

THE NEW SAFETY:

FACTORING THE CDC'S 5/13
GUIDANCE AND NY'S
CHANGING MANDATES INTO
THE MIX AT YOUR LIBRARY

Brought to you by PULISDO and the Empire
State Library Network on May 21, 2021, at 1PM
EST

Presented by Stephanie Cole Adams, Esq.

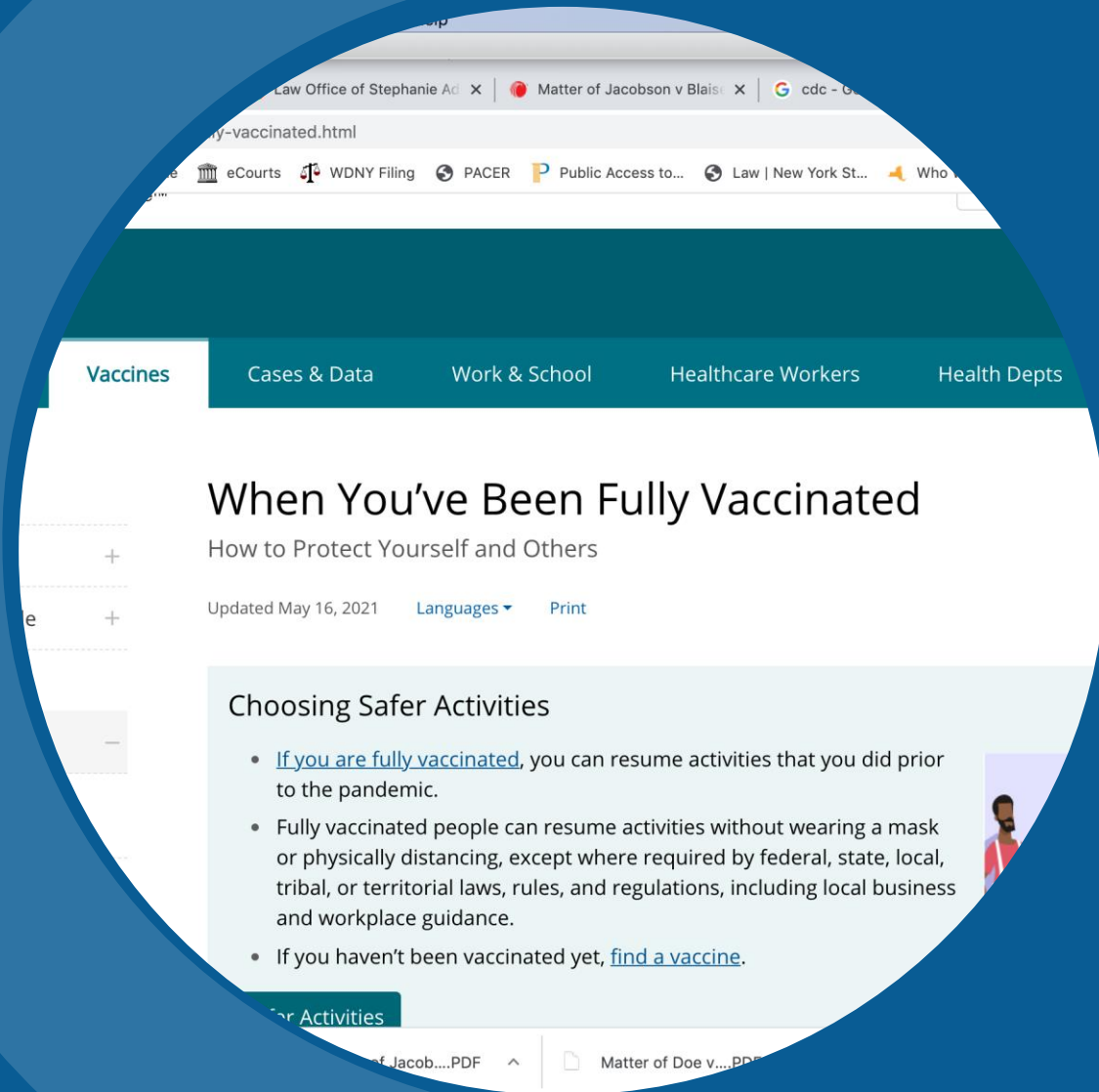


VERY BRIEF INTRO OF SPEAKER, because we have a lot to cover...

