



LICP Talks Labor & Employment: COVID + The Workplace

PRESENTED BY:

Domenique Camacho Moran, Esq.

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Agenda: COVID + The Workplace

- ❖ **Returning to the Workplace**
 - ❑ **COVID-19 Vaccinations**
 - ❑ **Plan in Place**
- ❖ **Post-Pandemic: Workplace Policies**
- ❖ **Post-Pandemic: Performance Management**
- ❖ **Post-Pandemic: Activism in the Workplace**

Returning to the Workplace: COVID-19 Vaccinations

**Mandatory
Vaccination
Policy**

**3 E's Vaccination
Policy**
Educate
Encourage
Enable

Before Choosing a Vaccination Policy...

- ❑ Vaccination is not a “Medical Examination” for purposes of the ADA; therefore, **employers can choose to mandate.**
- ❑ Potential Legal Risks Associated with Vaccine Mandate
 - ✓ Adverse reaction – unclear whether covered by Workers Compensation
 - ✓ Consistent Application of Policy

Mandatory Vaccination Policy

Vaccine mandate must allow for employees who cannot or will not be vaccinated due to a disability or sincerely held religious belief to request a reasonable accommodation.

Mandatory Vaccination Policy: Requests for Reasonable Accommodations

- ❑ Case-by-Case Assessment. Engage in an Interactive Dialogue.
- ❑ Determine whether allowing unvaccinated employee(s) on site will pose a “significant risk of substantial harm to the health or safety of the individual or others.” Factors:
 - ✓ Duration of the risk;
 - ✓ Nature and severity of the potential harm;
 - ✓ Likelihood that the potential harm will occur; or
 - ✓ Imminence of the potential harm.

Mandatory Vaccination Policy: Reasonable Accommodations

- Possible Accommodations:
 - ✓ Permit unvaccinated employee to work on-site.
 - ✓ Require additional PPE/precautions.
 - ✓ Require additional COVID-19 Testing
 - ✓ Permit remote work arrangement
- “No Reasonable Accommodation” – Only in rare circumstances.

3 E's Vaccination Policy

- ❑ **Educate** employees about the COVID-19 vaccine.
 - ✓ Rely on the CDC or NYS Dept. of Health.
- ❑ **Encourage** employees to get vaccinated.
 - ✓ Provide incentives to those who get vaccinated: *e.g.*, water bottles, paid time off, nominal gift cards. Be sure to have an alternative for those with disabilities or sincerely held religious beliefs.
- ❑ **Enable** employees to get vaccinated.
 - ✓ Provide paid leave (4 hours for each shot; additional time for those experiencing side effects).

Vaccinations and Paid Time Off

- ❑ The American Rescue Plan Act Extends Tax Credits through 9.30.2021
- ❑ Leave bucket resets on 4.1.2021
- ❑ Emergency Paid Sick Leave Qualifying Conditions
 - ✓ Required to quarantine/isolate due to exposure
 - ✓ Symptomatic,
 - ✓ Tests COVID+
 - ✓ **Waiting for COVID test results or diagnosis**
 - ✓ **Obtaining a COVID-19 vaccine; or**
 - ✓ **Illness due to COVID-19 vaccine.**

Nota Bene: COBRA Subsidies

- ❑ American Rescue Plan provides 100% COBRA Subsidy from April 1 – September 30, 2021
- ❑ Eligibility: Involuntary termination of employment (if not due to gross misconduct) or reduction of hours. Termination need not be COVID-related.
- ❑ Employers must **notify eligible** employees of subsidy option by May 31st
- ❑ Employees terminated before April 1st are **eligible**
- ❑ Employers must **notify eligible** employees subsidy will end on September 30th between August 16th and September 15th.

