

> Client Memo

Returning to the Workplace in the Post-Vaccination Era: Updated Q&A for New York Employers

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Question: Can we require that our employees return to the office?

Yes, however, [New York State's capacity limits](#) and physical distancing guidelines are still in effect. For office-based work, the total number of occupants is limited to no more than **50% of the maximum occupancy** at any given time for a particular area as set by the certificate of occupancy. Responsible Parties must ensure that a distance of at least six feet is maintained among individuals at all times. Any time individuals must come within six feet of another person, acceptable face coverings must be worn. Individuals must be prepared to don a face covering if another person unexpectedly comes within six feet.

Employers should also prohibit the use of small spaces (*e.g.*, elevators, supply rooms, personal offices, vehicles) by more than one individual at a time, unless all individuals in such space at the same time are wearing acceptable face coverings. However, even when face coverings in use, **occupancy must never exceed 50% of the maximum capacity of the space or vehicle**, unless it is designed for use by a single occupant.

Question: Can we require that our employees get vaccinated against COVID-19?

Yes, employers may implement mandatory vaccination programs, subject to limited exemptions. [EEOC Guidance](#) provides that employers may legally require that their employees be vaccinated as a condition of returning to the workplace. However, employers must first attempt to reasonably accommodate employees who, due to medical disabilities or sincerely-held religious beliefs, decline or refuse to receive the vaccine. In other words, an employer cannot simply compel employees to be vaccinated before returning to the workplace, and, instead, must engage in a flexible, interactive process to identify workplace accommodation options that do not constitute an undue hardship on the employer's business. In this, employers will from time to time be compelled to determine whether an employee's proffered reason for failing or refusing to get vaccinated is in fact the result of medical disabilities or sincerely-held religious beliefs and should always be respectful in engaging in the process identified above to make reasoned and thoughtful determinations regarding these issues.

For further information on this topic, please see our [Client Alert](#).

Question: Do we have to provide paid leave for our employees to be vaccinated?

Yes. [New York law](#) provides employees up to four (4) hours of paid leave for each COVID-19 vaccine injection they receive. Employers must provide such paid leave beginning March 13, 2021 through December 31, 2022. The law applies to all private employers regardless of size. The law further states that paid vaccination leave must be offered to “[e]very employee,” implying that the law applies to both full and part-time employees and regardless of an employee’s state of residency. Employees who do not physically live or work in New York State, but work for a New York employer (for example, employees working virtually), are entitled to paid vaccination leave under the law.

Employers must provide this newly enacted paid vaccination leave in addition to any other leave required by law. Like all other forms of paid leave required by law, employers are prohibited from discriminating or retaliating against any employee for exercising his or her rights under this new law.

For further information, please see our [Client Alert](#) on this topic.

Question: What are the quarantine requirements for employees who test positive for COVID 19, or were in close contact with someone who tested positive for COVID 19?

It depends.

If an employee is fully vaccinated (meaning two weeks have passed since receiving the second dose of a 2-dose series (Pfizer-BioNTech or Moderna), or two weeks after they have received a single-dose vaccine (Johnson and Johnson [J&J]/Janssen)) is exposed to COVID-19 and does not have any COVID-19 symptoms, they do not need to quarantine or be tested following an exposure to someone with suspected or confirmed COVID-19, as their risk of infection is low. Fully vaccinated people who do not quarantine should still monitor for symptoms of COVID-19 for 14 days following an exposure. If they experience symptoms, they should isolate themselves from others, be clinically evaluated for COVID-19, including SARS-CoV-2 testing, if indicated, and inform their health care provider of their vaccination status at the time of presentation to care. More information on fully vaccinated individuals and exposure to COVID-19 can be found here: <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated-guidance.html>.

