

August 17, 2021

**CLIENT ALERT – UPDATED**  
**OSHA GUIDANCE FOR ALL EMPLOYERS AND MANDATORY VACCINES**  
**FOR HEALTHCARE EMPLOYERS IN NEW YORK**

Dear Clients and Friends:

The COVID-19 Delta variant is surging, and the Lambda variant has shown up in the United States. With that backdrop, on Friday, August 13, 2021, the Occupational Health and Safety Administration (OSHA) updated its COVID-19 Guidance for Employers not subject to OSHA's COVID-19 Emergency Temporary Standard (ETS) for Healthcare. Since this guidance applies to most workplaces, Employers should use it as they implement safety precautions. In addition, New York joined the growing list of states requiring vaccination for hospital and long term care workers providing direct care to patients.

**OSHA Guidance**

OSHA previously issued guidance to primarily address unvaccinated workers and those with compromised immune systems. The updated guidance addresses mask and testing recommendations for fully vaccinated individuals and provides additional technical editing of the prior guidance. The complete guidance is available here: <https://www.osha.gov/coronavirus/safework>.

As expected, OSHA adopted the CDC recommendations that vaccinated employees wear a mask in public indoor settings in areas of substantial or high transmission. It also includes testing and quarantine requirements for vaccinated and unvaccinated individuals.

**Testing and Quarantine Requirements**

OSHA recommends “removing from the workplace all infected people, all people experiencing COVID symptoms and any people who are not fully vaccinated who have had close contact with someone with COVID-19 and have not tested negative for COVID-19 immediately.” Unvaccinated employees should be tested if symptoms develop. They should also be tested five (5) days after the contact even if symptoms do not develop. If they test negative and do not develop symptoms, they may return to work seven (7) days after the contact (wearing a mask).

Fully vaccinated people who have had close contact should get tested for COVID-19 3-5 days after exposure and be required to wear face coverings for 14 days after their contact unless they test negative for COVID-19.

Of course, some states have stricter requirements, and some New York County Departments of Health continue to require 10 or 14 day quarantines regardless of vaccination status. Employers are advised to check with their state and local Departments of Health regarding any more stringent requirements.

**Face Masks**

OSHA has recommended for some time that unvaccinated individuals be required to wear face masks in all areas where they cannot social distance. In the updated guidance, OSHA now recommends that fully vaccinated people in areas of substantial or high transmission should be required to wear face coverings inside as well. This means most employers should return to requiring masks in their workplaces regardless of vaccine status.

Employers are reminded that they are responsible to provide face masks for employees use. Employers are also cautioned against using N-95 masks unless you have an appropriate OSHA respiratory program and conduct both health assessments and fit tests.

## Other

OSHA continues to emphasize that the best way to prevent infection is vaccination and encourages employers to consider programs such as paid time off and on-site vaccination clinics to encourage vaccination.

OSHA also reminds employers in the guidance that there are other measures that can be taken such as “telework and flexible schedules, engineering controls (especially ventilation), administrative policies (e.g. vaccination policies), PPE, face coverings, physical distancing, and enhanced cleaning programs with a focus on high-touch surfaces.”

## New York to Require Mandatory Vaccines for Hospital and Long Term Care Employees

New York announced on Monday, August 16, 2021, that all “healthcare workers” at hospitals, and long-term care facilities, including nursing homes, adult care, and other congregate care settings, will be required to be vaccinated against COVID-19 by September 27. Employers will be allowed to consider religious and medical objections in accordance with EEOC guidance.

While the text of the Order has not yet been released, healthcare employers should begin the process of preparing policies and reasonable accommodation forms now. Such employers can also look at best practices and begin planning education programs for their employees to encourage vaccination.

## Conclusion

Hinman, Howard and Kattell, LLP remains ready to assist both healthcare clients and non-healthcare clients with preparing policies and accommodation forms and discussing best practices during these difficult times. Employers should review the OSHA guidance to ensure they are conforming to it in their workplaces. New York employers should also make sure their HERO Act policy is ready to be deployed should the Commissioner of Health/Commissioner of Labor declare a contingency requiring the policy to be deployed.

## Contact Your HH&K Attorney for Legal Guidance

This information is not legal advice and may not be suitable for all client situations. This Client Alert provides general information and does not outline all of the important considerations related thereto.

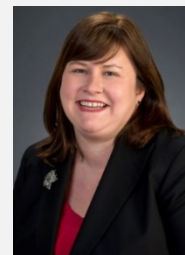
This Client Alert is not a substitute for legal guidance. As always, if we can be of assistance with these programs or any other matters, please do not hesitate to contact your HH&K attorney.



Thomas A. Conlon  
Partner  
80 Exchange Street  
Binghamton, NY 13901  
Phone: (607) 231-6744  
Email: [tconlon@hhk.com](mailto:tconlon@hhk.com)



John C. Fish  
Partner  
80 Exchange Street  
Binghamton, NY 13901  
Phone: (607) 231-6712  
Email: [jfish@hhk.com](mailto:jfish@hhk.com)



Dawn J. Lanouette  
Partner  
80 Exchange Street  
Binghamton, NY 13901  
Phone: (607) 231-6917  
Email: [dlanouette@hhk.com](mailto:dlanouette@hhk.com)

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