

No. _____

In the
Supreme Court of the United States

AARON ABADI,

Petitioner,

v.

CITY OF NEW YORK,

Respondent.

APPENDIX

For the PETITION FOR WRIT OF CERTIORARI

Petitioner:

Aaron Abadi (Pro se)
82 Nassau Street Apt 140
New York, NY 10038
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aabadi@optonline.net

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22-1560-cv
Abadi v. City of New York

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007 IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 8th day of May, two thousand twenty-three.

PRESENT:

JOSÉ A. CABRANES,
JOSEPH F. BIANCO,
SARAH A. L. MERRIAM,
Circuit Judges.

Aaron Abadi,

Plaintiff-Appellant,

v.

22-1560-cv

City of New York,

Defendant-Appellee.

FOR PLAINTIFF-APPELLANT:

Aaron Abadi, *pro se*, New York, NY.

FOR DEFENDANT-APPELLEE:

Richard Dearing, Devin Slack, Chloe K. Moon, of Counsels, *for* Sylvia O. Hinds-Radix, Corporation Counsel of the City of New York, New York, NY.

Appeal from a judgment of the United States District Court for the Southern District of New York (Engelmayer, J.).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the appeal is **DISMISSED** as moot, the judgment of the district court is **VACATED**, and the case is **REMANDED** to the district court with instructions to enter a judgment of dismissal without prejudice.

Appellant Aaron Abadi, proceeding *pro se*, sued the City of New York (the “City”) under 42 U.S.C. § 1983, asserting that emergency orders requiring a COVID-19 vaccination to enter various indoor establishments (the “Key to NYC program”), or to work as an employee for the City, violated, *inter alia*, his rights to equal protection, bodily integrity, and freedom from false imprisonment. After previously denying Abadi’s motion for a preliminary injunction, the district court dismissed his amended complaint. The Key to NYC program ended on March 7, 2022, and the employee vaccination requirements for City workers ended on February 10, 2023.¹ We assume the parties’ familiarity with the underlying facts, the procedural history of the case, and the issues on appeal.

I. Mootness

Although the district court did not address mootness, we have an “independent obligation” to consider whether an appeal is moot. *United States v. Williams*, 475 F.3d 468, 479 (2d Cir. 2007); *see also Hassoun v. Searls*, 976 F.3d 121, 127 (2d Cir. 2020) (“When a case becomes moot, the federal courts lack subject matter jurisdiction over the action.” (alteration

¹ City of New York, *Coronavirus (COVID-19) Vaccine Mandates*, <https://portal.311.nyc.gov/article/?kanumber=KA-03448> (last visited May 3, 2023).

adopted) (internal quotation marks and citation omitted)). “A case is moot when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome.” *Tann v. Bennett*, 807 F.3d 51, 52 (2d Cir. 2015) (per curiam) (internal quotation marks and citation omitted). A case remains live, by contrast, when “a court can fashion *some* form of meaningful relief to award the complaining party.” *Exxon Mobil Corp. v. Healey*, 28 F.4th 383, 392 (2d Cir. 2022) (internal quotation marks and citation omitted). “The voluntary cessation of allegedly illegal activities will usually render a case moot if the defendant can demonstrate that (1) there is no reasonable expectation that the alleged violation will recur and (2) interim relief or events have completely and irrevocably eradicated the effects of the alleged violation.” *Mhany Mgmt., Inc. v. County of Nassau*, 819 F.3d 581, 603 (2d Cir. 2016) (internal quotation marks and citation omitted). As the Supreme Court recently explained, “even if the government withdraws or modifies a COVID restriction in the course of litigation, that does not necessarily moot the case” where the plaintiff “remain[s] under a constant threat that government officials will use their power to reinstate the challenged restrictions.” *Tandon v. Newsom*, 141 S. Ct. 1294, 1297 (2021) (per curiam) (internal quotation marks and citation omitted).

Here, both the Key to NYC program and the City’s employment vaccination requirement have expired. Moreover, there is no evidence in the record that would support the conclusion that the City is likely to reinstitute any such COVID-19 restrictions. *Cf. Fed. Defs. of N.Y., Inc. v. Fed. Bureau of Prisons*, 954 F.3d 118, 127 (2d Cir. 2020) (“[P]ublic health-related developments” as of March 20, 2020, concerning COVID-19 “suggest” that “circumstances that disrupted attorney-client visits at the MDC . . . are all too likely to recur.”). In other words, there is no basis to conclude that Abadi “remain[s] under a constant threat” that these restrictions

will be reinstated, *Tandon*, 141 S. Ct. at 1297 (internal quotation marks and citation omitted), and thus the possibility of any such future action is entirely a “speculative possibility.” *Lillbask ex rel. Mauclore v. Conn. Dep’t of Educ.*, 397 F.3d 77, 87 (2d Cir. 2005); *see also Conn. Citizens Def. League, Inc. v. Lamont*, 6 F.4th 439, 446 (2d Cir. 2021) (concluding that “[p]articularly in view of the mitigation measures that have become available to combat the spread of COVID-19, and the providential infrequency of pandemics,” the risk of a future COVID-19 restriction on firearm retailers was “speculative”).

