

The Current COVID-19 Regulatory Regime Facing New York and Connecticut Firms

February 17, 2022

As the snow begins to melt, and beleaguered Northeasterners see the nascent signs of Spring, many investment managers are re-opening their doors or reinvigorating their efforts to draw employees back to the office. For firm personnel coordinating such efforts, keeping abreast of the ever-changing COVID-19 regulatory landscape remains a challenge. After two years of legislative enactments, executive orders, court decisions and policy reversals, what is the current state of the law? This *Hedge Up* answers this question for New York and Connecticut firms.

1. New York City Vaccine Mandate for Private Employers

Despite last month's Supreme Court decision staying President Biden's nationwide vaccine mandate for private employers,¹ firms in New York City (NYC) remain subject to the strictest vaccination mandate in the country for private employers.

Under the NYC mandate, all workers in NYC who perform in-person work or interact with the public in the course of business must show proof that they have received a COVID-19 vaccine. This includes full- and part-time employees, interns, volunteers and contractors, with exceptions for workers who (i) are entitled to reasonable accommodations for medical or religious reasons, (ii) work from home, or whose employment does not involve interacting with co-workers or members of the public, or (iii) enter the workplace for a quick and limited purpose (such as making a delivery). Among the potential reasonable accommodations cited in NYC guidance are remote work or a combination of weekly polymerase chain reaction (PCR) testing and masking.

NYC firms are required to collect, verify and maintain one of the following acceptable forms of proof of vaccination from each worker: a copy (digital or photocopy) of a Centers for Disease Control and Prevention (CDC) card or other official immunization record showing the worker's name, vaccine brand and date of vaccination, or the foregoing information as stored in the NYC COVID Safe App, NYS Excelsior Pass/Excelsior Pass Plus, CLEAR Health Pass or another format approved by the city's Commissioner of Health. In addition, firms must complete a **certificate** affirming that they are in compliance with the mandatory vaccination requirement, and must post the certificate in a visible location within their offices.

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At present, the NYC mandate does not require employees to receive COVID-19 vaccine booster shots, and instead requires two doses of the Moderna or Pfizer vaccine or a single dose of the Johnson & Johnson vaccine. The city's guidance regarding the mandate can be found [here](#).

There is at least one active lawsuit challenging the NYC vaccine mandate. See *Rivera v. The City of New York et al.*, No. 1:22-cv-00616 (E.D.N.Y. Feb. 2, 2022). On February 4, 2022, the district court judge denied the plaintiffs' motion for a temporary restraining order and preliminary injunction (see [here](#)), thus leaving the mandate in effect.

Unlike New York City, Connecticut does not impose a mandatory vaccination requirement on private employers or their employees.

2. New York and Connecticut Masking & Work Rules

Effective February 10, 2022, New York State (NYS) Governor Hochul lifted the state's mask mandate, which had required masking in indoor businesses that did not universally maintain a vaccine requirement. This move follows the June 2021 rescission of the myriad other COVID-19 regulations that previously applied to the workplace, including those requiring social distancing, the wiping of surfaces, *etc.* (see [here](#)). Localities in NYS remain free to maintain their own mandates if they so choose.

NYC does not have a mask mandate for private employers, but does still impose mask requirements in some settings (see [here](#)), such as for public transportation; schools; health care facilities; nursing homes; homeless shelters; when in a store, restaurant or other public space where the owner or operator requires masks; or at work, if required by an employer. Therefore, firms remain free to implement their own masking requirements, which employees then must follow.

Firms in Connecticut remain subject to a mask mandate for all employees who are not fully vaccinated (see [here](#)). Such individuals must wear masks in all public indoor settings, including office settings. Earlier this week, the town of Stamford revoked a mask mandate that had applied to all individuals (regardless of vaccination status) in indoor public spaces. Masking also is not required in Greenwich, Westport or Darien.

Some other localities in Connecticut and New York continue to maintain mandates relating to masks and other COVID-19 protocols, so firms should check for potential local restrictions.

