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& KING ATTORNEYS

January 12, 2021

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Introduction



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Vaccinations Update



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Vaccination – Mandate Consideration

- EEOC Guidance
- EUA Considerations
- Religious and Disability Issues
- Collective Bargaining issues
- Protected Concerted Activity
- HR Considerations
- Safety Concerns



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Practical Considerations

- Vaccine Availability
- Impact of Refusal on the Employee
- Staffing the Workplace
- Education
- Incentives
- Accommodations – Working from Home



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Other Things to Keep in Mind

- Vaccine Availability
- Healthcare Employers/Providers
- Records and Related Issues
- Time may take some or these things away from us



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Update from Albany



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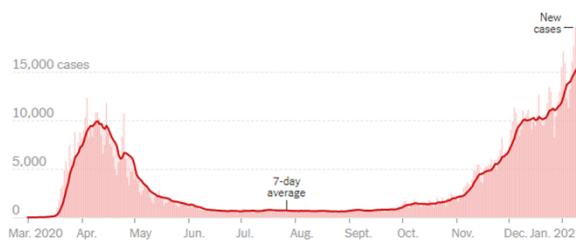
Albany, NY



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New York Coronavirus Map and Case Count

Updated January 12, 2021, 7:56 A.M. E.T.



The New York Times

	TOTAL REPORTED	ON JAN. 11	14-DAY CHANGE
Cases	1.1 million+	14,179	+47% →
Deaths	39,404	196	+27% →
Hospitalized	8,645		+22% →

Hospitalization data from the Covid Tracking Project; 14-day change trends use 7-day averages.



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<p>Eligible New Yorkers in Phase 1a and 1b are:</p> <ul style="list-style-type: none"> • High-risk hospital workers (emergency room workers, ICU staff and Pulmonary Department staff) • Residents and staff at nursing homes and other congregate care facilities • Federally Qualified Health Center employees • EMS workers • Coroners, medical examiners and certain funeral workers • Staff and residents at OPWDD, OMH and OASAS facilities • Urgent Care providers • Individuals administering COVID-19 vaccines, including local health department staff • All Outpatient/Ambulatory front-line, high-risk health care workers of any age who provide direct in-person patient care • All staff who are in direct contact with patients (i.e., intake staff) • All front-line, high-risk public health workers who have direct contact with patients, including those conducting COVID-19 tests, handling COVID-19 specimens and COVID-19 vaccinations • This includes, but is not limited to, <ul style="list-style-type: none"> ◦ Doctors who work in private medical practices and their staff ◦ Doctors who work in hospital-affiliated medical practices and their staff ◦ Doctors who work in public health clinics and their staff ◦ Registered Nurses ◦ Specialty medical practices of all types ◦ Dentists and Orthodontists and their staff ◦ Psychiatrists and Psychologists and their staff ◦ Physical Therapists and their staff ◦ Optometrists and their staff ◦ Pharmacists and Pharmacy Aides ◦ Home care workers ◦ Hospice workers • Staff of nursing homes/skilled nursing facilities who did not receive COVID vaccination through the Pharmacy Partnership for Long-Term Care Program <p>Beginning January 11, 2021:</p> <ul style="list-style-type: none"> • Individuals Age 65 and older • First Responders and Support Staff for First Responder Agencies <ul style="list-style-type: none"> ◦ Fire Service <ul style="list-style-type: none"> – State Fire Service, including firefighters and investigators (professional and volunteer) – Local Fire Services, including firefighters and investigators (professional and volunteer) ◦ Police and Investigators <ul style="list-style-type: none"> – State Police, including Troopers – State Police, DEC Police, Forest Rangers – SUNY Police – Sheriff's Offices – County Police Departments and Police Districts – City, Town, and Village Police Departments – Transit or other Public Authority Police Departments – State Field Investigators, including Department of Motor Vehicles, State Commission of Correction, Justice Center, Department of Financial Services, Inspector General, Department of Financial Services, Office of Children and Family Services and State Liquor Authority ◦ Public Safety Communications <ul style="list-style-type: none"> – Emergency Communication and Public Safety Answering Point Personnel, including dispatchers and technicians ◦ Other Sworn and Civilian Personnel <ul style="list-style-type: none"> – Court Officers – Other Police or Peace Officers ◦ Support of Civilian Staff for Any of the above services, agencies, or facilities • Corrections <ul style="list-style-type: none"> ◦ State Department of Corrections and Community Supervision Personnel, including correction and parole officers ◦ Local Correctional Facilities, including correction officers ◦ Local Probation Departments, including probation officers ◦ State Juvenile Detention and Rehabilitation Facilities ◦ Local Juvenile Detention and Rehabilitation Facilities • P-12 Schools <ul style="list-style-type: none"> ◦ P-12 school or school district faculty or staff (includes all teachers, substitute teachers, student teachers, school administrators, paraprofessional staff and support staff including bus drivers) ◦ Contractors working in a P-12 school or school district (including contracted bus drivers) • Licensed, registered, approved or legally exempt group Childcare Providers <ul style="list-style-type: none"> ◦ Employees or Support Staff of Licensed or Registered Childcare Setting • Public Transit <ul style="list-style-type: none"> ◦ Airline and airport employees ◦ Passenger railroad employees ◦ Subway and mass transit employees (i.e., MTA, LIRR, Metro North, NYC Transit, Upstate transit) ◦ Ferry employees ◦ Port Authority employees ◦ Public transit employees • Individuals living in a homeless shelter where sleeping, bathing or eating accommodations must be shared with individuals and families who are not part of the same household <ul style="list-style-type: none"> ◦ Individual working (paid or unpaid) in a homeless shelter where sleeping, bathing or eating accommodations must be shared by individuals and families who are not part of the same household, in a position where there is potential for interaction with shelter residents • In-person college instructors 	