Accordingly, we conclude that the City has met its burden of demonstrating that the voluntary cessation of the COVID-19 restrictions at issue renders plaintiff’s demands for injunctive and declaratory relief in this case moot. *See Weiss Haus v. Hochul*, No. 21-64, 2022 WL 17256755, at *1 (2d Cir. Nov. 29, 2022) (summary order) (holding, *inter alia*, “that the appeal [was] moot with respect to the district court’s denial of the preliminary injunction” related to the New York State Governor’s executive order mandating that certain travelers complete a health form for COVID-19 tracing where “[t]he record [was] devoid of support for the proposition that the Governor can reasonably be expected to reinstitute the traveler’s health form”); *Dark Storm Indus. LLC v. Hochul*, No. 20-2725, 2021 WL 4538640, at *1 (2d Cir. Oct. 5, 2021) (summary order) (holding that challenges to March 2020 COVID-19 executive orders were moot because the restrictions were lifted and New York State had demonstrated that the possibility of recurrence was speculative).

II. Standing

Plaintiff’s demands for money damages are not mooted by the repeal of the policies at issue, but we find that plaintiff lacked standing to bring these claims. The district court failed

to address the question of standing in its order on the motion to dismiss, but “[b]ecause the standing issue goes to this Court’s subject matter jurisdiction, it can be raised *sua sponte*.” *Cent. States Se. & Sw. Areas Health & Welfare Fund v. Merck-Medco Managed Care, L.L.C.*, 433 F.3d 181, 198 (2d Cir. 2005).

In order to have standing, a plaintiff must show that (1) he has suffered an “injury in fact[;]” (2) there is “a causal connection between the injury and the conduct complained of[;]” and (3) it is “likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992) (internal quotation marks and citation omitted). “To establish injury in fact, a plaintiff must show that he or she suffered an invasion of a legally protected interest that is concrete and particularized and actual or imminent, not conjectural or hypothetical.” *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339 (2016) (internal quotation marks and citation omitted).

Abadi lacks standing to challenge the Key to NYC policy because he has not pled an “injury in fact” suffered as a result of the policy. The Amended Complaint merely alleges, in a conclusory fashion, that plaintiff was “banned from . . . tens of thousands of public places throughout the city.” There is no allegation that Abadi ever attempted to enter an establishment and was turned away, or that he was denied any service because of the policy; his alleged injury is entirely “conjectural or hypothetical.” *Spokeo*, 578 U.S. at 339; *see also Carlone v. Lamont*, No. 21-871, 2021 WL 5049455, at *3 (2d Cir. Nov. 1, 2021) (summary order) (Plaintiff lacked standing to challenge a mask mandate because “the complaint does not state that [plaintiff] has ever actually been required to wear a mask or has been subject to enforcement of the mask mandate”).

Abadi also lacks standing to challenge the City's employment vaccination requirement. The Amended Complaint does not allege that plaintiff was a City employee, or that he applied for employment with the City, or was denied employment with the City. Abadi asserts that he has standing simply because he was interested in applying for employment with the City but decided against it because of the vaccination requirement. Abadi was not prevented from applying for the job because he was unvaccinated; he simply chose not to apply. Further, had Abadi been qualified for a position, applied for the position, been offered the position, and accepted the position, he could have applied for an accommodation waiving the vaccination requirement.² Abadi's alleged injury is purely hypothetical and does not confer standing. *See Spokeo*, 578 U.S. at 339.

CONCLUSION

For the foregoing reasons, we **DISMISS** the appeal as moot, **VACATE** the judgment entered by the district court, and **REMAND** the case to the district court with instructions to enter a judgment of dismissal without prejudice.³

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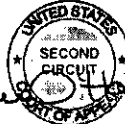
Catherine O'Hagan Wolfe, Clerk

United States Court of Appeals, Second Circuit

Catherine O'Hagan Wolfe

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk of Court



Catherine O'Hagan Wolfe

² See City of New York, *FAQ regarding New York City Employees and the COVID-19 Vaccine*, <https://www.nyc.gov/assets/dcas/downloads/pdf/guidelines/faq-vaccine-mandate.pdf> at 4-5 (discussing reasonable accommodations for City employees under vaccination policy) (last visited May 3, 2023).

³ Because the Court lacks subject matter jurisdiction on mootness and standing grounds, the amended complaint should be dismissed *without* prejudice. *See Katz v. Donna Karan Co.*, 872 F.3d 114, 116 (2d Cir. 2017) (“[A] complaint must be dismissed without prejudice where the dismissal is due to the court's lack of subject matter jurisdiction.”).

S.D.N.Y. – N.Y.C.
21-cv-8071
Engelmayer, J.
Cott, M.J.

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 16th day of June, two thousand twenty-two.

Present:

Debra Ann Livingston,
Chief Judge,
José A. Cabranes,
Michael H. Park,
Circuit Judges.

Aaron Abadi,

Plaintiff-Appellant,

v.

22-268

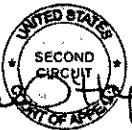
City of New York,

Defendant-Appellee.

Appellant, pro se, moves for leave to proceed in forma pauperis and a stay. Upon due consideration, it is hereby ORDERED that the motions are DENIED and the appeal is DISMISSED because it “lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *see* 28 U.S.C. § 1915(e).

FOR THE COURT:
Catherine O’Hagan Wolfe, Clerk of Court

Catherine O'Hagan Wolfe



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AARON ABADI,

Plaintiff,

-v-

CITY OF NEW YORK,

Defendant.

21 Civ. 8071 (PAE)

ORDER

PAUL A. ENGELMAYER, District Judge:

On February 4, 2022, the Court denied plaintiff Aaron Abadi's motion for a preliminary injunction against two executive orders related to COVID-19 vaccination requirements. Dkt. 24. On February 7, 2022, the defendant the City of New York (the "City") moved to dismiss Abadi's amended complaint. Dkt. 25. The same day, Abadi filed a notice of interlocutory appeal from the Court's opinion denying his request for emergency relief. Dkt. 28.

