


2022  
**BUSINESS IN 2021**  
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## Introduction



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## What's On My Desk . . . .



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## What's On My Desk....

- Remote Work Arrangements (In Other Jurisdictions)
- Harassment Training
- Handbook Policy Reviews
- Union Activity
- More Employment Claims...



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## Where Do Vaccination Mandates Stand for NY Employers?



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## Practical Advice on Religious Accommodations & New EEOC Guidance



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## Religious Accommodations

- On October 25, 2021, the EEOC released guidance specifically addressing whether employers must grant religious accommodations when a vaccine mandate is imposed.
- Overall, the Guidance states that the failure to provide for religious accommodations is in violation of Title VII.
- On October 28, 2021, the EEOC released its internal religious accommodation request form for public use.



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## Religious Accommodations

- The burden is on the employee to request an accommodation.
  - However, policy language should make clear that employees are able to ask for such accommodations.
- Employer should designate who will handle the religious accommodation request.
- Each request should be considered based on individual facts and circumstances.



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## Religious Accommodations

- Employees may be asked to explain the religious nature of their belief and should not assume that the employer already knows or understands it.
- The employer may ask for an explanation of how the employee's religious belief conflicts with the employer's COVID-19 vaccination requirement.
- An employee who fails to cooperate with an employer's reasonable request for verification of the sincerity or religious nature of a professed belief risks losing any subsequent claim that the employer improperly denied an accommodation.



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## Religious Accommodations

- The employee's sincerity in holding a religious belief is "largely a matter of individual credibility."
- Factors which may undermine credibility:
  - Actions inconsistent with professed beliefs;
  - Whether accommodation sought is desirable for non-religious reasons;
  - Timing of the request renders it suspect (follows a non-religious request for the same);
  - Other reasons to believe the accommodation is not sought for religious reasons



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## Religious Accommodations

- Possible accommodations include:
  - Remote work;
  - Reassignment;
  - Weekly testing;
  - Social distancing;
  - Increased PPE;
  - Unpaid leave;
  - Paid leave;
  - Others.

## Religious Accommodations

- Title VII does not protect social, political, or economic views, or personal preferences.
- Objections to COVID-19 vaccination that are based on social, political, or personal preferences, or on nonreligious concerns about the possible effects of the vaccine, do not qualify as “religious beliefs” under Title VII.

## Religious Accommodations

- If an employer demonstrates that it is unable to reasonably accommodate an employee's religious belief without an "undue hardship" on its operations, then Title VII does not require the employer to provide the accommodation.
- The determination of whether a particular proposed accommodation imposes an undue hardship on the conduct of the employer's business depends on its specific factual context.



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## Religious Accommodations

- The Supreme Court has held that requiring an employer to bear more than a "de minimis," or a minimal, cost to accommodate an employee's religious belief is an undue hardship. Costs to be considered include not only direct monetary costs but also the burden on the conduct of the employer's business – including, in this instance, the risk of the spread of COVID-19 to other employees or to the public.
  - Ex. The religious accommodation would impair workplace safety, diminish efficiency in other jobs, or cause coworkers to carry the accommodated employee's share of potentially hazardous or burdensome work.



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## Religious Accommodations

- If there is more than one reasonable accommodation that would resolve the conflict between the vaccination requirement and the sincerely held religious belief without causing an undue hardship under Title VII, the employer may choose which accommodation to offer.
- The obligation to provide religious accommodations absent undue hardship is a continuing obligation that takes into account changing circumstances.



