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Automobile Dealers
Association



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TITLE PROCESSING SERVICE

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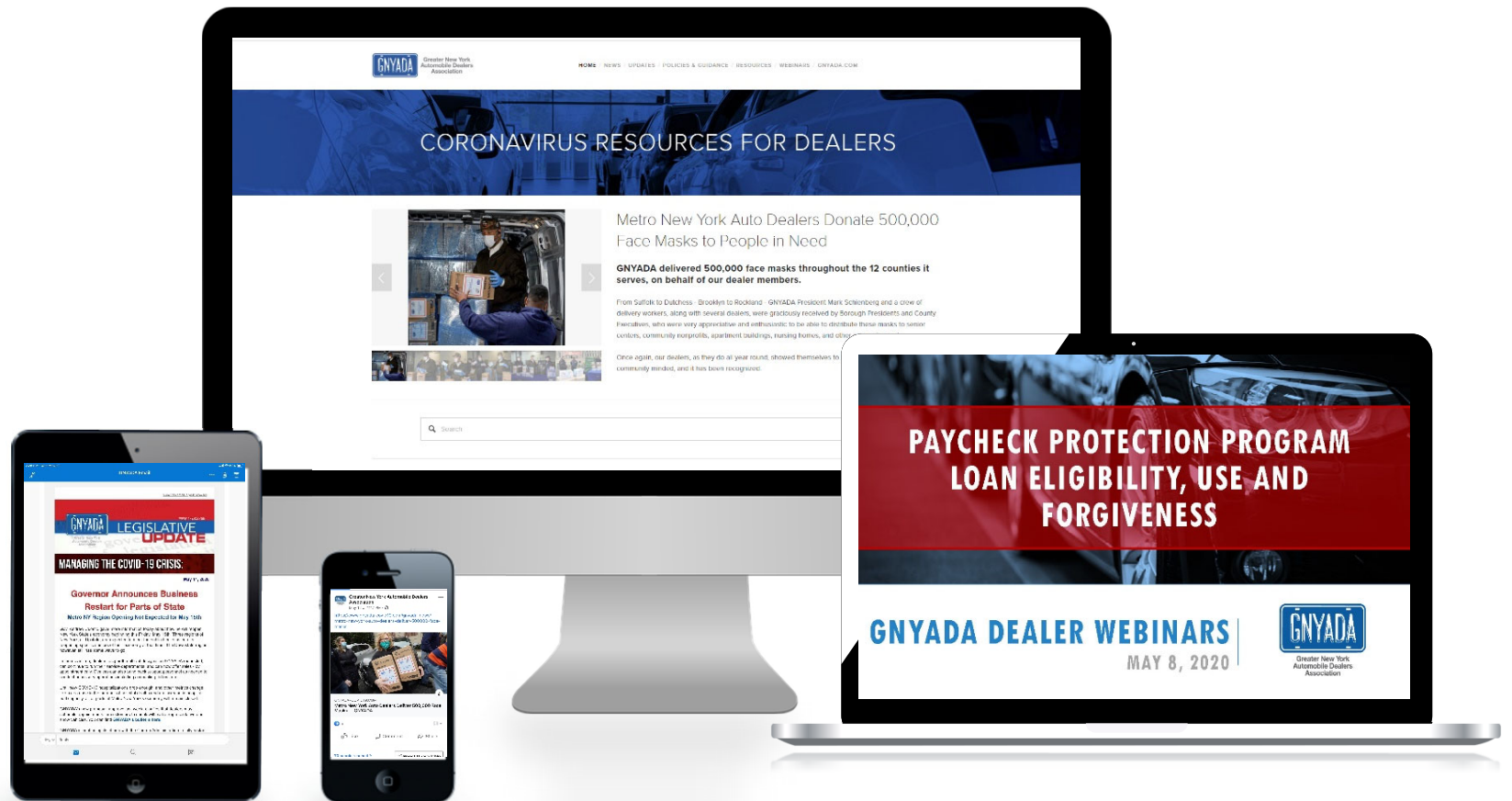


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Greater New York Automobile Dealers Association



New York City Vaccine Mandate for Private Employers

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DISCLAIMER

-This presentation is provided for informational purposes only and is not intended as legal advice. Dealers should contact their lawyers and professional advisors for details about federal, state, or local laws.



Mandate Overview

- On December 15, 2021, the New York City Commissioner of Health and Mental Hygiene published his Order mandating vaccination from COVID-19 (“vaccine mandate”).
- By December 27, 2021, covered employers must receive proof that all covered employees entering the workplace have received at least the first dose of a two-dose vaccine and must exclude employees from the workplace who have not provided such proof.



Fully Vaccinated

- Defined by the Mandate and CDC as at least two weeks after an individual:
 - Received a single dose of a COVID-19 vaccine requiring one dose (i.e., Johnson & Johnson);
 - OR
 - Received the second dose of a two-dose COVID-19 vaccine (i.e., Moderna or Pfizer-BioNTech)
-



Who Is A Covered Employer?

