

# CLIENT ALERT: City of Boston Mandates COVID-19 Vaccine for Entrants of Certain Establishments

Citing concerns over climbing COVID-19 positivity rates and the desire to increase vaccinations, on December 20, 2021, the City of Boston **announced** that beginning January 15, 2022, certain public occupancy establishments will be required to confirm the vaccination status of their entrants, including employees. Subject to only limited exceptions discussed below, businesses covered by the order will be required to deny entry to patrons, employees, interns, volunteers, or contractors (including children) who fail to present proof of their vaccinated status. The program, referred to as “**B Together**,” follows similar efforts in New York, Los Angeles, and other cities.

## Applicability to Specific Businesses

The order applies to Covered Entities, defined to include entities that operate the following types of establishments (referred to as “Covered Premises”), subject to certain exceptions (discussed below):

- Indoor Food Service Establishments (indoor portions of restaurants, bars, and other food service establishments);
- Indoor Entertainment, Recreational, and Event Venues (movie theaters, music/event/theater venues, convention centers, bowling alleys, museums/galleries, indoor sports stadiums/arenas); and
- Indoor Gyms and Fitness Settings (commercial gyms, fitness studios, indoor pools, other group exercise class settings).

Those who “operate” the premises are responsible for compliance with the City’s order.

Businesses or situations that are exempted from the order include:

- Premises that are “not open to the general public.” This includes office and residential buildings whose use is limited to residents, owners, or tenants of that building.
- Food service establishments offering food and/or drink exclusively for off-premises or outdoor consumption, colleges or universities that have a vaccination requirement covering staff and students, and charitable food service establishments (e.g., soup kitchens); and
- Public and nonpublic school (pre-K and K-12) and programs, child care programs, senior centers, and community centers.

## Implementation Schedule

Covered Entities must confirm entrants’ vaccination status according to the following, phased-in schedule, which varies based on the entrant’s age and point in the vaccination process:

- January 15, 2022 – All individuals ages 12 and over: must present proof of at least one dose of vaccination.
- February 15, 2022 – All individuals ages 12 and over: must present proof of fully vaccinated status (i.e., two dose of two-dose vaccine, or one dose of one-dose vaccine).
- March 1, 2022 – All individuals ages 5 to 11: must present proof of at least one dose of vaccination.
- May 1, 2022 – All individuals ages 5 and over: must present proof of fully vaccinated status (i.e., two dose of two-dose vaccine, or one dose of one-dose vaccine).

Proof of vaccination status need not be an original vaccine card, but must clearly establish the entrant’s receipt of the COVID-19 vaccine. This can include a digital photo of a vaccine card, a digital image of a record from a vaccination site showing receipt of a vaccine, or a vaccination verification

app to be developed by the state or by the City of Boston, or otherwise endorsed by the City. Entrants need not present a photo ID along with proof of vaccination.

Currently, booster shots are not required by the order; however, it is possible the order may be modified to incorporate such a requirement in the future.

*Exceptions:* The vaccination status of the following non-employee individuals/groups need not be verified, even if they enter a Covered Premises, provided they wear a face mask at all times:

- Individuals entering for a quick and limited purpose (delivery/pickup, necessary repair, restroom visit);
- A performing artist not regularly employed by the covered entity while they are in a covered premises for purposes of performing;
- A professional athlete/sports team who enters a covered premises as part of their regular employment for purposes of competing; and
- An individual accompanying a performing artist or professional athlete/sports team into a covered premises as part of their regular employment so long as the performing artist or professional athlete/sports team are performing or competing in the covered premises.

## **Required Posting**

In addition to confirming vaccination status, Covered Entities are required to **post notice** of the order's requirement at their entrances. Public notices to be posted at the front entrance of indoor establishments are available in the languages most commonly spoken in each neighborhood.

## **Penalties For Noncompliance**

Violations are subject to fines of up to \$300.00, as well as orders of the Boston Public Health Commission to cease and desist. Each instance of failing to confirm an individual's vaccination status when required to do so constitutes a separate violation.

## **Additional Guidance**

The City of Boston has **launched a website** with some preliminary guidance for Boston businesses on compliance with the order. Further guidance may be forthcoming from the Boston Public Health Commission.

We expect that part of that guidance will address medical- or religious-based vaccine exemptions. As of the date of this alert, only a single entry under "Additional Questions" on the **City's website** addresses the topic of accommodations. That language acknowledges that "customers" claiming they cannot be vaccinated for medical reasons are entitled to a "cooperative dialogue" to determine whether an accommodation is possible; it states, however, that a "business does not have to provide a reasonable accommodation if doing so would create a direct threat (including contact with an unvaccinated individual) for other customers or employees of the business, or impose an undue hardship on the business." This language suggests that in most cases, exempting entrants from the vaccine requirement will be a *per se* unreasonable accommodation if they will come into contact with any other person, vaccinated or otherwise.

The City will be hosting **weekly information webinars for businesses** and taking questions on the order, including on December 21, 2021, December 29, 2021, January 4, 2022, and January 13, 2022.

## **Next Steps**

Boston employers should immediately take steps to determine initially whether they are subject to the order. With the first-phase compliance date mere weeks away, employers who determine they

are a “Covered Entity” should immediately advise employees, interns, volunteers, and contractors of the new vaccine requirement, begin the process of instituting and/or updating their vaccination policies, and ensure that required notice is posted.

In addition, businesses in the communities surrounding Boston should monitor their city or town orders, as it is possible that the City of Boston mandate causes other locations to implement a similar vaccine mandate.

As guidance on required and recommended COVID-19 compliance continues to change on a regular basis, employers are encouraged to work with their MBJ attorney to ensure they are complying with the rapidly-evolving guidance.

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