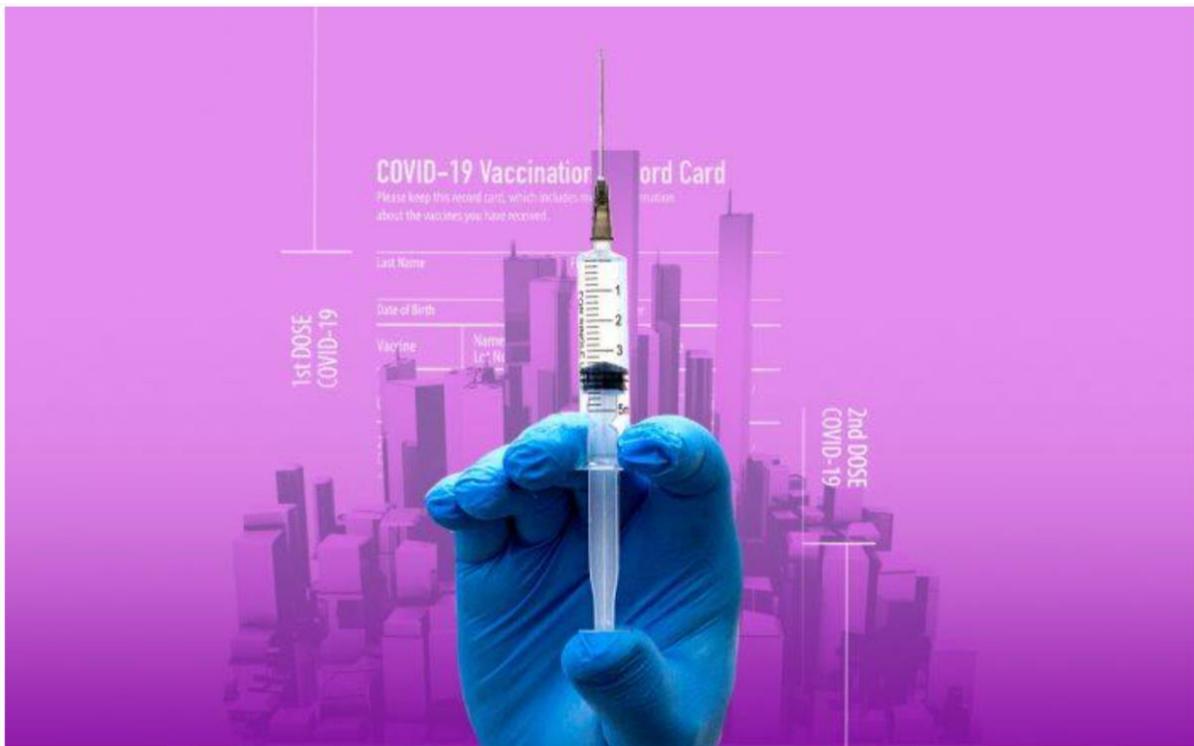


As more employers mandate vaccination, landlords let tenants decide

Experts divided on whether owners can keep unvaccinated out of their buildings

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Office owners have avoided making a uniform vaccine policy, even though companies mandate their staff get the shot. (iStock)

As Covid surges again across the nation, businesses and governments are increasingly mandating staff members get vaccinated. Big tech, financial and real estate firms have required employees to be inoculated as they prepare to return to the office after Labor Day.

Landlords, however, despite being responsible for ensuring safety in their buildings, have yet to make vaccination a uniform policy for tenants and visitors.

“It’s the decision of the employers what to tell their employees to do,” said Jorge Bromberg, of Inmobiliaria Brom, which has opened two office towers in Miami-Dade County’s Aventura and is wrapping up a third.

Landlords, brokers and attorneys who represent owners echoed that sentiment, telling The Real Deal they have not heard of any owners requiring proof of vaccination. Instead, landlords are bringing back or continuing mask mandates in lobbies, elevators, retail spaces and other common areas, even for those who have been vaccinated.

But real estate firms are holding their employees to a higher standard.

New York City-based **RXR Realty** is the latest to issue an ultimatum since Delta variant cases soared: Get vaxxed or get axed. The real estate owner, manager and developer in a memo to staff said it would make exceptions for medical reasons, “sincerely held religious beliefs” or bans under a contract, such as union agreements.

Stephen Ross’ **Related Companies** and residential brokerage Brown Harris Stevens are also insisting staff members get the shot, as are tech giants such as Facebook and Google. Some are also making the policy applicable to visitors to their offices. All have set deadlines to submit proof but are allowing for religious, medical and possibly other exemptions.