- An employer who employs more than one employee in NYC or maintains a workplace in NYC (i.e., a dealership).
 - A “workplace” means any location where work is performed in the presence of another worker OR member of the public.
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Covered Employer's Obligations

- Prior to allowing employees into the workplace, verify covered employees' proof of vaccination and maintain a record of such proof and, if applicable, record of the reasonable accommodation.
 - Exclude employees from the workplace who fail to provide proof.
 - Employers can confirm an employee's vaccination status by receipt and review of an employee's CDC Vaccination Card, NYC COVID Safe App, NY State Excelsior Pass or NY State Excelsior Pass Plus, or CLEAR Health Pass.
 - For non-employee workers, such as a contractors, a covered employer may request that the contractor's employer confirm proof of vaccination.
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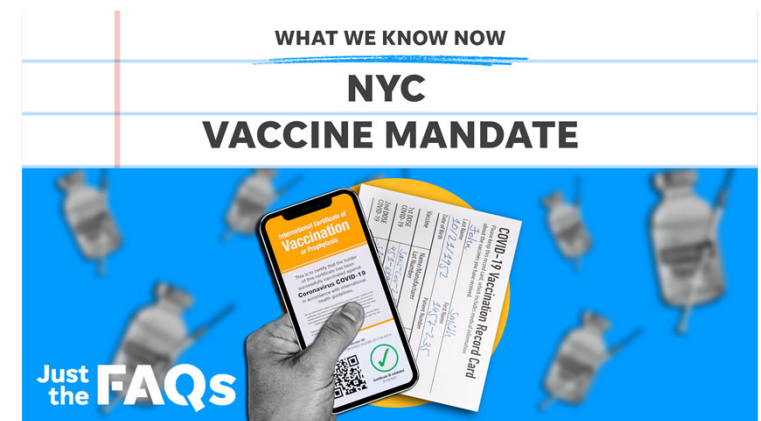
Employees Who Refuse To Get Vaccinated

- The mandate only requires that employers *exclude* unvaccinated employees (who have not applied for a reasonable accommodation) from the workplace.
- It does not require that excluded employees be disciplined or terminated.
- Employers with a unionized workforce may have to discuss the effects of the mandate with the Union.



Employees not yet fully vaccinated

- The vaccine order only requires that employees submit proof that they have received at least the first dose of a two-dose vaccine series.
- Employers must seek and received proof of the second dose no later than 45 days after the proof of the first dose was submitted.
- Employees with one shot can enter the workplace.
- Employees with pending or approved accommodation requests can enter the workplace.



Covered Employer's Obligations

- Employers must sign an affirmation of compliance indicating that they are in compliance with the mandate.
- Employers must post this affirmation in a conspicuous location (such as a dealership entrance).



TO BE POSTED IN PUBLIC-FACING LOCATION **NYC**

**Affirmation of Compliance With
Workplace Vaccination Requirements**

Name of Business

Street Address

City State ZIP Code

I affirm that I have read the December 13, 2021 Order of the New York City Commissioner of Health requiring vaccination of workers and that my workplace is in compliance with the Order.

Signature Date

Name (printed)

Title

Who Is A Covered Employee?

- Any individual who works in-person in NYC including:
 - Full-time or part-time employees;
 - Interns;
 - Volunteers and;
 - Contractors (remember...confirming their vaccination status, in writing, with their employer is sufficient).
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Who Is Not A Covered Employee?

– An employee who works from their home and whose employment does not involve interacting in-person with co-workers or members of the public.

(We appreciate that remote work is not a viable option for most dealership employees)



Reasonable Accommodations

- Pursuant to the mandate, employees have the right to seek an accommodation for medical and religious reasons. Accordingly, employees may be entitled to an accommodation exempting them from vaccination pursuant to relevant federal, state, and city laws. For an employer who is considering such an accommodation:
 - Consider using forms provided by DOHMH and the Commission on Human Rights Fact Sheet
 - Consider the usage of standardized forms to ensure consistency among requesting employees
 - Maintain records documenting that the accommodation was provided.
 - Separately maintain records stating the basis for the accommodation and any supporting documentation provided by the employee.
 - Employers should promptly handle any requests submitted as the City may review an employer's process and records.
-

Develop An Accommodation Protocol

- Develop a protocol for those employees who are granted an accommodation exempting them from becoming vaccinated. Examples of protocol include:
 - Remote Work
 - Weekly COVID-19 Testing
 - Mandatory Mask Policy



NYC Vaccine Mandate v. OSHA ETS

- Employers who may be covered by OSHA's Emergency Temporary Standard ("ETS") are probably asking themselves, which order do I follow?
- The NYC Mandate relieves the need to guess. The Mandate FAQ, published by the DOHMH, explicitly states "Covered entities or individuals who are covered by the OSHA rule...must comply with this order—their workers must be vaccinated if they do not have a reasonable accommodation".



Penalty for Noncompliance?

- Employers who refuse to comply with the mandate are subject to fines starting at \$1,000.
- Fines may escalate if violations continue.



NYC Vaccination Mandate & NY Labor Law

- NY Labor Law prevents employers from requiring that employees pay for medical examinations required as a condition of employment (i.e., Rapid or PCR COVID tests).
- NY Labor Law requires that employers grant employees up to four (4) hours of paid leave for each shot that an employee receives, including booster shots.



Takeaways

If you have not already...

- Develop a mandatory vaccine policy or review and revise any existing policy
- Request and gather proof of vaccination from employees
- Develop procedures to handle medical and religious exemption requests.





Questions?

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