

New York State Updates Interim Guidance for Office Environments

Governor Cuomo Forecasts Lifting All Restrictions

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At long last, on June 8, 2021, the New York State Department of Health (“DOH”) released an [update](#) to Interim Guidance previously issued on May 15, 2021, containing current recommendations for employers that operate in an **office environment**. The Interim Guidance clarifies that employers have the option to continue to follow the federal Centers for Disease Control and Prevention ([“CDC” recommendations](#)), provided that they adhere to applicable guidelines for masking, distancing, and capacity, as outlined in New York State’s “Implementing CDC Guidance,” which became effective on May 19, 2021 (“May 19 Guidance”), summarized [here](#). The May 19 Guidance remains in effect.

The updated Interim Guidance is applicable to both essential and nonessential businesses with office-based work activity. Its issuance comes on the heels of Governor Andrew Cuomo’s [announcement](#) on Monday that most COVID-19 restrictions would be relaxed or lifted once 70 percent of New Yorkers aged 18 or older have received the first dose of their COVID-19 vaccination series. Importantly, as of today, the percentage of adults who have received at least one vaccine dose is [69.2 percent](#), and counting. Once the State hits the 70 percent threshold, the industry-specific guidance documents (including the Interim Guidance) become optional.

So What’s New, and What’s Not?

Employers are still required to, among other obligations, follow mandatory guidance regarding tracing and tracking efforts for any COVID-19 cases in the workplace, employee training, hygiene, cleaning and disinfection protocols, and posting requirements for safety plans¹ and COVID-19-related signs in the office, consistent with DOH COVID-19 signage.

¹ In addition, the safety plan requirements of the New York Health and Essential Rights Act (the “HERO Act”) that permanently codified COVID-19-related health and safety protocols will soon be applicable to employers, as previously reported [here](#).

A number of prior requirements and restrictions, however, have been eased. Important changes in the DOH Interim Guidance include the following:

- Capacity limits based on a building's maximum occupancy have been eliminated. Office-based environments are now limited only by social distancing requirements, as described below:
 - Mandatory social distancing among *fully vaccinated individuals* (i.e., those who completed the COVID-19 vaccination series at least 14 days prior) **is no longer required**, as long as all present are fully vaccinated.
 - Notwithstanding, **social distancing** remains **required** among all employees in locations where individuals are unvaccinated or vaccination status is unknown, or in **elevators** and other small spaces used by more than one person.

The practical application of these capacity rules appears to be that, to the extent all individuals in “the entire establishment” or “a separate, designated part of the establishment” (e.g., a conference room or lunch room) are all fully vaccinated, six feet of distancing is not required. If, however, any individual in that “establishment” or “designated part” is not vaccinated, social distancing must remain.

- Similarly, a distance of at least six feet must be maintained between all employees at all times in locations where vaccination status is unknown or in “unvaccinated sections (e.g., common areas), unless safety or the core activity requires a shorter distance.”
- Detailed masking instructions provided in the previous guidance were eliminated, and business owners/managers or their designated compliance officers (“Responsible Parties”) are directed instead to follow the state’s May 19 [Guidance](#), which generally permits fully vaccinated individuals to forego wearing face masks. Employers remain authorized, however, to require masks and to deny admittance to anyone who fails to wear one, as long as any mask rules applied are consistent with the federal Americans with Disabilities Act and New York City and New York State Human Rights Laws.
- Mandatory physical barriers, such as plexiglass screens, cubicle walls, or other partitions, are no longer required.
- The recommendation that employers implement “strict clean desk policies” has been stricken, but employers are still required to limit the use of shared workstations and to disinfect any such workstations between users.
- Requirements that employers take measures to reduce interpersonal contact have been eased, but remain as recommendations. Similarly, rather than recommending that employers **encourage** employees to work remotely, the updated guidance states that employers **may** permit employees to work from home. Prior advice regarding phased reopening has been eliminated.

Employers have discretion as to how to apply these guidelines, and are permitted to set policies and post signage related to the guidelines. For example, employers may request that unvaccinated persons practice social distancing, wear masks, and use separate elevators; employers may choose to limit capacity to allow for continued social distancing.

New Health Screening Guidelines

Employers are still required to implement health screening protocols for individuals—both employees and visitors—who enter their premises. Such screening, whether via signage, electronically, telephonically, or at the point of entry, should include the following screening questions, at a minimum:

- **Do you have, or have you, in the past 48 hours, had any symptoms of COVID-19?**

Symptoms of COVID-19 include fever or chills, cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, congestion or runny nose, nausea or vomiting, or diarrhea; a few of these symptoms may occur with pre-existing medical conditions, such as allergies or migraines, that have been diagnosed by a health care practitioner. In those cases, individuals should only answer "yes" if symptoms are new or worsening.

- **Have you had close or proximate contact with any person confirmed or suspected to have COVID-19 in the past 10 days?**

Close contact is being within six feet of an individual for 10 minutes or more within a 24-hour period, starting from two days before their symptoms developed or if asymptomatic, two days before they were tested.

This question does not apply to those who have (1) been fully vaccinated against COVID-19 with a Food and Drug Administration or DOH authorized COVID-19 vaccine—defined as 14 days after completion of the vaccine series or (2) fully recovered from a lab-confirmed COVID-19 case within the past three months.

- **Have you tested positive for COVID-19 through a diagnostic test in the past 10 days?**

In addition, New York permits employers to request proof of vaccination status, in paper or digital form. Notably, while the Interim Guidance states that a Responsible Party “may accept” various forms of proof of vaccination status, it does not clarify whether an employer must require such proof. It appears that, since the May 19 [Guidance](#), which permits employers to rely upon the self-reporting of vaccination status (aka the “honor system”), remains in effect, employers operating office spaces should continue to rely

on its instructions, i.e., they **may** require proof of vaccination (but are not mandated to do so), or may continue to rely on the self-reporting of vaccination status.

What New York Employers Should Do Now

The new Interim Guidance, while relaxing certain requirements, is still not completely clear with respect to the easing of social distancing and mask protocols. For best practices, even with forecasted elimination of COVID-19-related restrictions upon the achievement of a 70-percent first shot vaccination rate among adults in the state, we recommend as follows:

- Maintain at least six feet of distance between individuals in any situation where it is uncertain that all present are fully vaccinated.
- Encourage the continued use of masks in such settings, but it is permissible to permit fully vaccinated individuals to forego masks.
- Modify daily screening questions to those recommended above.
- Consider having your New York workforce affirm, or even prove, that they are vaccinated. However, remember that, as per recent [federal guidance](#) from the U.S. Equal Employment Opportunity Commission, any documents or information you may gather about an employee's COVID-19 vaccination status is confidential medical information that must be kept confidentially and stored separately from an employee's personnel file.

For more information about this Advisory, please contact:

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