Nota Bene: New York State Mandated Paid Time Off

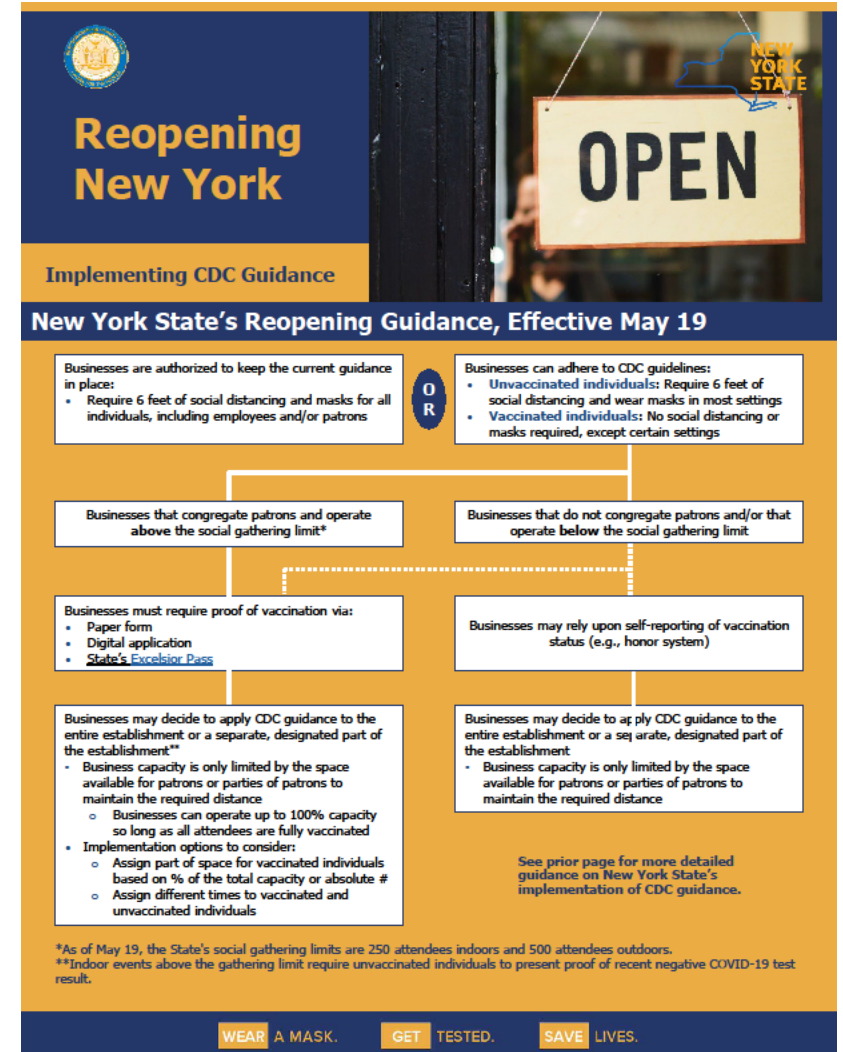
- If not offering FFCRA, NYS Paid COVID Leave
- NYS Paid COVID Vaccine Leave (Max 4 hours)
- NYS Paid Sick Leave.
 - ✓ <5 Employees – 40 hours unpaid sick (& safe) leave;
 - ✓ 5-99 Employees – 40 hours paid sick (& safe) leave;
 - ✓ 100+ Employees – 56 hours paid sick (& safe) leave.
- NYS Paid Family Leave – Eff. 1.1.2021
 - ✓ 12 weeks and 67% of compensation to weekly cap

Returning to the Workplace: Plan in Place

- Safety Plan *at least for now.*
- Daily Questionnaire
 - ✓ **SAMPLE:** I certify that (a) I have been fully vaccinated or I have not knowingly been in close or proximate contact in the past 10 days with anyone who has tested positive for COVID-19 or who has or had symptoms of COVID-19; (b) I have not tested positive for COVID-19 in the past 10 days; (c) I have not experienced any symptoms of COVID-19 in the past 10 days; and (d) I am not required to quarantine as a result of international travel.
- When No Travel Quarantine ...
 - ✓ Employers who choose to impose additional quarantine requirements, must pay employees - employees are not required to use accrued PTO.

Plan in Place: Mask Mandates

- ❑ Keep Mask Mandate and Social Distancing for all employees.
- ❑ Lift mask mandate and social distancing for vaccinated individuals; strongly recommend that unvaccinated individuals wear masks and continue to social distance. **(CDC/NYS)**
- ❑ Require Unvaccinated Employees to Social Distance and Wear Masks; no social distancing or masks for Vaccinated Employees.



Reopening New York

Implementing CDC Guidance

New York State's Reopening Guidance, Effective May 19

Businesses are authorized to keep the current guidance in place:

- Require 6 feet of social distancing and masks for all individuals, including employees and/or patrons

OR

Businesses can adhere to CDC guidelines:

- Unvaccinated individuals: Require 6 feet of social distancing and wear masks in most settings
- Vaccinated individuals: No social distancing or masks required, except certain settings

Businesses that congregate patrons and operate above the social gathering limit*

Businesses that do not congregate patrons and/or that operate below the social gathering limit

Businesses must require proof of vaccination via:

- Paper form
- Digital application
- State's Excelsior Pass

Businesses may rely upon self-reporting of vaccination status (e.g., honor system)

Businesses may decide to apply CDC guidance to the entire establishment or a separate, designated part of the establishment**

- Business capacity is only limited by the space available for patrons or parties of patrons to maintain the required distance
 - Businesses can operate up to 100% capacity so long as all attendees are fully vaccinated
- Implementation options to consider:
 - Assign part of space for vaccinated individuals based on % of the total capacity or absolute #
 - Assign different times to vaccinated and unvaccinated individuals