On March 9, 2022, the Court received a letter from the City arguing that the portions of Abadi's amended complaint challenging the Key to NYC program are now moot, because Mayor Eric Adams has lifted the vaccination requirements for restaurants, indoor gyms, and places of entertainment and recreation. Dkt. 30. Abadi responded, contesting the City's claim of mootness. Dkt. 31. On March 14, 2022, the Court held the motion to dismiss in abeyance pending the Circuit's resolution of Abadi's interlocutory appeal. Dkt. 32.

On July 14, 2022, the Circuit's mandate issued, denying Abadi's motions and summarily dismissing his appeal for "lack[ing] an arguable basis either in law or in fact." Dkt. 33 (quoting *Neitzke v. Williams*, 490 U.S. 319, 325 (1989)). For substantially the same reasons reviewed in the Court's opinion denying Abadi's motion for a preliminary injunction, *see* Dkt. 24, the Court

grants the City's motion to dismiss Abadi's claims, with prejudice. *See Cuoco v. Moritsugu*, 222 F.3d 99, 112 (2d Cir. 2000).

The Clerk of the Court is directed to close the motions pending at dockets 17 and 25 and to close this case.

SO ORDERED.

Dated: July 14, 2022
New York, New York

PAULA A. ENGELMAYER
United States District Judge

Name: Aaron Abadi | [REDACTED] | MRN: 9141633 | PCP: Yelena Karasina, MD

Letter Details



Yelena Karasina, MD
NYU LANGONE AMBULATORY CARE WEST SIDE
355 WEST 52ND ST
NEW YORK NY 10019-6239
Phone: 646-754-2100
Fax: 646-754-2148

December 3, 2020

Patient: **Mr. Aaron Abadi**
Date of Birth: [REDACTED]
Date of Visit: **12/3/2020**

To Whom it May Concern:

Mr. Aaron Abadi is suffering from extreme sensitivity to touch, mostly in the area of his head. For this reason he is unable to wear face mask or face shield, and should not be required to do so.
He has already recovered from COVID, and is not contagious.

Sincerely,

Yelena Karasina, MD

This letter was initially viewed by Aaron Abadi at 12/7/2020 9:41 AM.

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COVID-19

Reinfection with COVID-19

Updated Aug. 6, 2021

[Print](#)

Cases of reinfection with COVID-19 have been reported, but remain rare.

In general, reinfection means a person was infected (got sick) once, recovered, and then later became infected again. Based on what we know from similar viruses, some reinfections are expected. We are still learning more about COVID-19. Ongoing COVID-19 studies will help us understand:

- How likely is reinfection
- How often reinfection occurs
- How soon after the first infection can reinfection take place
- How severe are cases of reinfection
- Who might be at higher risk for reinfection
- What reinfection means for a person's immunity
- If a person is able to spread COVID-19 to other people when reinfected

Delta Variant

The Delta variant causes more infections and spreads faster than earlier forms of the virus that causes COVID-19. It might cause more severe illness than previous strains in unvaccinated people.

- Vaccines continue to reduce a person's risk of contracting the virus that cause COVID-19, including this variant.
- Vaccines continue to be highly effective at preventing hospitalization and death, including against this variant.
- Fully vaccinated people with breakthrough infections from this variant appear to be infectious for a shorter period.
- Get vaccinated and wear masks indoors in public spaces to reduce the spread of this variant.

[About the Delta Variant](#)[Variants in the US](#)

What CDC is doing

CDC is actively working to learn more about reinfection to inform public health action. CDC developed recommendations for public health professionals to help decide when and how to test someone for suspected reinfection. CDC has also provided information for state and local health departments to help investigate suspected cases of reinfection. We will update this guidance as we learn more about reinfection.

Important Ways to Slow the Spread of COVID-19

- Get a COVID-19 vaccine as soon as you can. Find a vaccine.
- Wear a mask that covers your nose and mouth to help protect yourself and others.
- Stay 6 feet apart from others who don't live with you.
- Avoid crowds and poorly ventilated indoor spaces.
- Wash your hands often with soap and water. Use hand sanitizer if soap and water aren't available.

More Information

How to Protect Yourself & Others

How Do I Find a COVID-19 Vaccine?

About Variants of the Virus that Causes COVID-19 | CDC

Choosing Safer Activities | CDC

Last Updated Aug. 6, 2021

Letter to the editor: Posner's pro se comments troubling

November 14, 2017

KEYWORDS 7TH CIRCUIT COURT OF APPEALS / 7TH CIRCUIT JUDGES / DEPARTMENT OF JUSTICE / JUDGE RICHARD A. POSNER / PRO SE

Richard A. Posner, a former 35-year member of the 7th Circuit Court of Appeals in Chicago, retired from the bench earlier than he had planned because of clashes with his fellow judges over the way the court treats litigants who represent themselves. Posner, 78, stated to the Chicago Daily Law Bulletin that he intended to stay on the court until he turned 80, but "difficulty" with his colleagues moved up that date. Posner said, "I was not getting along with the other judges because I was (and am) very concerned about how the court treats pro se litigants, who I believe deserve a better shake."