Localities have been early adopters of soft vaccine mandates, with New York City and Los Angeles giving city employees the choice to get vaccinated or be tested regularly for Covid. In Illinois, Gov. J.B. Pritzker mandated employees in state-run congregant facilities, including prisons, veteran’s homes and medical facilities, get vaccinated. He also said masks must be worn in schools and nursing homes.

In Florida — which on Aug. 6 reported a single-day record of 23,903 new Covid-19 cases — Gov. Ron DeSantis has hamstrung businesses and localities. In April he banned them from requiring vaccination proof, although businesses can mandate employee vaccination subject to union bargaining. Despite the order, Miami-Dade, Orange and Leon counties have set deadlines by when employees are to be vaccinated.

In some cases, public and private employers are allowing for weekly proof of a negative test as an alternative.

Still, not every boss is requiring inoculation. Real estate investor **Grant Cardone**, who is known as a motivational speaker, said he will not impose any mandate on his staff, including at the Aventura office complex he **bought** in June and his next-door office property. Tenants at his newly purchased property include UBS, Brilliant | Rothenberg Orthodontics, IberiaBank and Intrinsic Solutions notary.

“I believe it’s a violation of personal human rights and discrimination,” Cardone said. Others also have rejected a vaccine directive, including Amazon (although the e-

commerce giant **delayed its office return** until Jan. 3). The result is a patchwork of policies across office buildings, as landlords let their tenants decide.

Whether building owners even have the authority to require vaccination remains unclear. “The toughest part about all of this is that we clearly have no precedent for this situation,” said Pierre Debbas of the New York City-based law firm Romer Debbas, who in recent days has fielded calls from clients asking if their landlords can mandate vaccination. “So we are operating in the dark on many levels.”

Can they or can't they?

While the federal government and some courts have opined that employers can require inoculation, the legal authority of landlords is less clear.

Vaccine opponents have argued the Food and Drug Administration greenlighted the currently available vaccines under an emergency use authorization, not under full approval, called a biologics license application.

But the Department of Justice shot this down in a July 26 **memo**, saying the law “does not prohibit public or private entities from imposing vaccination requirements.”

Experts who spoke with *TRD* were divided on landlords’ rights.



Miami-based attorney Marko Cerenko said he has not seen lease amendments allowing owners to demand mask-wearing, let alone vaccines, in tenants’ spaces. “You are imposing certain powers over the tenant that may go beyond the scope of the landlord-tenant relationship,” said the commercial litigator and shareholder at Kluger, Kaplan, Silverman, Katzen & Levine. “A lot of tenants have the freedom to do whatever they want in their space.”

It is true that landlords would want “to limit themselves from liability,” so asking for vaccination proof from visitors such as delivery people or repair contractors is an option, Cerenko said. And although landlords in other asset classes such as retail, restaurants and movie theaters are likely to start screening out the unvaccinated, doing so for office tenants would be difficult.

Even if that were deemed legal, owners would have a hard time with implementation.

“If you are dealing with a multi-unit office tower 30 floors or something and 200-plus tenants, it would be very difficult not only to enforce but certainly you are going to have a lot of resistance,” Cerenko said. “You might get a lot of pushback and have a lot of tenants leave.”

Not everyone agrees with Cerenko. Some cite a 1905 Supreme Court ruling that permitted government-imposed smallpox vaccination.

Attorney Danielle Lesser, New York–based chair of Morrison Cohen’s business litigation practice, said rules could be altered in the future. Landlords could tweak lease clauses that deal with the types of identification required at entry but they would need to craft the language so as not to infringe on tenants’ right to quiet enjoyment of their space.

“As you see employers require vaccinations in increasing numbers, I don’t think it’s a leap to think we’ll start to see landlords regulate access to their buildings,” Lesser said. As for office landlords, many were eyeing a full return of their tenants after Labor Day. The coronavirus variant threw a wrench into their plans but did not scuttle them altogether.

Bromberg, the developer of the Aventura office complex, said most tenants at his completed Optima White and Optima Red towers are almost fully back to pre-pandemic physical occupancy. The Optima Onyx Tower is to be finished soon.

“I think we are at a different stage of the pandemic with high rates of vaccination,” he said. “It is a different problem now than 18 months ago.”

Bromberg, whose firm is based in Mexico City, said the buildings are built to exceed ventilation standards and offer expansive indoor spaces and outdoor working areas. It has signs encouraging mask-wearing and abiding by other Centers for Disease Control and Prevention guidelines throughout buildings, not requiring it.

“But if new regulations arise,” he added, “we would have to adapt.”