

Executive Order 2021-063 Requires Mandatory Employee Vaccination; Protocol for Reducing Infections Announced

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An McV Government Affairs Alert

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On August 11, 2021, Governor Pedro R. Pierluisi signed Executive Order 2021-063 (“EO 2021-063” or the “Executive Order”) to, among other matters, require the mandatory vaccination of employees working at restaurants, movie theaters, coliseums and convention centers, among other establishments, and establish a protocol for guests visiting such establishments in an effort to curb the spread of COVID-19 in Puerto Rico. This Executive Order mirrors Executive Order 2021-062 that also requires mandatory vaccination of employees in the government, the health and the hotels and lodging industry sectors.

EO 2021-063 becomes effective August 23, 2021 until the emergency declared in Administrative Bulletin No. EO-2020-020 is rescinded or until the Executive Order is amended or revoked by a subsequent Executive Order or by legislation.

For your convenience, this Alert will highlight the major modifications and amendments in EO 2021-063:

Vaccination Requirements for Employees (Section 1 of the Executive Order)

EO 2021-063 orders that restaurants (including fast foods, food courts and cafeterias), bars, lounges, chinchorros, coffee shops, sports bars, theaters, movie theaters, coliseums, convention and activity centers, and any other establishment – whether indoors or outdoors – that serves beverages or prepared food (hereinafter, a “Restaurants and Bars”) should require all employees working on-site to be fully inoculated with an FDA-approved COVID-19 vaccine. A person is considered “fully inoculated” two weeks after the second dose of the Moderna or Pfizer vaccines, or two weeks after the single-shot Johnson & Johnson vaccine.

For purposes of EO 2021-063, it is sufficient for an employee to demonstrate that they have begun the vaccination process by receiving a first dose by August 23, 2021. The employee must subsequently comply and evidence to its employer the administration of the second dose, if the type of vaccine

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administered requires a second dose.

The Executive Order provides that employees have until October 7, 2021, to provide evidence to their employers of having received the required doses of an FDA-approved COVID-19 vaccine.

Exceptions for Employees (Section 2 of the Executive Order)

Notwithstanding the provisions of Section 1 of the Executive Order, Section 2 provides that the following are excepted from being inoculated with the COVID-19 vaccine:

- Persons whose immune system is compromised and whose health may be adversely affected by the COVID-19 vaccine. This must be certified by a physician authorized to practice in Puerto Rico.
- Persons who have any other medical contraindication that prevents their inoculation. This must be certified by a physician authorized to practice in Puerto Rico.
- Lastly, persons are permitted to not be inoculated for religious reasons if the vaccination is against the tenets of the employee's religion. To meet this exception, the employee must submit an affidavit certifying, together with the minister or church leader of their religion or sect, that because of their religious beliefs they cannot be inoculated against COVID-19. If the employee does not have a minister or church leader, they must submit an affidavit specifically stating their religious convictions.

Employees who are not fully inoculated under one of the above-listed exceptions will be required to present a negative COVID-19 test (Nucleic Acid Amplification Test ("NAAT") or Antigen Test) weekly, performed within a maximum of 72 hours prior to entering the establishment, or a positive COVID-19 result within the past 3 months, along with documentation stating the employee's recovery.

Refusal of Vaccination by an Employee (Section 3 of the Executive Order)

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Restaurant and Bar employees who do not present their COVID-19 Vaccination Record Card or document evidencing that they have completed or initiated the COVID-19 vaccination process, and who are not covered by any of the exceptions listed in Section 2 of the Executive Order, must, for the duration of the emergency present a negative COVID-19 test (NAAT or Antigen Test) weekly, performed within a maximum of 72 hours before entering the establishment, or a positive COVID-19 result within the past 3 months, along with documentation stating the employee's recovery.

If an employee does not comply with these guidelines, they will not be able to work on-site at Restaurants and Bars.

Visitor Requirements (Section 4 of the Executive Order)

Any person over 12 years of age who visits Restaurants and Bars must comply with one of the following:

- Show proof that they are fully inoculated with a vaccine approved by the FDA.
- Show negative COVID-19 result from a qualified SARS-CoV2 viral test (NAAT or antigen test) performed within a maximum of 72 hours prior to entering the establishment or
- Present a positive COVID-19 result from within the past 3 months, along with documentation of recovery, including a letter from a certified health care provider or government health official certifying that the visitor is recovered and ready to appear in public places.

Capacity Limitation (Section 5 of the Executive Order)

Restaurants and Bars and any other closed format establishments that serve beverages or prepared food that do not comply with the requirements set forth in Section 4 of the Executive Order will be required to limit their seating capacity to a maximum of 50%.

Access Restriction (Section 6 of the Executive Order)

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Any visitor who refuses to comply with the requirements set forth in the Executive Order is to be denied access to the premises.

Oversight (Section 7 of the Executive Order)

Restaurants and Bars are ordered to visibly display posters with the confidential COVID-19 hotline created by the Puerto Rico Department of Health. The poster must contain the telephone number and e-mail address where people can report non-compliance with the Executive Order.

Penalties for Failing to Comply with EO 2021-063 (Section 9 of the Executive Order)

Any person who fails to comply with the provisions set by EO 2021-063 may face up to six months of incarceration and/or a fine of up to \$5,000.

Other EO 2021-063 Provisions

Section 8 - Guidelines and Regulations - of EO 2021-063 remains unaltered from previous administrative bulletins.

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