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Update from Albany

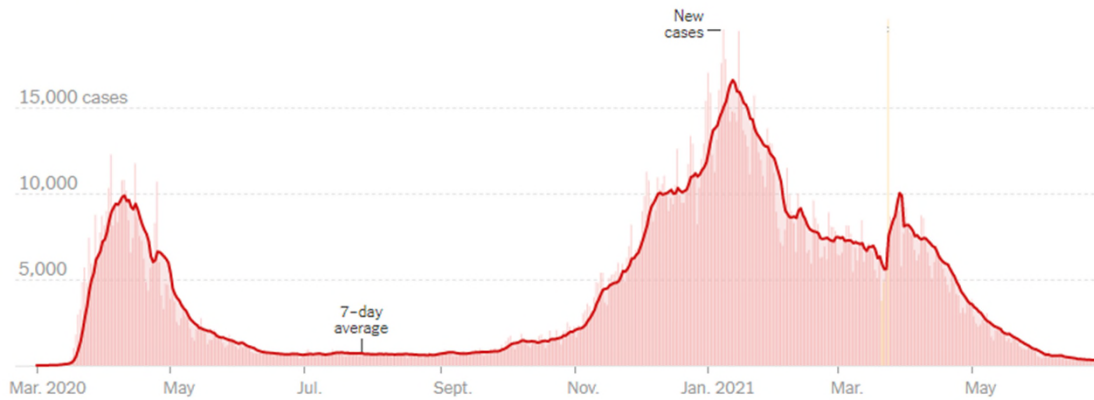


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New reported cases



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Vaccination progress

- All New Yorkers:
 - 54% fully vaccinated
 - 60% one dose
- 18 and older:
 - 65% fully vaccinated
 - 72% one dose

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JUNE 23, 2021 | Albany, NY

Governor Cuomo Announces New York Ending COVID-19 State Disaster Emergency on June 24

CORONAVIRUS

HEALTH

PUBLIC SAFETY



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What does that mean?

- **All executive orders have expired as of June 25.**
- Executive Order 210: "It has been determined that Executive Orders 202 through 202.111 and Executive Orders 205 through 205.3 are no longer necessary."



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What if we were reliant on an executive order?

- Need to adjust – quickly.
 - Many state agencies understand the quick turnaround, but need to get arrangements in order to comply with the law.
- Contact your relevant trade groups.



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Is everything gone?

- Nope!

Text of Emergency Regulations

	June 25, 2021 - Telehealth Services
	June 24, 2021 - Surge and Flex Health Coordination System
	June 24, 2021 - COVID-19 Vaccinations of Nursing Home and Adult Care Facility Residents and Personnel
	June 24, 2021 - Nursing Home Personal Protective Equipment (PPE) Requirements
	June 24, 2021 - Hospital Personal Protective Equipment (PPE) Requirements
	June 23, 2021 - Enforcement of Social Distancing Measures
	June 14, 2021 - Hospital Non-comparable Ambulance Acute Rate Add-on
	June 1, 2021 - Personal Caregiving and Compassionate Caregiving Visitors in Nursing Homes and Adult Care Facilities
	May 28, 2021 - Investigation of Communicable Disease; Isolation and Quarantine



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Emergency Regulations

- Enforcement of social distancing measures: face coverings required for unvaccinated people when social distancing cannot be maintained.
 - Penalties: \$1,000 per violation.



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Return to Office Plans and HERO Act Concerns



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NY Forward – What’s Next

- **Active Guidance:**

- Fairs and Festivals
- Large Scale Performing Arts & Entertainment
- Pre-K to Grade 12 Schools
- Professional Sports with Fans
- Public Transportation

- **Archived Guidance:**

- Agriculture, Forestry, Fishing
- Arts & Entertainment, Sports, Recreation
- Construction, Manufacturing, Trade
- Higher Education, Trade Schools, Child Care, Camps
- Food Services
- Offices, Real Estate, Commercial Building Management
- Personal Services (Hair Salons/Barbershops, Personal Care), Gyms
- Retail, Malls, Movie Theaters
- Private Transportation
- Dentistry
- Religious Funeral Services
- Media Production



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What Does This Mean

- If “Active Guidance” still applies → Must continue to adhere to guidance
- If “Archived Guidance” → Can choose to continue abiding by guidance, but not required
 - Organizations can still require masks and social distancing, regardless of vaccination status



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CDC Guidance... Still Relevant

- Organizations have two options:
 1. Continue to follow current guidance (require 6 ft social distancing, and masks for all individuals)
 2. Adhere to CDC Guidance:
 - Unvaccinated individuals must continue to wear masks and socially distance
 - Fully vaccinated employees do not need to wear masks or socially distance