In another interview, he said that he began looking more closely at pro se cases including one that involved an inmate who died after repeatedly falling from a top bunk even though a doctor had said a brain tumor required that he sleep in a bottom bunk. His request was allegedly ignored. Posner said he noticed that pro se cases tended to get very casual treatment by the staff attorneys who prepare a memo recommending disposition of the appeal. He said the recommendation goes to a panel of judges, and they usually "rubber stamp" the staff attorney's memo, which is usually to dismiss the appeal. He said he was on the panel with two other judges and they agreed with the district judge and voted to dismiss, but he dissented. He said it was ridiculous to dismiss the family's appeal as the guard and warden were aware of a serious danger as their own medical staff had told them. Posner went on to say, "I think I was just going along with the culture of the court. None of the judges paid any attention to the pro ses, and I just never woke up to it until I saw this case. ... I gradually began to realize that this wasn't right, what we were doing."

If what Posner is saying is true, then we have a very serious problem in the 7th Circuit warranting the attention of the U.S. Department of Justice as these judges are violating the civil rights of the pro se litigants who are constitutionally entitled to their day in court. By law, 28 United States Code Section 453, every federal judge must take an oath affirming to "... administer justice without respect to persons, and do equal right to the poor and to the rich" and to "faithfully and impartially discharge and perform all the duties incumbent upon me as judge under the Constitution and laws of the United States. So help me God."

If what Posner is saying is true, the judges are violating their oaths with systematic dismissals of pro se appeals for the sole reason that the litigants are representing themselves. This is a blatant form of discrimination that violates federal law as the

and manage their own causes personally ... ". Posner stated that one of the former staff attorneys that he talked to recently said that the staff attorneys in recommending dismissal of the pro se cases "are doing what the judges want." This cannot be.

Posner was quoted in an interview as saying, "The basic thing is that most judges regard these people as kind of trash not worth the time of a federal judge."

These are very strong statements from a 35-year member of the court and are clearly indicative of systematic civil rights violations by the judges of the 7th Circuit against the people. If true, these judges not only violated their sworn oaths but broke the law. The U.S. Department of Justice cannot look the other way and must investigate these judges. The law is the law.

Posner should be commended for bringing this very serious matter to the attention of the public.

— *Brian Vukadinovich, Wheatfield*

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Emergency Executive Order 225

August 16, 2021

Key to NYC: Requiring COVID-19 Vaccination for Indoor Entertainment, Recreation, Dining and Fitness Settings

[Download Emergency Executive Order 225](#)

WHEREAS, the COVID-19 pandemic has severely impacted New York City and its economy, and is addressed effectively only by joint action of the City, State, and Federal governments;

WHEREAS, the state of emergency to address the threat and impacts of COVID-19 in the City of New York first declared in Emergency Executive Order No. 98, and extended most recently by Emergency Executive Order No. 220, remains in effect;

WHEREAS, this Order is necessary because of the propensity of the virus to spread person-to-person, and also because the actions taken to prevent such spread have led to property loss and damage;

WHEREAS, the U.S. Centers for Disease Control ("CDC") reports that new variants of COVID-19, classified as "variants of concern," are present in the United States;

WHEREAS, some of these new variants currently account for the majority of COVID-19 cases sequenced in New York City and are much more transmissible than earlier variants;

WHEREAS, the CDC has stated that vaccination is the most effective tool to mitigate the spread of COVID-19 and protect against severe illness;

WHEREAS, the CDC has also stated that vaccination benefits both vaccine recipients and those with whom they come into contact, including individuals who are ineligible for the vaccine due to age, health or other conditions;

WHEREAS, the recent appearance in the City of the highly transmissible Delta variant of COVID-19 has substantially increased the risk of infection;

WHEREAS, indoor entertainment, recreation, dining and fitness settings generally involve groups of unassociated people interacting for a substantial period of time and requiring vaccination for all individuals in these areas, including workers, will protect the public health, promote public safety, and save the lives of not just those vaccinated individuals but the public at large;

WHEREAS, 56% of City residents are fully vaccinated and 62% of residents have received at least one dose, and mandating vaccinations at the types of establishments that residents frequent will incentivize vaccinations, increasing the City's vaccination rates and saving lives; and

WHEREAS, a study by Yale University demonstrated that the City's vaccination campaign was estimated to have prevented about 250,000 COVID-19 cases, 44,000 hospitalizations and 8,300 deaths from COVID-19 infection since the start of vaccination through July 1, 2021, and the City believes the number of prevented cases, hospitalizations and death has risen since then; and that between January 1, 2021, and June 15, 2021, over 98% of hospitalizations and deaths from COVID-19 infection involved those who were not fully vaccinated;

NOW, THEREFORE, pursuant to the powers vested in me by the laws of the State of New York and the City of New York, including but not limited to the New York Executive Law, the New York City Charter and the Administrative Code of the City of New York, and the common law authority to protect the public in the event of an emergency:

Section 1. I hereby order that a covered entity shall not permit a patron, full- or part-time employee, intern, volunteer, or contractor to enter a covered premises without displaying proof of vaccination and identification bearing the same identifying information as the proof of vaccination.

§ 2. I hereby order that the following individuals are exempted from this Order, and therefore may enter a covered premises without displaying proof of vaccination, provided that such individuals wear a face mask at all times they are unable to maintain six (6) feet of distance from other individuals inside the covered premises:

- a. Individuals entering for a quick and limited purpose (for example, using the restroom, placing or picking up an order or service, changing clothes in a locker room, or performing necessary repairs);
- b. A nonresident performing artist not regularly employed by the covered entity while they are in a covered premises for purposes of performing;
- c. A nonresident professional athlete/sports team who enters a covered premises as part of their regular employment for purposes of competing; and
- d. A nonresident individual accompanying a performing artist or professional athlete/sports team into a covered premises as part of their regular employment so long as the performing artist or professional athlete/sports team are performing or competing in the covered premises.

