businesses also need to train their employees who are responsible for checking customer vaccination status on the updated requirements that include verifying the vaccination status of children over the age of five and requiring proof of a full vaccine series for patrons over 12 as of December 27. They also need to ensure that they are displaying the

updated Key to NYC poster and that the required Affirmation of Compliance is signed and posted by December 27.

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