



Guidance for Businesses on the Equitable Implementation of Boston's B Together Vaccination Requirements

The Boston Public Health Commission is pleased to provide information regarding how to equitably implement the Boston [B Together initiative](#), which requires individuals to show proof of vaccination before entering certain indoor spaces. Starting January 15, 2022, people 12 and older are required to show proof that they have received at least one dose of a COVID-19 vaccine authorized for emergency use by the FDA or WHO for indoor dining, indoor fitness, and indoor entertainment spaces. Additional age groups and dose requirements are added in later phases as set forth in the public health [Order](#).

This guidance is not legal advice. While it is the responsibility of each covered entity to implement the vaccination checking requirement in a way that is consistent with equitable access goals and anti-discrimination law, the following guidance is offered to assist entities as they engage in conversations with guests and employees about the policy.

When implementing this new rule, business owners:

Cannot treat customers or employees differently because of their race, national origin, disability, gender, religion/creed, age, or any other characteristic protected by law. For example, business owners cannot:

- Scrutinize proof of vaccination more closely when it is provided by people of a particular race, national origin, or religion based on the perception that people in those groups are less likely to be vaccinated;
- Require proof of vaccination only for older people or people with disabilities based on the belief that COVID-19 is more dangerous for them; or
- Refuse to accept certain types of valid proof of vaccination, such as official immunization records from countries outside the United States.

Must provide reasonable accommodations to customers who need them because of a medical condition, disability, or other civil-rights related reason:

- If a customer is unable to show proof of vaccination due to a medical condition, disability, or other civil rights-related reason, engage with them in a cooperative dialogue, or a good faith discussion, to see if a reasonable accommodation is possible.
- Reasonable accommodations can take many forms. For example, a customer could purchase food for take-out, join a virtual exercise class, or speak with a sales representative by phone.

- You do not have to provide a reasonable accommodation if it would cause a direct threat to other customers or employees of your business, including through risk of COVID-19 infection, or impose an undue hardship on your business.

Must provide reasonable accommodations to employees who require them because of a medical condition, disability, or other civil-rights related reason. While specific determinations about these kinds of claims are each employer's responsibility and should be made on a case-by-case basis, the following guidance may be useful in considering these requests.

- Covered entities should engage in a dialogue with employees who present a medical, disability, or civil rights-related reason why they are unable to be vaccinated. If an employee requests an exception to the vaccine requirement or additional time to provide their proof of vaccination for one of the reasons listed above, engage with them in a cooperative dialogue, or a good faith discussion, to see if a reasonable accommodation is possible.
- The employer may determine that the covered premises is able to offer other reasonable accommodations to employees with a sufficiently documented exemption, taking into account case-by-case considerations including whether allowing an unvaccinated employee to work in the covered premises would create a direct threat to health and safety, including through risk of COVID-19 infection, or impose an undue burden on the business.
- Reasonable accommodations can take many forms. An employer may be able to reassign the employee to different job duties, assign the employee to remote work, or allow a leave of absence. Employers are encouraged to use their discretion to offer staff a reasonable grace period for employees who intend to get vaccinated to come into compliance.
- In considering whether allowing an unvaccinated employee with an accommodation request to continue to work in a covered premises would create a direct threat, employers have the discretion to consider mitigation strategies including required regular testing, social distancing, personal protective equipment, or other reasonable measures to reduce the risk of spreading COVID-19.

What should I do if a customer without sufficient proof of vaccination asks for service?

You can allow customers without proof of vaccination who are in the age groups covered by the Order into the indoor portion of your premises for quick and limited purposes (for example, to use the bathroom, place a food order, or pick up membership information) as long as they wear a face mask at all times.

If a customer in an age group covered by the order wishes to enter the indoor portion of your premises for more than a quick or limited purpose but states that they are unable to show proof of vaccination because of a disability or other reason related to civil rights law, you must engage with the person in a cooperative dialogue, or a good faith discussion, to see if there is a reasonable accommodation that would enable the customer to access your goods or services. You do not need to allow the customer into the interior portion of your premises for anything beyond a quick and limited purpose, even as a reasonable accommodation.

Examples of accommodations that are likely to pose a direct threat or an undue burden include allowing an unvaccinated customer to eat in the interior portion of a busy restaurant, participate in a group exercise class, or participate in indoor, unmasked contact sports.

However, when possible, accommodate customers who are unable to show proof of vaccination because of a disability or other civil rights-related reason outside the interior portion of your premises by, for example, providing service outside, by phone, or through an online platform.

Sample Scenario 1:

A customer approaches a restaurant and walks inside, where they are greeted by a server. The server requests to see the customer's proof of vaccination. In response, the customer states that they are unable to get vaccinated because of a medical condition. The server explains that the restaurant is not able to serve the customer inside the restaurant, but that they would be happy to place a take-out order that the customer can bring home with them. The business has provided a reasonable accommodation by allowing the customer to access their services without serving them in the interior portion of the restaurant. The business has complied with the law by finding a way to accommodate the customer without allowing them into the interior portion of the restaurant for anything more than a quick and limited purpose.

Sample Scenario 2:

A customer approaches a concert venue and walks inside, where they are greeted by an employee. The customer requests to purchase a ticket for that evening's event, which is being held live and will not be recorded. The employee asks to see the customer's proof of vaccination, but the customer explains that they are unable to get vaccinated because of a medical condition. The employee states that unfortunately there is no way for the customer to experience the performance outside the interior portion of the premises or remotely, but invites the customer to visit the venue's website, where recordings of other performances are available for viewing. The business has complied with the law by engaging with the customer in a cooperative dialogue, even though no reasonable accommodation was available.

Sample Scenario 3:

A customer approaches a gym and walks inside, where they are greeted by an employee. The customer asks to register for an exercise class. The employee asks to see the customer's proof of vaccination, but the customer explains that they are not vaccinated because vaccination conflicts with their religious beliefs. The employee states that unfortunately only vaccinated customers are allowed to participate in indoor exercise classes, and the employee and customer are unable to identify any accommodation that would permit participation without the customer being indoors with the staff and other patrons in the class. The customer leaves the gym. The business has complied with the law because the cooperative dialogue did not identify any reasonable accommodation that would avoid a direct threat to other employees and customers (in the form of being forced to participate in the class in proximity to an unvaccinated customer).

Should I require documentation from customers who state they are unable to show proof of vaccination because of a disability or for another reason?

Businesses should not ask customers for evidence of a disability if the customer states that they are unable to show proof of vaccination due to a disability, medical condition, or other civil rights-related reason. Instead, businesses should engage these customers in a cooperative dialogue to see if a

reasonable accommodation exists that would not pose a direct threat or an undue hardship to their business.

What kind of documentation should I require from employees who are seeking a reasonable accommodation?

- If your employee is seeking a reasonable accommodation because of a disability or other medical condition, you can request a note from their medical provider supporting their inability to show proof of vaccination.
- If your employee is seeking a reasonable accommodation because of their religious beliefs or other civil rights-related reason, you can request supporting documentation only if you have an objective basis to question the sincerity of the stated basis for the employee's inability to show proof of vaccination.

Do I have to provide a reasonable accommodation to a customer or employee who is unable to show proof of vaccination for a reason unrelated to their own disability, medical condition, or other civil-rights related reason?

No. Only customers who are unable to show proof of vaccination because of their own disability, medical condition, or other civil-rights related reason are entitled to a reasonable accommodation.

Additional Guidance

Additional information and guidance from the United States Equal Opportunity Commission, *What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws*, can be found [here](#).