

Proceed with Caution: Local Orders Lifting Mask Mandates Are Not Blanket Permission Slips to Eliminate Safety Protocols in Workplaces

Alert

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UPDATE: On May 17, OSHA added a disclaimer to its [Safe Work](#) guidance stating: "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." Our attorneys are awaiting updated OSHA guidance or standards. In addition, state and local business guidance remain in effect in many jurisdictions. These will continue to evolve and must be evaluated, as should workplace-specific hazards, before discontinuing face covering requirements in the workplace.

In response to the Centers for Disease Control and Prevention's (CDC) May 13 update of two key guidance documents that now show fully vaccinated people no longer need to wear a mask or physically distance, local and state authorities hastened to lift their own mask mandates. For example, Colorado, Kansas, Michigan and Minnesota, as well as Kansas City, MO announced within hours of the CDC's announcement that masks will no longer be required. Despite statements from the CDC, state governors, and even the President of the United States that vaccinated people are now free to go sans-mask, these recent changes provide more uncertainty than relief for employers when it comes to their workforces. Employers who are in the position of considering lifting masking requirements at their workplaces due to these recent announcements should take the following considerations into account before making any material changes to their safety plans.

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CDC's Statements Do Not Preempt State and Local Industry Guidance Regarding Coronavirus (COVID-19) Safety

Even if a mask mandate is gone, and CDC guidance provides that vaccinated people do not have to wear masks inside, employers are still allowed to implement reasonable work rules. Those work rules are largely governed—in this pandemic era—by industry-specific local and state guidelines from the Occupational Safety and Health Administration and local health departments. The CDC explicitly recognized that its update allowing fully vaccinated people to go without masks does not apply where federal, state, local, tribal or territorial laws, rules, and regulations provide otherwise, including local business and workplace guidance. Accordingly, where applicable state or local health department or industry guidance recommends or requires masking, that guidance is not superseded by the CDC's recommendations. These guidance documents are different from state executive orders regarding masking and could require businesses to require mask for their employees even where the general public is not required to wear a mask per executive order.

OSHA Has Not Yet Weighed In

The most recent [OSHA guidance](#), published on January 29, 2021, strongly encourages face coverings, particularly where social distancing cannot be maintained, and instructs employers not to distinguish between vaccinated and unvaccinated people, specifically with respect to masking requirements. And, while OSHA is in the process of finalizing an Emergency Temporary Standard regarding COVID-19 safety, that standard may not be published for another few weeks. That standard will govern workplace safety obligations more directly than generalized orders lifting masking requirements, and could contain direction regarding under what circumstances it will be acceptable to consider lifting workplace face covering policies.

Vaccinations Are Only Part of Larger Safety Considerations

Another reason for thoughtful planning in determining whether to eliminate masking requirements in the workplace is that vaccinations are only part of a larger workplace safety plan. Employers may miss other important safety considerations if they look at vaccination (and whether masking is thus required by the CDC) in a vacuum. Instead, a full range of controls should be analyzed when considering whether it would be appropriate to discontinue a mandatory mask policy in the workplace, for example: what percentage of workers are vaccinated; whether social distancing is feasible in the workplace; what other safety measures are in place to protect against potential spread of the virus; what sanitation and disinfection practices are being utilized; how much contact workers have with the general public, whose vaccination status may be unknown; and other important considerations specific to individual workplaces. Some of these considerations may take time to roll-out, such as vaccine surveys to determine the vaccinated population

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or development of new policies. Employers should not rush to remove mask mandates before overall safe workplace assessments can be conducted and implemented, or they risk not only COVID-19 outbreaks in the workplace but vulnerability for failing to provide a safe and healthful work environment.

Moreover, employers may want to take into account more practical considerations such as how to communicate the change in policy so that employees do not feel pressured to work without masks, in the event they want to do so or have a medical condition that would require them to do so, or to train and prepare employees for interactions in the event that a customer harasses them about wearing a mask or asks them to remove their mask. In addition, many policies such as self-screening for symptoms, hygiene and social distancing policies likely need to remain in effect. Employers should be mindful to communicate clearly which policies will still be enforced.

Conclusion

Workers and employers alike are eager to return to “normal”—including the elimination of masks at work. However, this transition should be done at the right time and with thoughtful consideration regarding the particular employment setting. CDC’s recent guidance, while signaling that we are headed in the right direction, is not the only consideration for changes in workplace policies.

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