§ 3. I hereby direct each covered entity to develop and keep a written record describing the covered entity's protocol for implementing and enforcing the requirements of this Order. Such written record shall be available for inspection upon a request of a City official as allowed by law.

§ 4. I hereby direct each covered entity to post a sign in a conspicuous place that is viewable by prospective patrons prior to entering the establishment. The sign must alert patrons to the vaccination

requirement in this Order and inform them that employees and patrons are required to be vaccinated.^{17a} The Department for Health and Mental Hygiene ("DOHMH") shall determine the text of such sign and provide a template on its website that a covered entity may use. A covered entity may use the sign available online at nyc.gov/keytoNYC, or use its own sign provided its sign must be no smaller than 8.5 inches by 11 inches, with text provided by DOHMH in at least 14-point font.

§ 5. For the purposes of this Order:

- a. "Contractor" means the owner and/or employees of any business that a covered entity has hired to perform work within a covered premise, except that it shall not include nonresident owners and/or employees.
- b. "Covered entity" means any entity that operates one or more covered premises, except that it shall not include pre-kindergarten through grade twelve (12) public and non-public schools and programs, child care programs, senior centers, community centers, or as otherwise indicated by this Order.
- c. "Covered premises" means any location, except a location in a residential or office building the use of which is limited to residents, owners, or tenants of that building, that is used for the following purposes:
 - i. **Indoor Entertainment and Recreational Settings**, including indoor portions of the following locations, regardless of the activity at such locations: movie theaters, music or concert venues, adult entertainment, casinos, botanical gardens, commercial event and party venues, museums and galleries, aquariums, zoos, professional sports arenas and indoor stadiums, convention centers and exhibition halls, performing arts theaters, bowling alleys, arcades, indoor play areas, pool and billiard halls, and other recreational game centers;
 - ii. **Indoor Food Services**, including indoor portions of food service establishments offering food and drink, including all indoor dining areas of food service establishments that receive letter grades as described in section 81.51 of the Health Code; businesses operating indoor seating areas of food courts; catering food service establishments that provide food indoors on its premises; and any indoor portions of food service establishment that is regulated by the New York State Department of Agriculture and Markets offering food for on-premises indoor consumption. The requirements of this Order shall not apply to any food service establishment offering food and/or drink exclusively for off-premises or outdoor consumption, or to a food service establishment providing charitable food services such as soup kitchens;
 - iii. **Indoor Gyms and Fitness Settings**, including indoor portions of standalone and hotel gyms and fitness centers, gyms and fitness centers in higher education institutions, yoga/Pilates/barre/dance studios, boxing/kickboxing gyms, fitness boot camps, indoor pools, CrossFit or other plyometric boxes, and other facilities used for conducting group fitness classes.
- d. "Indoor portion" means any part of a covered premises with a roof or overhang that is enclosed by at least three walls, except that the following will not be considered an indoor portion: (1) a structure on the sidewalk or roadway if it is entirely open on the side facing the sidewalk; and (2) an outdoor dining structure for individual parties, such as a plastic dome, if it has adequate ventilation to allow for air circulation.

- e. "Nonresident" means any individual who is not a resident of New York City.
- f. "Patron" means any individual 12 years of age or older who patronizes, enters, attends an event, or purchases goods or services within a covered premise.
- g. "Identification" means an official document bearing the name of the individual and a photo or date of birth. Examples of acceptable identification include but are not limited to: driver's license, non-driver government ID card, IDNYC, passport, and school ID card.
- h. "Proof of vaccination" means proof of receipt of at least one dose of a COVID-19 vaccine authorized for emergency use or licensed for use by the U.S. Food and Drug Administration or authorized for emergency use by the World Health Organization. Such proof may be established by:
 - i. A CDC COVID-19 Vaccination Record Card or an official immunization record from the jurisdiction, state, or country where the vaccine was administered or a digital or physical photo of such a card or record, reflecting the person's name, vaccine brand, and date administered; or
 - ii. A New York City COVID Safe Pass (available to download on Apple and Android smartphone devices); or
 - iii. A New York State Excelsior Pass.

§ 6. I hereby direct that each instance that a covered entity fails to check an individual's vaccination status shall constitute a separate violation of this Order.

§ 7. I hereby direct the City's Commission on Human Rights to develop guidance to assist covered entities in complying with this Order in an equitable manner consistent with applicable provisions of the New York City Human Rights Law.

§ 8. I hereby direct, in accordance with Executive Law § 25, that staff from any agency as may hereafter be designated by the DOHMH Commissioner shall enforce the directives set forth in this Order.

§ 9. I hereby direct that any person or entity who is determined to have violated this Order shall be subject to a fine, penalty and forfeiture of not less than \$1,000. If the person or entity is determined to have committed a subsequent violation of this Order within twelve months of the initial violation for which a penalty was assessed, such person or entity shall be subject to a fine, penalty and forfeiture of not less than \$2,000. For every violation thereafter, such person or entity shall be subject to a fine, penalty and forfeiture of not less than \$5,000 if the person or entity committed the violation within twelve months of the violation for which the second penalty was assessed. This Order may be enforced pursuant to sections 3.05, 3.07, and/or 3.11 of the Health Code and sections 558 and 562 of the Charter. I hereby suspend Appendix 7-A of Chapter 7 of the Rules of the City of New York to the extent it would limit a violation of this Order to be punished with a standard penalty of \$1,000 or a default penalty of \$2,000.