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## Update from Albany



### Caitlin A. Anderson

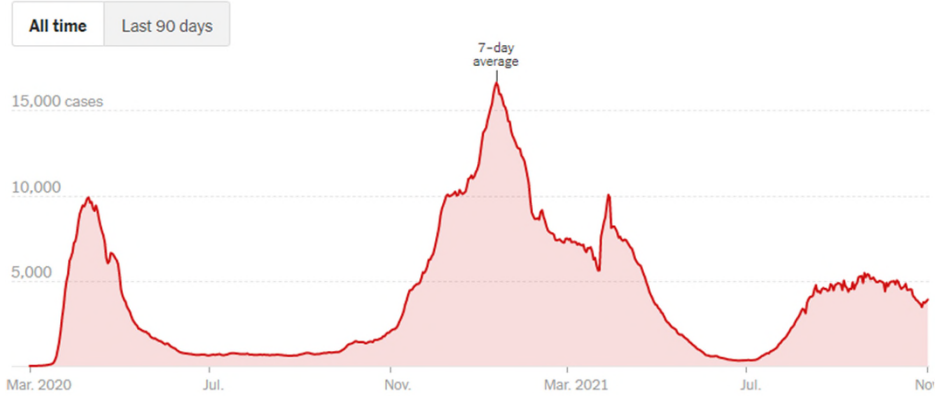
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New reported cases



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DAILY AVG. ON OCT. 25 14-DAY CHANGE

Cases	3,825	-24%
Tests	148,331	+4%
Hospitalized	2,415	-9%
Deaths	36	+1%

DAILY AVG. ON NOV. 1 14-DAY CHANGE TOTAL REPORTED

Cases	3,884	-13%	2,563,625
Tests	150,653	+10%	—
Hospitalized	2,313	-10%	—
Deaths	34	-6%	56,044

[About this data](#)

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## Vaccination progress

- All New Yorkers:
  - 67% fully vaccinated
  - 74% one dose
- 12 and older:
  - 77% fully vaccinated
  - 86% one dose

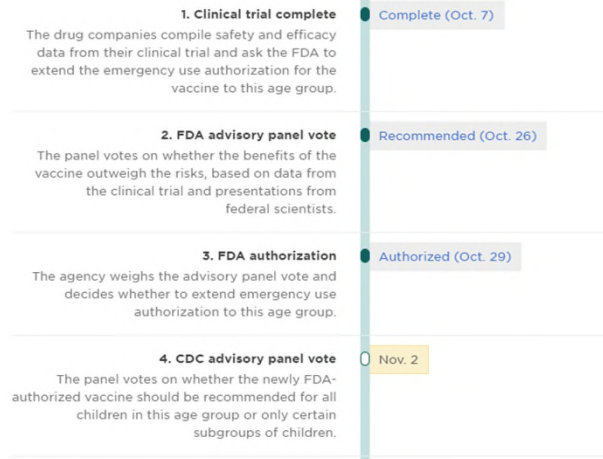
## COVID-19 Vaccine Updates

- CDC expected to approve giving COVID-19 vaccine to children **TODAY**.
- Currently: Children make up a quarter of all new cases of COVID-19.

## The road to vaccine authorization for 5-to-11-year-olds



### PFIZER-BIONTECH



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## NYC Vaccine Mandate

- All NYC municipal employees required to have at least one shot by Nov. 1.
- Workforce ~400,000; 9,000 placed on unpaid leave (~2.5%)

## Hero Act Designation Extended

**Commissioner's Designation Pursuant to Labor Law § 218-b for COVID-19**

**October 31, 2021**

On September 6, 2021, pursuant to Labor Law § 218-b and the associated regulation at 12 NYCRR 840.1, I designated COVID-19 as a highly contagious communicable disease that presents a serious risk of harm to the public health in New York State, in which the Centers for Disease Control and Prevention (CDC) has identified the level of transmission of such disease as "substantial" or "high." I hereby continue this designation until December 15, 2021, at which point I will review the level of transmission of COVID-19 in New York State and determine whether to continue this designation.

## NY Paid Leave Expansion Signed

- S.2928-A/A.6098-A signed by Governor Hochul yesterday.
  - Adds siblings to definition of family member for PFL
  - Includes biological, adopted, half-sibling, or step-sibling
  - Goes into effect on January 1, 2023



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## It's Election Day!

- Five ballot proposals:
  - Changes in redistricting process – cap number of Senators to 63, require all NYers to be counted regardless of citizenship status, count incarcerated people at place of last residence, not place of detainment.
  - Constitutional right to clean air, water, and a “healthful environment.”
  - Same day voter registration.
  - No excuse absentee ballots.
  - Changes to NYC civil courts – double monetary limit for claims filed in NYC from \$25,000 to \$50,000.



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