



Covid-19 Recently Asked Questions (Updated 9/2/21)

While the [New York State COVID-19 State of Emergency ended on June 24, 2021, with E.O. 210](#), officially rescinding prior executive orders issued in response to the COVID-19 State of Emergency, increased infections due to the Delta Variant and removal of prior executive orders have prompted questions regarding mask policies, meeting procedures and vaccines. This information is current as of August 19, 2021; we recommend that you check with state and county officials regularly for the most current information.

How do we find current information on COVID-19?

Please note that state and federal guidance is constantly evolving, so we recommend that you visit the following websites on a regular basis for the most up-to-date and breaking news type of information:

- [Centers for Disease Control and Prevention \(CDC\)](#)
- [NYS Department of Health \(NYSDOH\)](#)
- [County Health Departments](#)
- [NY Forward](#)

Is the New York State Department of Health regulation regarding masks and social distancing still in effect?

The New York State Department of Health (NYSDOH) issued [emergency regulations](#) on June 23, 2021 addressing masks and social distancing in public places, workplaces and large-scale indoor events. The NYSDOH emergency regulations require unvaccinated individuals to maintain social distancing in public places, workplaces and large-scale indoor events (5000+ individuals). Social Distancing equals six feet or more between individuals (Title 10 part 66-3.1)

- Public Places – Pursuant to the emergency rules, unless you are fully vaccinated, a person over the age of 2 who is medically able to tolerate a mask, should wear a mask when in a public place where social distancing cannot be maintained. In addition, all individuals over the age of 2 and medically able to tolerate a mask must wear a mask in schools (preK - grade 12) public transit, homeless shelters, correctional facilities, nursing homes, health care settings, or other settings where mask use is otherwise required by federal or state law or regulation. (Title 10 part 66-3.1 [a])
- Workplaces – NYSDOH regulations provide that any employee who is present in the workplace and who is not fully vaccinated must wear a mask when in direct contact with the public or when unable to maintain social distance. Employers are required to provide employees with masks (Title 10 part 66-3.1 [b])
- Large-scale indoor events (more than 5,000 attendees) – Patrons who are not fully vaccinated are required to wear face coverings consistent with NYSDOH regulations. The venue may require all patrons to wear a face covering regardless of vaccination status and may deny admittance to any person who fails to comply. This regulation shall be applied in a manner consistent with the federal American with Disabilities Act, New York State or New York City Human Rights Law, and any other applicable provision of law (Title 10 part 66-3.1 [c]).

Are County Health Departments recommending masks?

As the Delta Variant spreads, the [New York State Association of County Health Officials recommends](#) that individuals, regardless of vaccination status wear masks in public indoor settings consistent with the CDC updated mask guidance (August 5, 2021).

Individual county health departments are making similar recommendations. Check your county health department's website for information pertaining to your county.

Does the CDC recommend that individuals wear masks inside public buildings?

The CDC recommends wearing [masks](#) regardless of [vaccination status](#) in indoor public settings if you are not fully vaccinated or if you are in areas of substantial or high risk of transmission, or if you have a weakened immune system or live with someone who has a weakened immune system. For more information, please visit the CDC website.

How do I know if my town is in an area that the CDC has designated to be experiencing a substantial or high risk of transmission?

CDC guidance considers a substantial and high risk of transmission to be 50 or more total cases per 100,000 individuals over the previous seven days. The CDC has a [transmission tracker](#) where you can check the transmission status of your county.

In light of the Delta Variant, can our town require individuals to wear a mask in town facilities?

Yes, during the COVID-19 pandemic, the town board may adopt a resolution, requiring individuals over the age of 2, who are medically able to tolerate a mask, to wear a mask in town facilities (Town Law §64(3)). Local mask policies should be consistent with the town's broader COVID-19 safety protocols and periodically reviewed to address current circumstances and county, state, and federal guidance. Proper signage and the availability of disposable masks should also be considered.

Where the board does not have time to act, if the town supervisor has designated your town to be in a local state of emergency due to the COVID-19 pandemic, the supervisor may direct that masks be worn in town facilities in accordance with Executive Law, §24 and the local state of emergency. Mask orders may be in effect for five-day periods, and renewed as needed for additional five-day increments. A local emergency order must be published as soon as practicable in a newspaper of general circulation in the area affected by such order and transmitted to radio and television media for publication and broadcast (Executive Law §24 (2)). Local COVID-19 state of emergency orders are no longer required to be approved by the New York State Department of Health (see [Executive Order 210](#)).

Is Social Distancing Recommended or Required?

The CDC generally recommends [several steps](#), including masking and physical distancing, to limit exposure and transmission of the COVID-19 virus.

[The CDC Considerations for Events and Gatherings Guidance also recommends social distancing at large events.](#)

[UPDATED 9/2/21] Can we still hold virtual-only meetings?