§ 10. Covered entities shall comply with further guidelines issued by DOHMH to further the intent of this Order and increase the number of vaccinated individuals in the City.

§ 11. This Emergency Executive Order shall take effect on August 17, 2021, except for section ^{19a} 9 of this Order, which shall take effect on September 13, 2021.

Bill de Blasio,
MAYOR

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Executive Order 78

August 31, 2021

Mandatory Vaccination or Test Requirement for City Employees and Covered Employees of City Contractors

[Download Executive Order 78](#)

WHEREAS, the COVID-19 pandemic poses a danger to the health and safety of the City of New York and its residents;

WHEREAS, the U.S. Centers for Disease Control ("CDC") reports that new variants of COVID-19, identified as "variants of concern," have emerged in the United States, and some of these new variants, which currently account for the majority of COVID-19 cases sequenced in New York City, are more transmissible;

WHEREAS, the CDC has stated that vaccination is an effective tool to prevent the spread of COVID-19 and benefits both vaccine recipients and those they come into contact with, including persons who for reasons of age, health, or other conditions cannot themselves be vaccinated;

WHEREAS, the City and its contractors provide services to all New Yorkers that are critical to the health, safety, and well-being of City residents, and should take reasonable measures to reduce the transmission of COVID-19 when providing such services;

WHEREAS, a study by Yale University demonstrated that the New York City Department of Health's vaccination campaign was estimated to have prevented about 250,000 COVID-19 cases, 44,000 hospitalizations and 8,300 deaths from COVID-19 infection since the start of vaccination through July 1, 2021, and the Department believes the number of prevented cases, hospitalizations and death has risen since then; and that between January 1, 2021, and June 15, 2021, over 98% of hospitalizations and deaths from COVID-19 infection involved those who were not fully vaccinated;

WHEREAS, it is essential that the City promote the best health and safety practices recognized in light of current scientific understanding of the conditions under which COVID-19 can spread; and

NOW, THEREFORE, by the power vested in me as the Mayor of the City of New York, it is hereby^{21a} ordered:

Section 1. City employees must either:

- a. Provide the City agency or office where they work with proof of full vaccination by September 13, 2021, or
- b. Beginning September 13, 2021, and on a weekly basis thereafter until the employee submits proof of full vaccination, provide the City agency or office where they work with proof of a negative COVID-19 PCR diagnostic test (not an antibody test).

Nothing in this Order shall preclude a City agency from requiring an employee who has been vaccinated to be tested for COVID-19 or preclude a City agency from requiring employees to be tested more frequently than once a week.

§ 2. Any City employee who does not comply with this Order may be subject to disciplinary action.

§ 3. All City agencies must take all necessary actions to require their contractors to require their covered employees to either:

- a. Provide their employer with proof of full vaccination by September 13, 2021, or
- b. Beginning September 13, 2021, and on a weekly basis thereafter until the employee submits proof of full vaccination, provide their employer with proof of a negative COVID-19 PCR diagnostic test (not an antibody test).

All such contractors shall submit a certification to their contracting agency confirming that they are requiring their covered employees to provide such proof. If contractors are non-compliant, the contracting City agencies may exercise any rights they may have under their contract.

§ 4. For purposes of this Order:

- a. The term "full vaccination" means at least two weeks have passed after a person received a single-dose of an FDA- or WHO- approved COVID-19 vaccine or the second dose of an FDA- or WHO- approved two-dose COVID-19 vaccine except that, for the purposes of this Order, a City employee or covered employee of a contractor who provides documentation of having received one dose of any COVID-19 vaccine before September 13, 2021 will be considered fully vaccinated even though two weeks have not passed since their final dose, so long as, if such City employee or covered employee of a contractor received a two-dose vaccine, the employee provides documentation that the second dose has been administered before October 28, 2021.
- b. The term "contract" means a contract awarded by the City, and any subcontract under such a contract, for work: (i) to be performed within the City of New York; and (ii) where employees can be expected to physically interact with City employees or members of the public in the course of performing work under the contract.
- c. The term "contractor" means a person or entity that has a City contract, including the subcontracts described in the definition of "contract."

d. The term "covered employee" means a person: (i) employed by a contractor or subcontractor holding a contract; (ii) whose salary is paid in whole or in part from funds provided under a City contract; and (iii) who performs any part of the work under the contract within the City of New York. However, a person whose work under the contract does not include physical interaction with City employees or members of the public shall not be deemed to be a covered employee.

e. The term "City employee" means a full or part-time employee, intern, or volunteer of a City agency.

§ 5. Each City agency shall send each of its contractors notice that the Mayor has directed contractors to comply with the requirement of section 3 of this Order and request a response from each such contractor, as soon as possible, with regard to the contractor's intent to follow this Order.

§ 6. This Order shall take effect immediately. Nothing in this Order shall affect the enforcement of other orders issued by the Mayor, the Commissioner of Citywide Administrative Services, the Commissioner of Health and Mental Hygiene, or the Board of Health.