Individuals who are not fully vaccinated and who test positive for COVID-19 or came in close contact with someone who tested positive for COVID-19 can end their quarantine after 10 days so long as 10 days have passed since the individual has tested positive or since symptoms first appeared, and 24 hours with no fever without the use of fever-reducing medications, and other symptoms of COVID-19 are improving. After day 10 is reached, individuals must continue monitoring for symptoms through day 14 and if any develop, they should immediately self-isolate and contact the local health department or their healthcare provider to report this change and determine if they should seek testing. More information can be found here: <https://www.cdc.gov/coronavirus/2019-ncov/if-you-are-sick/end-home-isolation.html>.

In a non-health care setting, in New York, a **close contact** is defined as someone who was within 6 feet of an infected person for a cumulative total of 10 minutes or more over a 24-hour period, starting from two days before illness onset.

Questions: (a) How do we handle an employee who is at high risk for complications stemming from COVID-19, or live with someone who is at such high risk; and (b) How do we handle employees who continue to have child care issues related to the COVID-19 pandemic?

This is a difficult question, and the answer depends heavily on the facts of each case. Employers may set a general rule that attendance in the office is mandatory, absent a request for an accommodation to work remotely. However,

if an employee objects to this policy, it is important to determine if they are requesting an accommodation. Under federal and NY State and local laws, employers are obligated to provide a “**reasonable accommodation**” to qualified individuals with disabilities unless it would cause an undue hardship. In the case of an accommodation request to work remotely, it is important to engage in the “interactive process” (or in NYC, “cooperative dialogue” process) – the discussion focused on whether the employee’s impairment is a disability and the reasons that an accommodation is needed. Please note that employers cannot require an employee that has requested an accommodation to work from home and is, even arguably, disabled, to come into the office. This requirement in the face of such a request could lead to significant liability on behalf of the Company.

Caregiver status is also protected category under New York law. In other words, an employee’s request to work from home based on their status as a caregiver may constitute an accommodation request under New York law. However, caregiver protections do not prevent the Company from holding employees with caregiver obligations to the same attendance, punctuality or performance standards as other employees. **Individuals with caregiver responsibilities still must be able to perform the essential functions of their job.**

All of this being said, general objections to coming into the office without evidence of a disability or pre-existing condition that could be exacerbated by COVID-19 or the threat of COVID-19, cannot form the basis for an accommodation request, and those employees can be compelled to come into the office. We, nevertheless, generally counsel our clients to engage in the interactive process with anyone that expresses concern about coming into the workplace or the workplace itself. Assuming that the concern involves issues other than safety (which raises OSHA concerns), then the employer can require office attendance. Failure to return to the office, absent a request for a reasonable accommodation based on an actual disability, could ripen into job abandonment.

Question: How do we handle employees who return to New York after travelling internationally or out of state?

[As of April 1, 2021](#), asymptomatic domestic travelers are no longer required to quarantine after entering New York from another U.S. State or U.S. Territory. While no longer required, the NYS Department of Health still recommends quarantine after domestic travel as an added precaution for domestic travelers who are not fully vaccinated or have not recovered from laboratory confirmed COVID-19 during the previous 3 months. Symptomatic travelers must immediately self-isolate and contact the local health department or their healthcare providers to determine if they should seek COVID-19 testing.

Mandatory quarantine remains in effect for international travelers. Upon arrival in the U.S., **international travelers** must either quarantine for 7 days with a test 3-5 days after travel, or quarantine for the full 10 days without a test. This requirement applies to all international travelers whether they were tested before boarding, are recovered from a previous COVID-19 infection, or are fully vaccinated.

Travelers from Canada, crossing at land borders subject to the agreement between the governments of the United States and Canada, are permitted to travel in accordance with this federal agreement and need not quarantine solely due to such federally authorized travel. Other travelers flying between the US and Canada must follow the CDC guidance for international travel.

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The Morrison Cohen LLP Labor & Employment Team is available to provide legal advice concerning COVID-19 work-related issues or such other employment law questions that should arise from time to time and as needed.