LOSA lead attorney **Stephanie “Cole” Adams** combines experience with municipal law, intellectual property, education law, and employment law, to serve the needs of public and private libraries, museums, and other cultural institutions.

Joining her are LOSA team librarian-paralegals **Jill Aures** and **Joanna Gaff**.





The CDC on 5/13

Right outta left field...

Safety

Compliance

Sanity

SAFETY

So what's the new "Safe"?

cdc.gov/coronavirus/2019-ncov/daily-life-coping/participate-in-activities.html

Apps Lexis Advance® -... NYSCEF Home eCourts WDNY Filing PACER Public Access to... Law | New York St... Who We Supervis... My Drive - Google... Reading List

Your Health

- About COVID-19 +
- Symptoms +
- Testing +
- Prevent Getting Sick +
- If You Are Sick +
- People at Increased Risk +

Daily Activities & Going Out

- Choosing Safer Activities**
- Deciding to Go Out
- Returning to Work
- Running Errands

IF YOU ARE FULLY VACCINATED


Find [new guidance for fully vaccinated people](#). If you are not vaccinated, [find a vaccine](#).

Choosing Safer Activities

Updated May 13, 2021 Languages Print

What You Need to Know

- [If you are fully vaccinated](#), you can resume activities that you did before the pandemic.
- Fully vaccinated people can resume activities without wearing a mask or physically distancing, except where required by federal, state, local, tribal, or territorial laws, rules, and regulations, including local business and workplace guidance.
- If you haven't been vaccinated yet, [find a vaccine](#).



Oh, OSHA...

The screenshot shows the OSHA website at osha.gov/coronavirus. The page features the OSHA logo and the text "UNITED STATES DEPARTMENT OF LABOR Occupational Safety and Health Administration". A navigation menu includes "OSHA", "STANDARDS", "TOPICS", and "HELP AND RESOURCES". A search bar is labeled "SEARCH OSHA". The main content area displays the title "Coronavirus Disease (COVID-19)" and a news update in a pink box: "The Centers for Disease Control and Prevention (CDC) has issued new guidance relating to recommended precautions for people who are fully vaccinated, which is applicable to activities outside of healthcare and a few other environments. OSHA is reviewing the recent CDC guidance and will update our materials on this website accordingly. Until those updates are complete, please refer to the CDC guidance for information on measures appropriate to protect fully vaccinated workers." Below the text is a banner image of workers wearing masks and a green cap, with the text "Workers and employers are seeking new ways to provide service while keeping their".

EE “Oh” C

The screenshot shows a web browser window with the URL eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws. The browser's address bar and tabs are visible at the top. Below the browser window, the website's navigation menu includes: **About EEOC**, **Employees & Job Applicants**, **Employers / Small Business**, **Federal Sector**, and **Contact Us**. The main content area features a breadcrumb trail: [Home](#) » [What You Should Know](#) » What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws. To the right of the breadcrumb trail are three icons: an envelope, a document, and a plus sign. The main heading is **What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws**. Below the heading is a light blue information box containing an information icon (i) and the following text: "These materials were prepared prior to the [CDC's updated guidance for fully vaccinated individuals](#) issued on May 13, 2021, and any supplements. The EEOC is considering any impact of these developments on COVID-19 technical assistance provided to date."

NYSD “OH”