Bill de Blasio,
MAYOR

**ORDER OF THE COMMISSIONER
OF HEALTH AND MENTAL HYGIENE
TO REQUIRE COVID-19 VACCINATION IN THE WORKPLACE**

WHEREAS, on March 12, 2020, Mayor Bill de Blasio issued Emergency Executive Order No. 98 declaring a state of emergency in the City to address the threat posed by COVID-19 to the health and welfare of City residents, and such Order remains in effect; and

WHEREAS, on March 25, 2020, the New York City Commissioner of Health and Mental Hygiene declared the existence of a public health emergency within the City to address the continuing threat posed by COVID-19 to the health and welfare of City residents, and such declaration and public health emergency continue to be in effect; and

WHEREAS, the COVID-19 virus continues to spread and mutate, and on November 26, 2021, the World Health Organization ("WHO") declared a new variant of COVID-19, named Omicron, a variant of concern and preliminary evidence suggests an increased risk of reinfection and spread across the world, including to the United States; and

WHEREAS, on November 26, 2021, New York State Governor Kathy Hochul issued Executive Order No. 11 to address new emerging threats across the State posed by COVID-19, finding that New York is experiencing COVID-19 transmission at rates the State has not seen since April 2020 and that the rate of new COVID-19 hospital admissions has been increasing over the past month to over 300 new admissions a day; and

WHEREAS, COVID-19 spreads when an infected person exhales the virus and these are breathed in by other people or land on their eyes, noses, or mouth, with people closer than 6 feet from the infected person most likely to get infected, making the risk of COVID-19 transmission greater in workplace settings because of close proximity to others and the sharing of office space and facilities such as restrooms, elevators, lobbies, meeting and break rooms, and other common areas; and

WHEREAS, the WHO and the U.S. Centers for Disease Control and Prevention ("CDC") have advised all individuals to take measures to reduce their risk of COVID-19, especially the Delta and Omicron variants, including vaccination, which is an effective tool to prevent the spread of COVID-19 and benefits both vaccine recipients and those they come into contact with, including persons who for reasons of age, health, or other conditions cannot themselves be vaccinated; and

WHEREAS, a study by Yale University demonstrated that the City's vaccination campaign was estimated to have prevented about 250,000 COVID-19 cases, 44,000 hospitalizations and 8,300 deaths from COVID-19 infection since the start of vaccination through July 1, 2021, and the City believes the number of prevented cases, hospitalizations and death has risen since then; and that between January 1, 2021, and June 15, 2021, over 98% of hospitalizations and deaths from COVID-19 infection involved those who were not fully vaccinated;

WHEREAS, a system of vaccination that requires employers to implement vaccination policies for their employees will potentially save lives, protect public health, and promote public safety; and

WHEREAS, on September 9, 2021, President Biden issued an Executive Order stating that “It is essential that Federal employees take all available steps to protect themselves and avoid spreading COVID-19 to their co-workers and members of the public,” and ordering each federal agency to “implement, to the extent consistent with applicable law, a program to require COVID-19 vaccination for all of its Federal employees, with exceptions only as required by law”; and

WHEREAS, on August 16, 2021, Mayor Bill de Blasio signed Emergency Executive Order No. 225, the “Key to NYC,” which requires the employees, as well as patrons, of establishments providing indoor entertainment, dining, and fitness to show proof of at least one dose of an approved COVID-19 vaccine, and such Order, as reissued in Emergency Executive Order No. 316 on December 13, 2021, is still in effect; and

WHEREAS, on August 24, 2021, I issued an Order requiring that Department of Education employees, contractors, and visitors provide proof of COVID-19 vaccination before entering a DOE building or school setting, and such Order was re-issued on September 12 and 15, 2021, and subsequently amended on September 28, 2021, and such Orders and amendment were ratified by the Board of Health on September 17, 2021 and October 18, 2021; and

WHEREAS, on September 12, 2021, I issued an Order requiring that staff of early childhood programs or services provided under contract with the Department of Education or the Department of Youth and Community Development provide proof of COVID-19 vaccination, and that Order was ratified by the Board of Health on September 17, 2021; and

WHEREAS, on October 20, 2021, I issued an Order requiring that City employees provide proof of vaccination to their agencies or offices by October 29, 2021 or be excluded from their workplace, and on October 31, 2021, I issued a supplemental Order, and both Orders were ratified by the Board of Health on November 1, 2021; and

WHEREAS, on November 17, 2021, I issued an Order requiring COVID-19 vaccinations for staff of child care programs, as defined therein, and in early intervention programs, and such Order was ratified by the Board of Health on November 19, 2021; and

WHEREAS, on December 2, 2021, I issued an Order requiring COVID-19 vaccinations for all nonpublic school staff and volunteers; and

WHEREAS, pursuant to Section 558 of the New York City Charter (the “Charter”), the Board of Health may embrace in the Health Code all matters and subjects to which the power and authority of the Department of Health and Mental Hygiene (“the Department”) extends; and

WHEREAS, pursuant to Section 556 of the Charter and Section 3.01(c) of the Health Code, the Department is authorized to supervise the control of communicable diseases and

conditions hazardous to life and health and take such actions as may be necessary to assure the maintenance and protection of public health; and

WHEREAS, Section 17-104 of the New York City Administrative Code (“Administrative Code”) directs the Department to adopt prompt and effective measures to prevent the communication of infectious diseases such as COVID-19, and in accordance with Section 17-109(b) of Administrative Code, the Department may adopt vaccination measures to effectively prevent the spread of communicable diseases; and

WHEREAS, pursuant to Section 3.01(d) of the Health Code, I am authorized to issue orders and take actions that I deem necessary for the health and safety of the City and its residents when urgent public health action is needed to protect the public health against an existing threat and a public health emergency has been declared pursuant to such section; and