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State of the State

- Governor's Annual State of the State began yesterday
 - Will take course over four days.
- Seven Agenda Items:
 1. Defeat COVID
 2. Vaccinations
 3. Short-term economic crisis
 4. Reopen economy
 5. Green energy transition
 6. Address long term impacts of COVID and capitalize on changes
 7. Address systemic injustices



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Biggest proposals announced (so far)

- Public Health Corps: hire 1,000 people to focus on vaccinations throughout the State
- Rapid testing network to help businesses reopen: set up network of testing sites, starting in NYC, to help get businesses open
- Rent and mortgage relief: codify Executive Orders to establish a statewide moratorium on commercial evictions until May 1 and to allow tenants to use their security deposit as immediate payment for late rent.



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Biggest proposals announced (so far)

- Expanding creation of statewide childcare options – grants to create programs in childcare deserts
- Expansion of internet access and lowering costs of high-speed internet
- Telehealth legislation to encourage and modernize use of telehealth
- Adult-use cannabis – estimated 60,000 new jobs
- Online sports betting – NYS Gaming Commission would issue an RFP to select one or more providers to offer mobile sports betting



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Other Legislation

- State Senate passed an election reform package yesterday
 - Speed up absentee ballot counting – officials must examine and determine validity of received absentee ballot envelopes 40 days prior to election; counting absentees to begin on second Sunday of early voting.
 - Authorize absentee ballot drop boxes
 - Prohibit voiding of absentee ballots based on technicalities where intent of voter is clear
 - Implement tracking system for absentee ballots
 - Constitutional Amendment – no excuse absentee voting



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Litigation Update



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Year-End Appropriations and COVID-19 Act Employee Benefit Changes



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COVID-Related Tax Relief Act and Consolidated Appropriations Act - Employee Benefit Provisions

- Retirement plan partial termination relief
- No extension of CARES Act coronavirus-related distribution and loan rules beyond 12/31/20
- Added major disaster-related distribution and loan rules
 - Similar to CARES Act rules
 - Applies to major disasters, other than COVID-19, up to 2/25/21
- Extends reimbursement of student loan repayments under education assistance plan through 12/31/25



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COVID-Related Tax Relief Act and Consolidated Appropriations Act - Employee Benefit Provisions

- Extended rules permitting election changes under flexible spending accounts (FSA) through 2021
- Allows FSA balance carryovers from 2020 to 2021 and from 2021 to 2022
- Allows extended FSA grace periods
- Allows FSA to permit continued reimbursements after individual ceases to participate in FSA (e.g., due to termination of employment)
- Adds special rules to permit use of dependent care FSA to reimburse childcare expenses for 13- and 14-year-old children
- These changes are optional



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COVID Cost Savings Compensation and Personnel Cost Savings



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Vaccinations Update

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Update from Albany

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Year-End Appropriations and COVID-19 Act

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