

# LABOR AND EMPLOYMENT LAW

## INFORMATION MEMO

DECEMBER 10, 2021

### NYS Health Department Issues New Mask Mandate

On Dec. 10, 2021, at the direction of Gov. Kathy Hochul, the acting commissioner of the New York State Department of Health issued a new mask mandate that applies to several specific public settings, including health care and adult care facilities, K-12 schools, correctional facilities, homeless shelters and public transportation centers and hubs. Importantly, the mask mandate also includes a general provision applicable to “all indoor public places” not otherwise covered by the mandate. This general provision is broadly applicable and impacts businesses across the state.

The mandate has several specific requirements, including the following:

- All persons over the age of 2 and able to medically tolerate a face covering/mask, regardless of vaccination status, must wear an appropriate face covering/mask in *any* indoor public place.
- The requirement does not apply to any indoor public area that requires proof of vaccination as a condition of entry.
- “Indoor public place” is defined as any indoor space that is not a private residence.

The mandate takes effect on Monday, Dec. 13, 2021, and remains in effect until Jan. 15, 2022, at which time it will be reevaluated. Violators of the mask mandate may be subject to a maximum fine of \$1,000 per violation.

In conjunction with the mandate, the Department of Health also issued Frequently Asked Questions, which address some of the issues created by this new requirement. For example, the FAQs clarify that “indoor public places” include publicly and privately owned public businesses such as entertainment venues, concert halls, indoor sports stadiums, recreational spaces, restaurants, office buildings, shopping centers and common areas in residential buildings.

With respect to office buildings, the FAQs state that if the office does not require proof of vaccination as a condition of entry, everyone must wear masks at all times regardless of vaccination status, except when eating, drinking or alone in an enclosed room.

The FAQs also clarify that a business may avoid the mask mandate by requiring proof of vaccination as a condition of entry. However, whichever requirement is selected, it must apply to all individuals within the business/venue’s capacity, including staff, patrons, visitors and guests. A business and venue cannot utilize a “combination” requirement.

We will continue to monitor the guidance and FAQs provided by the state and update this memorandum accordingly. If you have any questions about the information presented in this memo, please contact **Adam Mastroleo**, **Mallory Campbell**, any attorney in the **Labor and Employment** practice or the Bond attorney with whom you are regularly in contact.



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