NOW THEREFORE, I, Dave A. Chokshi, MD, MSc, Commissioner of the Department of Health and Mental Hygiene, finding that a public health emergency within New York City continues, and that it is necessary for the health and safety of the City and its residents, do hereby exercise the power of the Board of Health to prevent, mitigate, control and abate the current emergency, and hereby order that:

1. Beginning December 27, 2021, workers must provide proof of vaccination against COVID-19 to a covered entity before entering the workplace, and a covered entity must exclude from the workplace any worker who has not provided such proof, except as provided in paragraph 5.
2. Covered entities shall verify workers’ proof of vaccination. Covered entities shall:
 - a. maintain a copy of each worker’s proof of vaccination and, if applicable, a record of reasonable accommodation(s) as described in (b)(iv); *OR*
 - b. maintain a record of such proof of vaccination, provided that such record shall include:
 - i. the worker’s name; and
 - ii. whether the person is fully vaccinated; and
 - iii. for a worker who submits proof of the first dose of a two-dose vaccine, the date by which proof of the second dose must be provided, which must be no later than 45 days after the proof of first dose was submitted; and
 - iv. for a worker who does not submit proof of COVID-19 vaccination because of a reasonable accommodation, the record must indicate that such accommodation was provided, and the covered entity must separately maintain records stating the basis for such accommodation and any supporting documentation provided by such worker; *OR*
 - c. check the proof of vaccination before allowing a worker to enter the workplace and maintain a record of the verification.

For a non-employee worker, such as a contractor, a covered entity may request that the worker's employer confirm the proof of vaccination in lieu of maintaining the above records. A covered entity shall maintain a record of such request and confirmation.

Records created or maintained pursuant to this section shall be treated as confidential.

A covered entity shall, upon request by a City agency, make available for inspection records required to be maintained by this section, consistent with applicable law.

3. No later than December 27, 2021, a covered entity shall affirm on a form provided by the Department compliance with the requirements of paragraph 2 of this Order and post the affirmation in a conspicuous location.
4. For purposes of this Order:
 - a. "Covered entity" means:
 - i. a non-governmental entity that employs more than one worker in New York City or maintains a workplace in New York City; or
 - ii. a self-employed individual or a sole practitioner who works at a workplace or interacts with workers or the public in the course of their business.
 - b. "Fully vaccinated" means at least two weeks have passed after an individual received a single dose of a COVID-19 vaccine that requires only one dose, or the second dose of a two-dose series of a COVID-19 vaccine approved or authorized for use by the Food and Drug Administration or World Health Organization, or any other circumstance defined by the Department in its guidance associated with this Order.
 - c. "Proof of vaccination" means one of the following documents demonstrating that an individual has (1) been fully vaccinated against COVID-19; (2) received one dose of a single-dose COVID-19 vaccine; or (3) received the first dose of a two-dose COVID-19 vaccine, provided that a worker providing proof of only such first dose provides proof of receiving the second dose of that vaccine within 45 days after receiving the first dose:
 - i. A CDC COVID-19 Vaccination Record Card or other official immunization record from the jurisdiction, city, state, or country where the vaccine was administered, or from a healthcare provider or other approved immunizer who administered the vaccine, that provides the person's name, vaccine brand, and date of administration. A digital photo or photocopy of such record is also acceptable.
 - ii. New York City COVID Safe App showing a vaccination record;
 - iii. A valid New York State Excelsior Pass/Excelsior Pass Plus;
 - iv. CLEAR Health Pass; or

v. Any other method specified by the Commissioner as sufficient to demonstrate proof of vaccination.

d. "Worker" means an individual who works in-person in New York City at a workplace. Worker includes a full- or part-time staff member, employer, employee, intern, volunteer or contractor of a covered entity, as well as a self-employed individual or a sole practitioner.

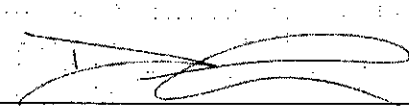
Worker does not include:

- i. an individual who works from their own home and whose employment does not involve interacting in-person with co-workers or members of the public;
- ii. an individual who enters the workplace for a quick and limited purpose; or
- iii. non-City residents who are performing artists, college or professional athletes, or individuals accompanying such performing artists or college or professional athletes who do not have to display proof of vaccination pursuant to the Key to NYC program, Emergency Executive Order No. 316 and successor Orders.

e. "Workplace" means any location, including a vehicle, where work is performed in the presence of another worker or member of the public.

5. Nothing in this Order shall be construed to prohibit reasonable accommodations for medical or religious reasons.
6. This Order shall not apply to covered entities or individuals who are already subject to another Order of the Commissioner of the Department, Board of Health, the Mayor, or a State or federal entity that is in effect and requires them to maintain or provide proof of full vaccination or to individuals who have been granted a reasonable accommodation pursuant to such requirement.
7. This Order shall take effect immediately, and remain in effect until rescinded, subject to the authority of the Board of Health to continue, rescind, alter, or modify this Order pursuant to Section 3.01(d) of the Health Code.

Dated: December 13, 2021


 Dave A. Chokshi, MD, MSc
 Commissioner

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NYC**Job Description****Senior Contract Manager**

Proposed Salary Range \$ 84,451.00 - \$113,550.00 (Annual)

As of August 2, 2021, all new hires must be vaccinated against the COVID-19 virus, unless they have been granted a reasonable accommodation for religion or disability. If you are offered city employment, this requirement must be met by your date of hire, unless a reasonable accommodation for exemption is received and approved by the hiring agency.

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