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CDC Guidance Continued

- Businesses that do not congregate patrons/operate below social gathering limit*:
 - May rely on self-reporting (honor system/vaccination), **or**
 - May require proof of vaccination (CDC Immunization Card, digital app., Excelsior Pass)
 - May apply CDC guidance to entire establishment or separate/designated parts
 - Business capacity is only limited by space available for patrons/parties to maintain required distance

*Social gathering limit = 250 indoor, 500 outdoor



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CDC Guidance Continued

- Businesses that congregate patrons and operate above social gathering limit (250 indoor, 500 outdoor)
 - Must require proof of vaccination (CDC Immunization Card, digital app., Excelsior Pass)
 - May apply CDC guidance to entire establishment or separate/designated parts
 - Indoor events above gathering limit must require unvaccinated individuals to provide proof of recent negative COVID-19 test
 - Business capacity is only limited by space available for patrons/parties to maintain required distance
 - Note: Businesses can operate at 100% capacity if all attendees are fully vaccinated
 - Considerations:
 - Assigning part of space for vaccinated vs. unvaccinated based on % total capacity
 - Assigning different times to vaccinated/unvaccinated individuals



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Looking Forward

- NY HERO Act* – Reminder: requirement to adopt an airborne infectious disease exposure prevention plan
 - NYSDOL to publish model plans/standards by 7/5
 - Covered employers only have 30 days from when NYSDOL publishes the model plan(s)/standard(s) to adopt one or develop their own
- *(Private employers only)



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Lessons Learned - Reflection

- What worked well for you during the last ~16 months?
- How will you enforce your airborne infectious disease prevention plan (NY HERO Act) moving forward?
- Preparedness for future



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Gender Identity and Sexual Orientation: Tips for Employers



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Supreme Court Declines to Hear *Grimm* Case

- On June 29, 2021, the Supreme Court announced that it would not hear the case of Gloucester County School Board v. Gavin Grimm.
 - This refusal leaves in place the Fourth Circuit decision that mandated that Grimm be allowed to use the restrooms that corresponded with his gender identity.
 - This signals that the Supreme Court will not hear similar cases in the future, *i.e.*, that it other courts can rule the same way the Fourth Circuit.



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Supreme Court Decision(s)

June 15, 2020

Bostock v. Clayton County

Zarda v. Altitude Express

EEOC v. R.G. Harris Funeral Homes, Inc.



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Gender Expression Non-discrimination Act (GENDA)

- GENDA amended the Human Rights Law in 2019 by adding “gender identity or expression” as a protected category, defined as:
 - “A person’s actual or perceived gender-related identity, appearance, behavior, expression, or other gender-related characteristic regardless of the sex assigned to that person at birth, including, but not limited to, the status of being transgender”
- Protects the way a person expresses gender through speech, dress, and behavior



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Sexual Harassment

- Gender stereotyping is illegal sexual harassment
- Occurs when personality traits are considered inappropriate because they do not conform to other people’s ideas or perceptions about how individuals of either gender should look or act
- Extends to:
 - Looks, speech, personality, lifestyle,
 - Performing a job that is usually performed, or was performed in the past by persons of the opposite sex



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Pronoun Use

- Failure to use correct pronouns for individuals in the workplace is discrimination.
- Correct pronouns may include: they/them, he/him, she/her or ze/zem
- Illegal under NYC and NYS law; if use of incorrect pronouns is “severe and pervasive” harassment, illegal under Title VII as well.
 - In NYC, violators are subject to civil penalties of \$125,000, and up to \$250,000 for “willful” violations.
- Educate employees about the importance of correct pronouns, and impose consequences for violations.



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Customer Objections

- All of the employers who went before the Supreme Court argued that their customers felt uncomfortable or that their public image was affected by their employees’ gender or sexual orientation.
- However:
 - Presumed or actual customer/public prejudices are not sufficient bases to justify violations of Title VII or the NY/NYC Human Rights Law.
 - Loss of business or public perception are not defenses to an employer’s discriminatory actions.



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Religious Objections

- The NY/NYC Human Rights Laws, as well as Title VII, prevent discrimination on the basis of an employee's religion.
- An employers actual or perceived religious objections do not justify discrimination, nor do a co-workers beliefs justify the same.
- It is not a violation of an employee's religious rights in the workplace to require the employee to follow the law.
- Note: For religious institutions, Title VII does not apply to employees in "ministerial" positions.



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Tips for Employers

- Implement a Gender Identity and Sexual Orientation Non-Discrimination Policy
 - Pronoun use, name changes, restrooms, confidentiality, reporting harassment and discrimination
- Training for supervisors and employees as part of or separate from sexual harassment training
- Enforcing consistent consequences for violations



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U.S. Supreme Court Decision Regarding Students' First Amendment Rights



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Update from Albany

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U.S. Supreme Court Decision

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New York Employment Law: The Essential Guide

Bar Association Members can buy the book from the bar [here](#).

Non-Bar Association Members can purchase through Amazon [here](#).



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