3. New York Isolation & Quarantine Guidance

On **February 4, 2022**, the New York State Department of Health (NYSDOH) updated its isolation and quarantine guidelines. Under the new guidance, all individuals infected with COVID-19 should (i) isolate for at least five days; (ii) end isolation after five days if they are asymptomatic or their symptoms are resolving (including being fever-free for 24 hours without the use of fever-reducing medication); (iii) continue to wear a mask around others for five additional days; and (iv) if fever continues or other symptoms have not improved after five days of isolation, continue to isolate until the individual has no fever for 24 hours (without the use of fever-reducing medication) and the individual's other symptoms have improved.

The NYSDOH guidance also states that unvaccinated individuals exposed to COVID-19 should quarantine for five days and, if asymptomatic, then wear a mask for the

ensuing five days when around others. Fully vaccinated individuals and those who recently have recovered from COVID-19 are not required to quarantine following a new exposure, but should wear a mask for 10 days when around others. Vaccinated and unvaccinated individuals who experience COVID-19 symptoms after an exposure should quarantine until a negative PCR or antigen test confirms that the symptoms are not COVID-19.

On **January 21, 2022**, Connecticut also updated its isolation and quarantine guidelines in a manner similar to the new NYS protocols. Fully vaccinated individuals (*i.e.*, those who have completed their first series of Pfizer or Moderna within the last six months, or Johnson & Johnson within the last two months, or have received a booster shot after completing the first series) who are exposed to COVID-19 do not need to quarantine, but should wear a mask around others for the ensuing five day period. If symptoms develop, such individuals should isolate for at least five days from onset and end isolation after five days *if* they are asymptomatic or their symptoms are resolving (including being fever-free for 24 hours without the use of fever-reducing medication).

Unvaccinated individuals, or those that have not received their booster after completing their first series of shots (more than six months following Pfizer or Moderna shots, or two months after Johnson & Johnson), should quarantine for five days after exposure to COVID-19 and then take a COVID-19 test. If such individuals test positive, or otherwise develop COVID-19 symptoms, they should isolate for an additional five days and then end isolation *if* they are asymptomatic or their symptoms are resolving (including being fever-free for 24 hours without the use of fever-reducing medication). If such individuals test negative and have not developed COVID-19 symptoms, they should wear a mask around others for the ensuing five day period.

4. Current Status of the New York HERO Act

The New York Health and Essential Rights (HERO) Act has been extended through March 17, 2022. COVID-19 previously was designated as a highly contagious and communicable airborne disease under the Act, meaning that all firms must continue to maintain workplace safety plans and adhere to other requirements, as detailed in our previous [article](#).

On December 22, 2021, the New York State Department of Labor published proposed [regulations](#) regarding Section 2 of the HERO Act, which requires firms with at least 10 employees to allow employees to form joint employer-employee workplace safety committees. Among other things, the proposed regulations address the mechanisms for establishing such committees, the composition of such committees and a firm's obligations once a safety committee has been formed.

5. Expanded COVID-19 Vaccine Paid Leave in New York State and New York City

Effective November 2, 2021, NYC's Earned Safe and Sick Time Act was amended to provide parents and legal guardians paid leave to obtain COVID-19 vaccinations for children under the age of 18 and for older children who are incapable of self-care because of a mental or physical disability (see [here](#)). This development follows a similar New York State law passed last Spring, requiring firms to permit leave for employees to obtain vaccinations for themselves (see [here](#)).

Eligible employees may take up to four hours of paid leave per vaccination injection, per child. Covered leave includes both time spent accompanying a child to receive a COVID-19 vaccine injection and time spent caring for a child who cannot attend school or childcare due to temporary side effects from a COVID-19 injection. Such paid leave cannot be charged against an employee's accrual or use of sick or safe leave under existing law.

We continue to monitor developments involving COVID-19 in the workplace. Should you have any questions regarding these issues, please feel free to contact us.

¹ See *Nat'l Fed'n of Indep. Bus. v. DOL*, 142 S. Ct. 661 (2022). The Court left intact a similar mandate for health care workers, finding that the Department of Health & Human Services Centers for Medicare & Medicaid Services was authorized to issue the rule. This mandate covers approximately 10 million workers at hospitals and nursing homes that receive Medicare or Medicaid funding. See *Biden v. Missouri*, 142 S. Ct. 647 (2022).

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