



Labor & Employment Issues

Client Alert

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For Clients and Friends
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CONFUSED YET? MORE CDC GUIDANCE ON SHORTER ISOLATION & QUARANTINE PERIODS

On January 4, 2022, the U.S. Center for Disease Control and Prevention (“CDC”) published an update that makes clear it is sticking to its December 27, 2021 shortened isolation and quarantine period guidance and is declining to require a negative test result to end isolation. As a reminder, the CDC changed its guidance in late December 2021 to recommend that people isolate (if infected) or quarantine (if exposed) for 5 days followed by 5 days of mask wearing. Previously, the guidance suggested 10 days of isolation/quarantine and recommended, in some cases, a negative test result to end quarantine. Notably absent from the December guidance (and not lost on critics) was the requirement of a negative test result to end isolation; however, the late December guidance did provide that individuals who were experiencing symptoms at the end of quarantine should isolate immediately and get tested. While CDC guidance may shift and continue to evolve, one imperative is certain – CDC guidance is to be considered, but New York State and City mandates, often stricter, are law with which employers, unions and individual employees must comply.

The January 4, 2022 update and accompanying FAQs address testing more in depth. However, rather than suggest that individuals take a test, the guidance offers advice on what individuals should do if they choose to take a test and it comes back negative or positive. The FAQs state that if an individual has access to a test and wants to test, “the best approach is to use an antigen test toward the end of the 5-day isolation period.” If an individual’s test result is positive, the individual should continue to isolate until day 10. If an individual’s test result is negative, the individual can end isolation but should continue to wear a well-fitting mask around others at home and in public until day 10. The CDC recommends wearing a well-fitting mask for 10 days following a positive test result (if asymptomatic). If an individual has symptoms, the CDC recommends wearing a well-fitting mask for 10 days following the onset of symptoms. The FAQs point out that early use of tests for SARS-CoV-2 is the best approach as “the significance of a positive or negative antigen test late in the course of illness is less clear; while a positive antigen test likely means a person has residual transmissible virus and can potentially infect others, a negative antigen test does not necessarily indicate the absence of transmissible virus.” Therefore, the CDC recommends that regardless of the test result, individuals wear a well-fitting mask around others at home and in public for 10 days.

As for the bulk of the update, the CDC cites “emerging science on when and for how long a person is maximally infectious with Omicron, as well as the effectiveness of

COVID-19 vaccines and booster doses against Omicron infection” as support for a shorter isolation period. According to the CDC, the data suggests around one day before symptoms begin, infectiousness is at its highest and declines within a week of symptoms beginning. Noting that the science is “evolving,” the CDC stated that reports suggest that “Omicron has a shorter incubation period (2-4 days), defined as the time between becoming infected and symptom onset.”

The update emphasizes the importance of mask wearing for a period of 5 days after exiting quarantine or isolation. The update also underscores the importance of a well-fitting mask and “layered prevention strategies, such as receiving all recommended vaccination and booster doses, physical distancing, screening testing, and improved ventilation.” The CDC suggests that these are “key to preventing COVID-19 and decreasing transmission.”

Indeed, the shortened quarantine and isolation period guidance applies to the general population in the community and does not apply to healthcare personnel in healthcare settings or correctional facilities and homeless shelters who have stricter standards. In addition, the most recent update suggests “additional precautions” people should take at the end of quarantine or isolation. The CDC suggests that individuals – after ending quarantine or isolation – not travel until 10 days after the start of quarantine or isolation. The CDC also suggests that individuals not go to places where they are unable to wear a mask, including restaurants, bars, and some gyms, until 10 days after the start of quarantine or isolation. Interestingly, the CDC does not recommend quarantine for the increasing number of individuals “who have had a laboratory-confirmed SARS-CoV-2 infection within the past 90 days who have subsequently recovered and no longer have COVID-19 symptoms.”

Critics have already begun to attack the updated guidance, in particular the clarification regarding testing, as “confusing.” To view the CDC update, please click [here](#).

ADAMS VS. COVID - IN DETAIL LIKE JANUARY LOOKS BACK AND FORWARDS

January 1, 2022 marked the first day of the term of New York City Mayor Eric L. Adams. While there had been some speculation that he might deviate from the policies implemented by outgoing Mayor Bill de Blasio to respond to the COVID-19 pandemic, that speculation was put to rest on his first day at City Hall. In one of his first official acts after being sworn into office, Mayor Adams issued Executive Order No. 1, which continued all prior executive orders issued by Mayor de Blasio, and issued Emergency Executive Order No. 1, which continued the “[Key to NYC](#)” program, requiring that proof of COVID-19 vaccination be presented by customers and staff at a number of indoor settings. While it is not uncommon for incoming mayors to continue the executive orders in place on the last day of their predecessor’s terms, it was unclear until January 1, 2022

whether this practice would also apply to executive orders specifically related to the COVID-19 state of emergency.

