

> Client Alert

New York City Private Sector Vaccine Mandate to Expire On November 1, 2022

October 27, 2022

Authors and Key Contacts

If you require any additional information regarding workplace vaccination issues, or any other employment law questions, please feel free to contact any of the attorneys listed below.

Jeffrey P. Englander
Partner & Co-Chair
P (212) 735-8720
jenglander@morrisoncohen.com



Keith A. Markel
Partner & Co-Chair
P (212) 735-8736
kmarkel@morrisoncohen.com



John B. Fulfree
Senior Counsel
P (212) 735-8850
jfulfree@morrisoncohen.com



Cassandra N. Branch
Associate
P (212) 735-8838
cbranch@morrisoncohen.com



Alana Mildner
Associate
P (212) 735-8784
amildner@morrisoncohen.com



New York City's COVID-19 vaccine mandate for private sector employees will officially [expire](#) on November 1, 2022. The lifting of the vaccination mandate follows the City's decision effective in March 2022 to end its "Key to NYC" program, which required employees and patrons of NYC businesses to show proof of vaccination and wear masks in certain public and workplace settings.

Since December 2021, New York City has required almost all private businesses to verify vaccination status and banned unvaccinated workers from those businesses' workplaces, with the exception of (i) employees whose job duties do not require them to interact with coworkers or the public, and (ii) those requiring reasonable accommodations for demonstrated health reasons or bona fide religious beliefs.

Beginning on November 1, 2022, however, NYC private businesses are no longer required to verify the vaccination status of employees or require vaccination to enter the workplace. Employers will still be free to continue requiring workers to get vaccinated as a condition of employment, and can continue requiring employees to wear masks in the workplace, but these requirements will be a matter of policy and not required by law.

Municipal employees continue to raise challenges to New York City's public sector vaccine policies, including some high-profile lawsuits by former municipal employees terminated for failure to comply with the City's vaccination mandate. Despite the issuance of some decisions adverse to the City, Mayor Eric Adams has confirmed that, at least for the time being and pending the appeals process, proof of vaccination will still be required for municipal workers, including police officers, firefighters and teachers. The continued enforcement of vaccine mandates for municipal workers, however, does not apply to private sector employers or their decision to allow unvaccinated employees into their workplaces.

Next Steps for Private Sector Employers

Again, as of November 1, 2022, private sector employers are free to invite existing workers as well as new hires back to the job site without any requirement that they or others entering the workplace be vaccinated.

The City is encouraging private sector businesses to voluntarily put in place their own vaccine policies to continue preventing the spread of COVID-19. Employers that wish to do so should update any existing COVID-19 policies to remove references to a government-issued vaccine mandate and instead reflect that the employer has opted to continue requiring employees to be vaccinated, clearly delineating any exceptions to this policy.

Employers should also adopt procedures for employees to request an exemption or reasonable accommodation for genuine medical or religious reasons.

Potential Implications for Private Sector Employers

Prior to November 1, 2022, employers were required to terminate employees who refused, subject to previously noted exceptions, to get vaccinated. This notwithstanding, employers should be mindful that former private sector employees who were legitimately terminated for failing to comply with vaccination mandates may now be emboldened to take legal action to obtain reinstatement and back pay, especially given recent court decisions awarding reinstatement and back-pay damages to unvaccinated municipal employees. Thus, while private sector employees may try to leverage the termination of New York City's COVID-19 vaccine mandate as a basis to seek reinstatement and damages, there is no reason to believe that courts would sustain such claims as a matter of law.

On the other end of the spectrum, employers may also face complaints and challenges from vaccinated employees, particularly those with health conditions, who believe they are placed at greater risk for suffering serious effects of COVID-19, by being required to work alongside unvaccinated colleagues. It is possible that the removal of a workplace vaccine mandate could prompt some employees with health conditions to request accommodations including remote work options or protective barriers in the workplace, which employers should be ready to address accordingly.

Employers in New York City should also be mindful of their obligation to engage in a cooperative dialogue with any employee requesting a reasonable accommodation for a disability, including with respect to vaccination status.

Private sector employers should reach out to legal counsel as soon as possible upon receiving any employee inquiries or complaints stemming from either (i) the former vaccination mandates or the voluntary continuation thereof, or (ii) an employer's decision to discontinue implementing a vaccine mandate in the workplace.

The Morrison Cohen LLP Labor & Employment Team is available to provide legal advice related to workplace issues relating to COVID, the New York City Human Rights Law, or any other employment law questions.