Amendments to Open Meetings Law were signed into law on 9/2/21 that allow public bodies to meet remotely until January 15, 2022. The same rules apply that existed under previous Executive Orders on remote meetings – specifically, the public must be able to view or listen to the meeting, minutes must be taken, and there must be a transcript of the meeting.

For more information on the Open Meetings Law, please see the Committee on Open Government's website (<https://opengovernment.ny.gov/>) or contact an AOT attorney at (518) 465-7933 or info@nytowns.org.

Where can I find information about COVID-19 Vaccines?

[The New York State Department of Health Vaccines](#)

[County Health Departments](#)

The [CDC](#)

[The Food and Drug Administration](#)

Can the town board require town employees to show proof of vaccination, proof of negative COVID-19 test results or screen employees for COVID-19 Symptoms?

Towns are not currently required to ask employees to provide proof of vaccination status, or a negative COVID-19 test. If your town is considering such a policy, it should be consistent with the town's broader COVID-19 safety protocols, thoroughly reviewed with the town attorney, consistent with state and federal law and where required, negotiated with employee unions.

- **Testing and Symptom Screening** - The federal Equal Employment Opportunity Commission (EEOC) has determined that employer screening and testing policies do not conflict with the Americans with Disabilities Act or Title VII of the Civil Rights Act of 1964 because COVID-19 poses a direct threat to the health and safety of individuals in the workplace. Screening/testing should be limited to COVID-19 and the information collected should remain confidential. For more information, please review the full [EEOC COVID-19 Guidance Section A](#).

It is not clear whether COVID-19 testing is readily available at no cost. You can find COVID-19 testing sites on the [NYSDOH website](#) or by contacting your county health department. You can also call 1-888-364-3065 to make an appointment at a New York State-run testing location. According to the New York State Department of Health website, COVID-19 tests are currently administered at no cost at New York State testing centers, but there might be a cost if the test is administered at a local or private testing facility (<https://coronavirus.health.ny.gov/covid-19-testing>). Health insurance will generally cover medically necessary diagnostic COVID-19 testing, but it is not clear whether it will cover employer directed screening/testing. The town's health insurance provider should be contacted to determine what is covered and the associated costs. Although current EEOC COVID-19 guidance does not expressly address cost, employment law experts generally recommend that employers cover the cost of employer-directed screening/testing because prior EEOC guidance has advised that employers must fund employer-mandated medical testing. Please see [EEOC Enforcement Guidance on Disability-Related Inquiries and Medical Examinations of Employees under the ADA](#).

- **Vaccinations** - The federal Equal Employment Opportunity Commission (EEOC) has determined that asking employees to show proof of vaccination does not conflict with the American with Disabilities Act or Title VII of the Civil Rights Act of 1964, provided questions are limited to vaccination status, and reasonable accommodations are provided for individuals with medical conditions or sincerely held religious beliefs. Information regarding an employee's vaccination status is confidential. For more information, please review the full [EEOC Covid-19 Guidance Section K](#)

The United States [Department of Justice recently opined](#) that the emergency use status of the currently available COVID-19 vaccines does not prohibit an organization from asking about proof of vaccination.

There are free COVID-19 vaccination clinics around New York State, which can be located through your county health department, New York State Health Department or the CDC. New York State requires employers to provide employees with up to four hours of paid leave for each

vaccine injection, and public sector unions may bargain for additional paid leave (Civil Service Law, §159-c).

For more information on employee vaccination and testing policies, please review:

- [MAY A PUBLIC EMPLOYER REQUIRE VACCINATION AGAINST COVID-19?](#) Diane Juffras, Law Professor at the University of North Carolina (August 16, 2021)
- [GUIDANCE ON COVID-19 VACCINE MANDATE LEGALITY INFORMS FEDERAL, STATE AUTHORITIES' VACCINE APPROACHES](#), Morgan Lewis (August 2, 2021)
- [Whitehouse Fact Sheet](#) (July 29, 2021)
- [New York State Employee Vaccine and Testing](#) (July 28, 2021)
- [OSHA COVID-19 Information](#)
- [EEOC COVID-19 Information](#)
- [CDC Essential Workers Toolkit](#)

Are employer testing and vaccination policies subject to collective bargaining?

Employee unions may also seek to negotiate the cost and procedures to implement a testing or vaccination policy. Town boards should review relevant collective bargaining agreements and seek the advice and counsel of the town attorney regarding the negotiability of COVID-19 testing and vaccine procedures and costs (see generally, 25 PERB ¶ 3042 (June 1992); 26 PERB ¶ 4563 (May 1993); 25 PERB ¶ 4506 (January 1992)).

Can an employee be dismissed or disciplined for missing work due to COVID-19 treatment or quarantining?

The Civil Service Law was amended in July to prohibit a public employer from dismissing, disciplining or taking adverse employment actions against a public employee because the employee uses sick leave or compensatory time to quarantine, convalesce, seek medical treatment, or engage in other activities related to a COVID-19 diagnosis or contact (Chapter 214 of the Laws of 2021, adding a new Civil Service Law 159-c).