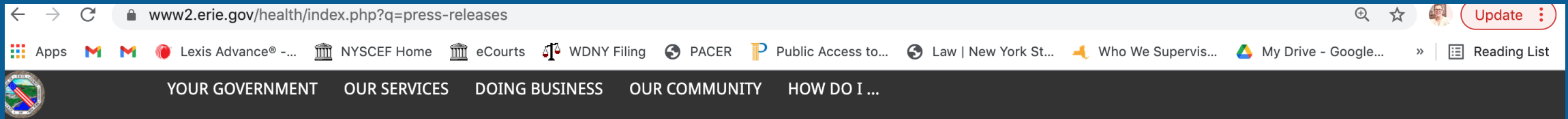
IMPLEMENTING CDC GUIDANCE

LAST UPDATED: MAY 20, 2021 AT 12:49 PM

What You Need to Know

- Effective May 19, New York State has adopted the CDC’s [“Interim Public Health Recommendations for Fully Vaccinated People”](#) for most businesses and public settings. See New York’s [guidance for implementing the new CDC recommendations](#).
- The [COVID-19 Vaccine Tracker Dashboard](#) updates New Yorkers on the distribution of the vaccine including the number of doses received by the state, a breakdown of first or second doses, and the number of persons vaccinated with the first and second doses in each region.
- In accordance with the CDC’s new guidance on mask use, fully vaccinated people no longer need to wear masks outdoors, except in certain crowded settings and venues. [Find detailed guidance on mask use](#).
- The Open Enrollment Period for uninsured New Yorkers has been extended through December 31, 2021. New Yorkers can apply for coverage through [NY State of Health](#) or directly through insurers.
- Health care workers can text NYFRONTLINE to 741-741 to access 24/7 emotional support services.
- Any New Yorker can call the COVID-19 Emotional Support Hotline at [1-844-863-9314](#) for mental health counseling.

Oh, your local D'OH



News & Press Releases

- 05/19/2021 ONE DAY, FIVE COVID-19 VACCINATION EVENTS: ERIE COUNTY DEPARTMENT OF HEALTH OFFERS PFIZER
Highmark Blue Cross Blue Shield of Western New York partners with ECDOH for vaccine clinic at Kleinhans Music Hall Parking L
- 05/14/2021 NEW CASES PER 100,000 RESIDENTS OVER SEVEN DAYS DROP BELOW 100 FOR ERIE COUNTY
NEW CASES PER 100,000 RESIDENTS OVER SEVEN DAYS DROP BELOW 100 FOR ERIE COUNTY
- 05/13/2021 ERIE COUNTY DEPARTMENT OF HEALTH WILL EXPAND COVID-19 VACCINATION TO YOUTH AGES 12-15
Appointments available at Pfizer vaccine clinics; walk-ins welcome ECDOH also announces one-dose Johnson & Johnson vaccine
- 05/11/2021 ERIE COUNTY INTRODUCES "VAX VISIT" SERVICE TO VACCINATE ANY ERIE COUNTY RESIDENT AT THEIR HOME
Individuals and households can schedule at-home COVID-19 vaccination through the Erie County COVID-19 Information Line a
- 05/07/2021 WITH MORE THAN 800,000 SHOTS IN ARMS, 61% OF ELIGIBLE ERIE COUNTY RESIDENTS HAVE RECEIVED
OF COVID-19 VACCINE
"We anticipate that the FDA will authorize emergency use for the Pfizer vaccine for youth ages 12 to 15, and our department is
Commissioner of Health Dr. Gale...

COMPLIANCE

Okay, NY Forward

May 20, 2021 | 12:49 pm
COVID-19 Updates

The COVID-19 vaccine is here. It is safe, effective and free. Walk in to get vaccinated at sites across the state. Continue to mask up and stay distant where directed.

[GET THE FACTS >](#)



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Q Search

[New York Forward](#) [Industry Guidelines](#) [Testing](#) [Vaccine Program](#) [Advisory Boards](#) [Protect Yourself](#)

Implementing New CDC Guidance

Effective May 19, New York State has adopted CDC guidance for fully vaccinated people for most businesses and public settings.

NYS GUIDANCE



New York State's Reopening Guidance, Effective May 19

Businesses are authorized to keep the current guidance in place:

- Require 6 feet of social distancing and masks for all individuals, including employees and/or patrons

OR

Businesses can adhere to CDC guidelines:

- **Unvaccinated individuals:** Require 6 feet of social distancing and wear masks in most settings
- **Vaccinated individuals:** No social distancing or masks required, except certain settings

Businesses that congregate patrons and operate **above** the social gathering limit*

Businesses that do not congregate patrons and/or that operate **below** the social gathering limit

Businesses must require proof of vaccination via:

- Paper form
- Digital application
- [State's Excelsior Pass](#)

Businesses may rely upon self-reporting of vaccination status (e.g., honor system)

Businesses may decide to apply CDC guidance to the entire establishment or a separate, designated part of the establishment**

- Business capacity is only limited by the space available for patrons or parties of patrons to maintain the required distance
 - Businesses can operate up to 100% capacity so long as all attendees are fully vaccinated
- Implementation options to consider:
 - Assign part of space for vaccinated individuals based on % of the total capacity or absolute #
 - Assign different times to vaccinated and unvaccinated individuals

Businesses may decide to apply CDC guidance to the entire establishment or a separate, designated part of the establishment

- Business capacity is only limited by the space available for patrons or parties of patrons to maintain the required distance

See prior page for more detailed guidance on New York State's implementation of CDC guidance.

