

Asked and Answered: Q&A with our Experts:

How do you determine capacity limitations within a theater space?

Depending on where your theater is located, you'll need to review [Illinois guidelines](#) or the [Chicago guidelines](#).

Per the Chicago guidelines dated April 29, 2021, venues with capacity of less than 200 people are limited to the lesser of 50 people or 50% capacity. Venues with capacity of more than 200 people may operate at no more than 25% capacity. Outdoor, general admission spectator events are limited to 15 people per 1,000 square feet.

Per the Illinois guidelines issued on March 18, 2021, indoor venues with capacity of less than 200 people are limited to the lesser of 50 people or 50% capacity. Indoor venues with capacity of more than 200 people may operate at no more than 25% capacity. Outdoor theaters and performing arts venues should operate at 25% of overall theater or performance space capacity.

As noted in the presentation, these capacity restrictions will loosen when Illinois enters the upcoming Bridge phase.

Would volunteer ushers be included in the count related to capacity limitations?

There is some ambiguity in governmental “capacity” restrictions as to whether they are intended to relate only to patrons, or should be understood to include all persons who may be “in” the space. The latter interpretation would include ushers, and therefore would reduce the number of allowed ticket holders. Our speakers generally advise a more conservative approach, based on the principle that government guidelines have aimed to promote distancing and reduce airborne particles, which suggests counting all people in a space toward capacity limits. For example, prior guidelines for retail spaces advised to include employees on the sales floor as well as customers to determine compliance with capacity limits, while retail workers in the back or on break would not count towards capacity. Applying this approach to the theater space, ushers helping patrons in the seating area would count against capacity limits; ushers greeting guests just outside that area would not. In the absence of specific guidance, apply your knowledge of your space and good judgment about what can be achieved while also observing social distancing guidelines.

Can employers require employees to be vaccinated? And, if so, what can they require as proof of vaccination?

As a general rule, yes – employers can require employees to be vaccinated if the employer handles requests for accommodations consistent with applicable law. The recorded program and the presentation slides contain detailed discussions of the advantages and disadvantages of mandating vaccinations, requiring proof of such vaccinations, and the determination of reasonable accommodations.

If we are planning to collect staff members' medical information (for example, on whether they have been vaccinated), do we need to store this information in a HIPAA compliant way?

Vaccination status information may be provided in a way that does not implicate HIPAA. In guidance issued by the EEOC, the agency confirmed that asking an employee about the employee's vaccination status is not a disability-related inquiry under the ADA. An employer may require written proof (i.e. by showing or submitting a copy of the CDC "COVID-19 Vaccination Record Card") that the employee received the full vaccine. Employees should be cautioned not to provide any medical information when providing proof of vaccination, nor should employees be asked any other medical questions.

As a best practice, it is still recommended that documentation of vaccination status be maintained separate from employee personnel files and restricted to those with a need to know.

Can employers require patrons to be vaccinated? And, if so what level of proof can they require?

To date, the answer to this question is unclear. As a general matter, hospitality businesses that have some impact on interstate commerce (and this is a broadly construed category) fall under federal laws prohibiting discrimination based on religion, ethnic and racial categories. It is not clear if such laws would include "discrimination" based on vaccinations. This is a developing area of law, with some states explicitly prohibiting any businesses from requiring vaccinations of customers, while other states specifically allow it. Illinois has not yet spoken on the issue. On April 27, 2021, officials at the Chicago Department of Public Health shared that a "Vax Pass" initiative could be launched in May, but few details are available at this time.

When hiring new employees, can employers ask whether candidates are vaccinated or require vaccinations?

As a general rule, yes. Even so, you may need to seek to provide reasonable accommodations in the interview/audition process. For example, if an actor is not yet vaccinated, but will be vaccinated within a few weeks, you may want to give them the opportunity to audition virtually. The recorded program contains more detailed discussions of this question, requiring proof of such vaccinations, and the determination of reasonable accommodations.

If someone is not getting vaccinated but doesn't have a qualifying disability or otherwise qualify for a reasonable accommodation, is it legal to require different protocols for vaccinated vs. unvaccinated employees? I.e. can there be a blanket determination that vaccinated staff does not need to wear a mask in the office, but unvaccinated staff needs to wear a mask?

At present, the Illinois and Chicago guidelines require that all employees wear face coverings when within 6 feet of others, regardless of vaccinated status. As COVID health facts develop, there may be changes in this rule. In fact, on April 27, 2021, the CDC relaxed mask guidelines for outdoor activities and certain gatherings of vaccinated people. For the near term, however, anticipate that staff will continue to wear masks regardless of vaccination status.