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Labor & Employment Alert

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New York requires weekly COVID-19 testing for P-12 school personnel

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New York State public and private school employers must prepare to comply with mandatory routine COVID-19 testing rules.



What's the Impact

- / The emergency regulation and determination letter spell out which public and private schools and personnel are subject to the testing requirements
- / Fully vaccinated school personnel are eligible to opt out of testing, subject to applicable procedures
- / Additional concerns are discussed in the state's interim school reopening guidelines

Yesterday, consistent with Governor Hochul's plan to reopen schools safely, New York's Public Health and Health Planning Council passed an [emergency regulation](#)¹ that provides the New York Department of Health's Commissioner (the "Health Commissioner") with authority to

¹ This emergency regulation will become effective upon filing with the Secretary of State and will expire 90 days from the date of that filing unless it is renewed.

require routine COVID-19 testing for all covered “teachers and staff,” or proof of vaccination in lieu of testing, in all schools in New York State, including private and charter schools.

Given this authority, the Health Commissioner issued a [determination letter](#) requiring “P–12 schools ... to ensure teachers and staff ... have testing performed for COVID-19 at least once per week when a school is in a geographic area identified by the CDC as having low, moderate, substantial, or high transmission rates.” However, there is an exception to this testing requirement for teachers and staff who are fully vaccinated: Those individuals may opt out of the weekly testing requirement if they provide proof of full vaccination against COVID-19 as set forth in the emergency regulation, which is described in more detail below. In addition, P–12 schools must offer screening testing to unvaccinated students on a weekly basis and must have the “capacity (either directly on-site or via referral) to provide diagnostic testing” for any student, teacher, or staff member who is symptomatic or has been exposed to someone with COVID-19.²

Below is a summary of the scope and requirements of both the emergency regulation and Health Commissioner’s determination letter.

What types of schools and school personnel does this emergency regulation and accompanying determination letter affect?

The foregoing testing requirements apply to the following schools: “P–12 elementary and secondary, public, charter, private, and state-operated schools, including residential schools and programs serving students with disabilities, as regulated by the NYS Education Department.” However, such requirements do not apply to institutions of higher education or “‘standalone’ pre-kindergarten schools (that is, schools that only serve pre-kindergarten students and are not located in a building that also serves older students).”

The school personnel covered by the testing requirements include all “teachers and staff,” defined as: “all P–12 (public or non-public) school district faculty or staff, including all teachers, substitute teachers, student teachers, school administrators, paraprofessional staff, and support staff, including bus drivers.” The requirements also apply to “contractors working in a P–12 school (public or non-public) or school district setting, including contracted bus drivers.”

What documentation is required for proof of full vaccination?

As set forth in the emergency regulation, documentation for fully vaccinated individuals must include “the manufacturer, lot number(s), date(s) of vaccination, and vaccinator or vaccine clinic” and must be in one of the following formats:

- / Record prepared and signed by the licensed health practitioner who administered the vaccine, which may include a CDC COVID-19 vaccine card;
- / An official record from one of the following, which may be accepted as documentation of immunization without a health practitioner’s signature: a foreign nation, NYS

²The Health Commissioner’s determination letter also sets forth requirements for “Return to School Testing” for students, teachers, and staff members who exhibit COVID-19 symptoms.

Countermeasure Data Management System (CDMS), the NYS Immunization Information System (NYSIIS), City Immunization Registry (CIR), a Department-recognized immunization registry of another state, or an electronic health record system;

/ Excelsior Pass; or

/ Any other documentation determined acceptable by the Department of Health.

What are the consequences for not complying with the emergency regulation?

Schools that violate any of these requirements are subject to a maximum fine of \$1,000 for each violation³ and any other civil or criminal penalties as provided by law.

NYS DOH related school re-opening guidance that incorporates the emergency regulation and determination letter

Also released yesterday in accord with the Health Commissioner's determination letter, the NYS DOH issued interim [school reopening guidance](#) to address classroom instruction during the 2021–2022 school year. This guidance applies to the same schools outlined above (elementary and secondary, public, charter, private, and state-operated schools, including residential schools and programs serving students with disabilities, as regulated by the NYS Education Department), but does not apply to institutions of higher education or "standalone" pre-kindergarten schools. In addition to providing a framework and recommendations for schools to address classroom instruction during the COVID-19 pandemic, the guidance incorporates the testing requirements discussed herein and provides additional information concerning the requirement that schools must have the capacity to offer on-site or off-site testing.

What's next?

Schools should prepare to comply with both the emergency regulation and the Health Commissioner's determination letter, which is likely to become effective next week once it is filed with the Secretary of State.

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³Each day that a school operates in violation of the requirements shall constitute a separate violation for purposes of imposing civil penalties.