Pursuant to the Key to NYC program, in order to access indoor dining, indoor fitness, and indoor entertainment and meeting establishments, all customers ages 12 and older must present proof of their full vaccination status, and customers ages 5 to 11 must present proof of having at least one dose of a vaccine (until January 28, 2022); beginning January 29, 2022, customers ages 5 to 11 will also have to present proof of full vaccination status. Additionally, customers ages 18 and older must also present photo identification along with their proof of vaccination. The Key to NYC program also requires that all staff working at the covered establishments be fully vaccinated and that records of their vaccination status be maintained by their employers.

To be compliant with the Key to NYC program, employers must:

1. Create an implementation plan that is available for inspection and that describes how proof of vaccination for customers and staff will be verified;
2. Post a [sign](#) that is visible to customers before entering the establishment and that notifies customers and staff of the vaccination requirement;
3. Adhere to the proof of vaccination and identification requirements for customers and staff; and
4. Consider requests for reasonable accommodations from both [customers](#) and [staff](#) who are unvaccinated.

In applying vaccine requirements, businesses must consider requests for reasonable accommodations from customers who need them because of a disability, and they must consider requests from employees who need them because of disability, pregnancy, childbirth, lactation, religious beliefs or observances, or status as a victim of domestic violence, stalking, or sex offenses. In such cases, the business must engage with them in a cooperative dialogue, or a good faith discussion, to see if a reasonable accommodation is possible; however, a reasonable accommodation need not be provided if it would cause a direct threat to other customers or employees of the business, or to the requester, or otherwise impose an undue hardship on the business.

In addition to the Key to NYC program, which was established by Emergency Executive Order No. 317 of 2021 (by Mayor de Blasio), the COVID-19 vaccination requirement for private sector workers that was established by the December 13, 2021 [Order of the Commissioner of Health](#) (by Commissioner Dave Chokshi) also continues to remain in place. Pursuant to this order, as of December 27, 2021, all workers at private sector businesses with physical workplaces located in New York City must provide to their employers, proof of at least one dose of a COVID-19 vaccination. Within 45 days of the effective date of the Order (i.e., February 10, 2022), workers will have to provide proof of their full COVID-19 vaccination status. Unless they have made a request for reasonable accommodation based upon a medical condition or sincerely held religious belief, workers

who are unable to provide proof of their vaccination status must be excluded from the workplace.

Similar to the Key to NYC program, to be compliant with the Order, employers must:

1. Obtain and maintain proof of each worker's vaccination status (either by maintaining a copy of the worker's proof of vaccination or by creating a record containing the worker's name, vaccination status, and, for workers providing proof of only one dose of a two-dose vaccine, the date by which proof of a second dose must be provided);
2. Complete, sign, and post an [attestation](#) in a conspicuous location in the workplace affirming compliance with the vaccination requirements; and
3. Consider and maintain a record of all requests for reasonable accommodations based upon medical condition or sincerely held religious belief and [determinations](#) about the same.

Mayor Adams is also looking forward into 2022. Adams disclosed in a media interview that booster shots may be required in April for both public and private sector employees. Such additional vaccinations would appear to be part of the Mayor's determination to avoid any return to City shutdown status and to monitor COVID's impact on low-skilled and unskilled workers who could not work remotely. "I need companies back open and operating", stressed Adams in a preview of his plans. "You cannot run a city like New York on 30% occupancy... ."

NEW LAWSUIT CHALLENGING ADAMS VAX MANDATE JOINS THE LINE

On January 4, 2022, a Staten Island realty firm at the behest of its Borough President, filed suit in federal district court seeking class status and a temporary restraining order/preliminary injunction against New York City's vaccination mandate for private employers effective since December 27, 2021. *CNS Partners, Inc. d/b/a Cornerstone Realty et al. v. City of New York, Eric L. Adams et al.*, E.D.N.Y. No. 1:22-cv-00037 - AMD-CLP. Among other points, Plaintiffs argue that the mandate imposes crushing burdens on private businesses and forces employers to fire unvaccinated employees who cannot work remotely, despite a labor shortage, in violation of the employers' liberty and property interests and due process right to be heard under the U.S. Constitution, 14th Amendment. The Adams Administration announced it stands by the mandate and expects the emergency motion to be denied in line with prior cases.

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