

Labor & Employment Law Alert: NYS Mask Mandate Takes Effect

On December 10, 2021, Governor Kathy Hochul announced that beginning December 13, 2021, masks must be worn in all indoor public places unless the individual business or venue implements its own vaccine requirement. Governor Hochul made clear that this is a direct response to the “winter surge” in COVID-related cases, which has seen both cases and hospitalizations rise statewide.

The requirement is in effect until January 15, 2022 and applies to both customers and employees of all private businesses regardless of size. After January 15, 2022, the State will evaluate its next steps based on current conditions and COVID-related numbers at that time.

To comply, businesses have two options—either require all employees and customers to be vaccinated or require that they all wear masks. If even one employee is unvaccinated, the business must require that all employees and customers wear masks regardless of their vaccination status. The same is true for customers. For example, employers cannot ask for and accept proof of vaccination from customers and require only unvaccinated customers to wear masks. Businesses must either wholly require mask wearing, or wholly require proof of vaccination from all employees and customers.

Businesses that decide to implement a “proof of vaccination” requirement must make certain that anyone 12 years of age or older is fully vaccinated before entering the establishment. This verification can be done through Excelsior Pass, Excelsior Pass Plus, Smart Health Card, vaccination record through NYC COVID Safe App, CDC Vaccination Card, or other official immunization record. To be deemed “fully vaccinated”, individuals must be 14 days past the last vaccination dose in their initial vaccine series (i.e., 14 days past the second shot of a two-dose Pfizer-BioNTech or Moderna vaccine or 14 days past the one-shot Janssen/Johnson & Johnson vaccine). Children ages 5-11 need only show proof that they have received at least one dose of the COVID-19 vaccination, as vaccines have only been available since November of 2021.

The mask mandate applies to individuals over the age of two who are medically able to tolerate a face covering. Further, employees and patrons are not required to be masked when actively eating or drinking, and employees are not required to be masked when alone in an enclosed room, such as their own personal office. Food service businesses, such as restaurants and bars, and businesses or venues that hold indoor private events, such as weddings, are subject to the same rules. Masks are not required for outdoor dining spaces with a temporary or fixed cover such as an awning or roof and at least two open sides of airflow.

An establishment that violates any provision of the Governor’s order will be subject to all civil and criminal penalties, including a fine up to \$1,000 for each violation. New York State is being assisted by local health departments in enforcing these requirements.

[Sample posters and additional information](#) are available online. As employers navigate these evolving

issues, our Firm's labor and employment attorneys listed below are standing by to provide legal advice.

1800 AXA Tower I 100 Madison Street, Syracuse, NY 13202 | 315.565.4500  | www.hancocklaw.com