*As of May 19, the State's social gathering limits are 250 attendees indoors and 500 attendees outdoors.

**Indoor events above the gathering limit require unvaccinated individuals to present proof of recent negative COVID-19 test result

SANITY

(1)the **purpose and character** of the safety plan, including whether such plan can easily be changed;

(2)the **nature** of your library;

(3)the **amount and substantiality** of change you can effect while still providing service; and

(4)the **effect** of any change upon the people and budget.

YOUR QUESTIONS:

(Compilation of several questions):

Can you address how the new guidelines impact different types of libraries (municipal public libraries, school district public libraries, private institutions, etc.)

Download | Print

NAICS: 519120

Industry: Libraries and Archives

OPERATING WITH RESTRICTIONS

Your business is located in county, which is in Western New York region. Western New York is in Phase 4 of reopening.

Your business is currently permitted to operate with restrictions. Restrictions that are applicable to your industry are as follows:

Libraries that are operated by a local government or political subdivision are allowed to operate as business restrictions do not apply to government agencies or entities. Libraries that are operated by a not-for-profit or other non-governmental organization may perform curbside or “in-store” pickup once the region in which they are located reaches Phase 1 and may perform other “in-store” operations once the region in which they are located reaches Phases 2-4. Libraries and archives should follow the office-based work guidance for their employee activities, where appropriate.

In order to operate, you must comply with all COVID-19 guidelines specific to your business activities, as well as any additional health and safety guidance issued by the state.



YOUR QUESTIONS:

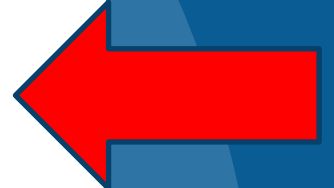
Are libraries still
required to perform
employee health
checks?

III. PROCESS

A. Screening. To ensure the business and its employees comply with protective equipment requirements, you agree that you will do the following:

- Implement mandatory health screening assessment (e.g. questionnaire, temperature check) before employees begin work each day and for essential visitors, asking about (1) COVID-19 [symptoms](#) in past 14 days, (2) positive COVID-19 test in past 14 days, and/or (3) close contact with confirmed or suspected COVID-19 case in past 14 days. Assessment responses must be reviewed every day and such review must be documented.

What type(s) of daily health and screening practices will you implement? Will the screening be done before employee gets to work or on site? Who will be responsible for performing them, and how will those individuals be trained?



YOUR QUESTIONS:

(Compilation of several questions):

Can we ask patrons for proof of vaccination, such as CDC card or Excelsior pass?

exempt and must continue to follow the state's existin

For businesses that do not congregate patrons and/or that operate below the State's social gathering limit of 250 indoors or 500 outdoors (e.g., retail, food services, offices)

If businesses are implementing the CDC guidance, they may require proof of full vaccination status through paper form, digital application, or the State's [Excelsior Pass](#). Alternatively, such businesses may rely upon self-reporting of vaccination status (e.g., honor system).

- If the business is following the CDC guidance, fully vaccinated individuals do not need to wear masks or be socially distanced, but unvaccinated individuals must continue to wear masks and be socially distanced.
 - The business may decide to apply this guidance to the entire establishment or a separate, designated part of the establishment.
- If the business is not following the CDC guidance, all individuals must wear masks and maintain six feet of social distancing.
 - Business capacity is only limited by the space available for patrons or parties of patrons to maintain the required social distance.



YOUR QUESTIONS:

(Compilation of several questions):

Can a library (of any type) still require masks in general? What if the state no longer requires masks?

Can we require masks for a specific program or area, such as for a children's movie or in the children's area?

What if the patron refuses?

YOUR QUESTIONS:

(Compilation of several questions):

Can we require employees to be vaccinated?
Can an employee be forced out of the job if they refuse the COVID vaccine? What about new hires?