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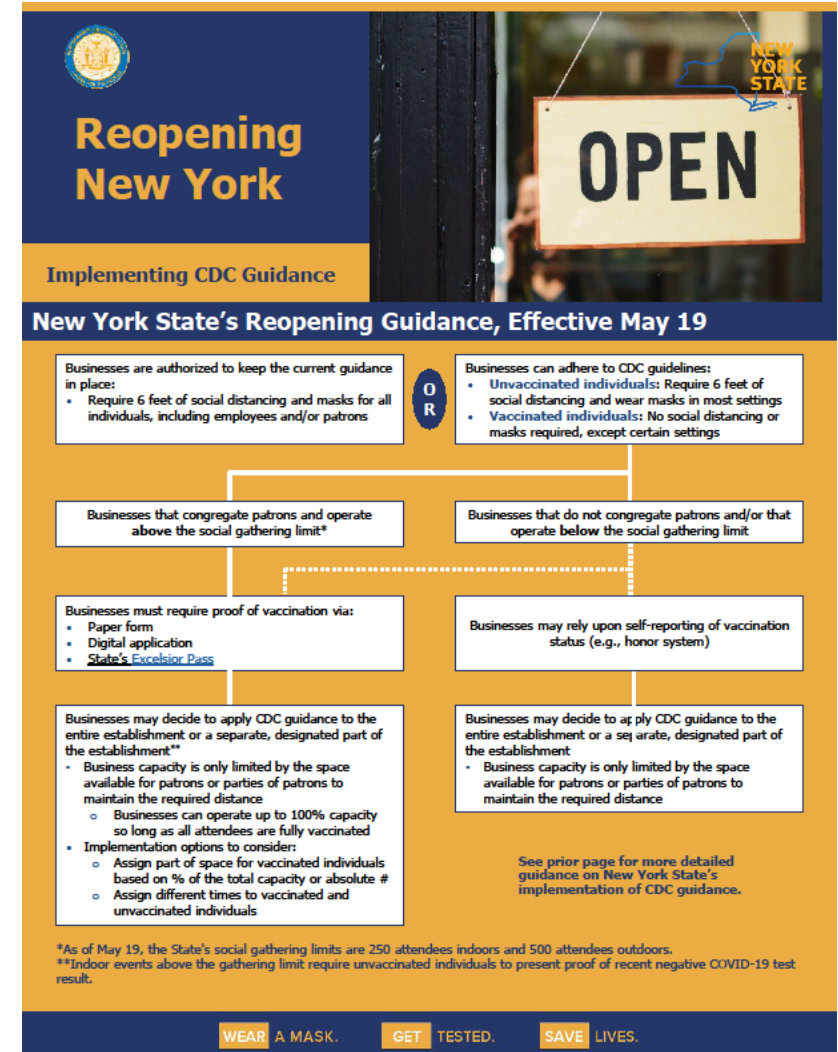
See prior page for more detailed guidance on New York State's implementation of CDC guidance.

*As of May 19, the State's social gathering limits are 250 attendees indoors and 500 attendees outdoors.
**Indoor events above the gathering limit require unvaccinated individuals to present proof of recent negative COVID-19 test result.

WEAR A MASK. GET TESTED. SAVE LIVES.

Plan in Place: Mask Mandates

- ❑ Employers can require proof of vaccination (vaccination records are medical records that must be kept confidential).
- ❑ Businesses may rely on the “honor system.”



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Plan in Place . . . “Report to the Office ASAP!”

- Remote Workers report they are more productive: Fewer interruptions, quieter work environment, more comfortable workspace.
- Remote Work enhances work/life balance and employee satisfaction; reduces commute time; allows for flexible work schedule.
- Remote Work expands the pool of available talent.
- Remote Work may result in cost savings (real estate, commuting) and enhance emergency preparedness.

Post-Pandemic Workplace Policies

Remote Work Policies

- When will remote work be permissible?
- Set and Document Expectations in writing.
- Revisit Periodically.
- Consistency.



Post-Pandemic Workplace Policies

- Video Conferencing.
- Company Equipment.
- Dress Codes.
- Work Hours.



Post-Pandemic: Performance Management

- Regular feedback is more important than ever. Remote work made it easier to avoid confronting performance challenges.
- Review performance appraisal forms. Does your performance evaluation form address pandemic skills, e.g., crisis management, remote work, etc.?
- Use performance review process to reset expectations.

Political Activism in the Workplace: NY Legal Activities Law

- ❑ Employers cannot take adverse employment actions based on:
 - ✓ “Political Activities” (running for public office, campaigning for a candidate, or participating in fund raising for candidate, party or PAC)
 - ✓ “Recreational Activities” (lawful, leisure-time activity)

so long as such activity is off-duty and does not create a material conflict of interest.

- ❑ Consistent response is essential. How has the Company handled similar situations in the past?

Social and Racial Activism in the Workplace

- Diversity, Inclusion and Equity Initiatives.
 - ✓ Hiring practices.
 - ✓ Equal pay assessment.
- Sexual Harassment Training.
 - ✓ Mandatory annual training is still required.
 - ✓ Training should address the new ways employees interact/communicate: Zoom, FaceTime, Teams, text messages, etc.

Additional Questions

**Domenique Camacho Moran, Partner
Head of the Labor + Employment Practice
Farrell Fritz, P.C.
dmoran@farrellfritz.com**