Even if they are vaccinated, should we recommend that masks still be worn by employees (just to be safe and unified)?

Is it discriminatory to nonvaccinated employees to allow staff who voluntarily show proof of vaccination to work without a mask?

YOUR QUESTIONS:

If someone is not vaccinated, can they run a program? Does Library type matter?

YOUR QUESTIONS:

(Compilation of several questions:)

Can you discuss the implications of staff and patrons who are unvaccinated due to immune deficiency?

YOUR QUESTIONS:

If an employee doesn't wear a mask for a medical reason, how can they require others to wear a mask?

Your Questions

Can you address how to encourage an employee who is very concerned about COVID infection to resume programming activities, such as Children's programming?

YOUR QUESTIONS:

If a vaccinated employee has concerns about working in an office or area with an unvaccinated employee, must the employees be separated?

YOUR QUESTIONS:

(Compilation of several questions):

How do we deal with children and mask-wearing?

For example, if an unmasked child comes into library with vaccinated parents, do we have to tell the parents that the child needs a mask?

What if the child follows social distancing guidelines?

We're worried about unfairly targeting children who are not wearing masks if we're following the honor system with adults.

YOUR QUESTIONS:

Can a library add a note about a patron's proof of vaccination status to their record ?

“Confidential User Record”

Library records, which contain names or other personally identifying details regarding the users of public, free association, school, college and university libraries and library systems of this state, including but not limited to records related to the circulation of library materials, computer database searches, interlibrary loan transactions, reference queries, requests for photocopies of library materials, title reserve requests, or the use of audio-visual materials, films or records, shall be confidential and shall not be disclosed except that such records may be disclosed to the extent necessary for the proper operation of such library and shall be disclosed upon request or consent of the user or pursuant to subpoena, court order or where otherwise required by statute.

YOUR QUESTIONS

Could a library open for an additional hours (say an hour early) and set that time as mask only time in the library?

Are libraries open to out of state visitors?

Scenario: A town supervisor has mandated all municipal buildings to follow Governor's new rules relaxing mask wearing...there is a library employee who is sole caretaker of a immune-compromised child who has asked to work remotely as the employee feels at risk.

YOUR QUESTIONS:

Can you provide guidance on what actions regarding COVID plans/phases require Board “motions.”

BE IT RESOLVED that after due consideration of May 13, 2021 Guidance from the Centers for Disease Control, the board of the NAME Library shall:

[OPTION 1] amend its Safety Plan to include reference to and use of the new CDC guidance, as shown in the document reviewed by the board on this date and affixed to this resolution.

[OPTION 2] direct the Director to lead a group of [NAMES] to assess the new guidance and the Library's capacity to adapt same, and develop a recommendation as to any use of the guidance in an amended Safety Plan by DATE.

[OPTION 3] continue with the current Safety Plan until more information is available to ensure the Library's procedures can be updated; the Director is directed to check the guidance from OSHA weekly and report to the Executive Committee when updated information is posted.

[OPTION 4] to follow the Safety Plan of [insert municipality] with no modifications.

Additional considerations may be:

To work with a library's landlord if the library is a tenant in a location with common areas;

To discuss plan changes with an employee union;

To explore modifications to standing contracts with vendors; and

To confirm plan changes with the local health department.

YOUR QUESTIONS:

Can someone SUE a library if they believe that they were infected with COVID at the library?

YOUR QUESTIONS:

How can the past year best inform a library policy addressing the next pandemic?

Big Take-aways

Do not switch what you do before changing the Safety Plan in writing.

To the greatest extent possible, [continue to] work with the local health department.

Do not feel pressured to make hasty decisions!

Ensure your team has the right training and supplies to comply with and enforce the Safety Plan.

The cost and impact of new procedures should be part of assessing if your plan should use the new guidelines.

Public libraries should be aligned with local government requirements, but customized for their own operations. Be ready to use diplomacy, cunning, and guile.

Association libraries should be aligned with the mission and the safety of employees and patrons, and in compliance with executive orders.

Use the buddy system to address challenges.

THANK YOU

A written summary of answers will be sent to attendees by 5/24/21.

This version of the presentation removes illustrative images shown in the original and only meaningful in context.

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