

OSHA Issues Updated Mask Guidance to Align With CDC Recommendations

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On August 13, 2021, the Occupational Safety and Health Administration (OSHA) issued updated guidance to align with recent Centers for Disease Control and Prevention (CDC) changes to masking and testing recommendations for fully vaccinated individuals ([Protecting Workers: Guidance on Mitigating and Preventing the Spread of COVID-19 in the Workplace | Occupational Safety and Health Administration \(osha.gov\)](#)).

Due to rising case numbers and the increased transmissibility of the Delta variant, the CDC (and now OSHA) recommend that vaccinated individuals wear masks indoors in areas where COVID-19 spread is classified as substantial or high transmission. Currently, more than 90% of the United States meets this standard.

As you may recall, OSHA previously issued an emergency temporary COVID-19 standards for workers in the health care industry ([COVID-19 Healthcare ETS | Occupational Safety and Health Administration \(osha.gov\)](#)), but declined to issue standards for other industries. Accordingly, its guidance here is a recommendation – not a requirement. However, it is likely that OSHA will strongly consider compliance with these recommendations in determining whether an employer has violated its General Duty Clause obligation to provide a workplace free from recognized hazards likely to cause death or serious physical harm to employees.

More broadly, OSHA recommends that employers implement multi-layered interventions to protect workers and mitigate the spread of COVID-19. OSHA's most current recommendations include the following:

1. **Facilitate employees getting vaccinated.** Employers should grant paid time off for employees to get vaccinated and recover from any side effects. OSHA also suggests, for the first time, that employers consider adopting policies that require unvaccinated workers to undergo regular COVID-19 testing – in addition to mask wearing and physical distancing.

2. **Enforce policies for workers who are in close contact with someone who tested positive for COVID-19.** Fully vaccinated people who have exposure to someone with suspected or confirmed COVID-19 should get tested 3-5 days after exposure and should wear a mask in public indoor settings for 14 days or until they receive a negative test result. People who are not fully vaccinated should be tested immediately after being identified, and, if negative, tested again in 5–7 days after last exposure or immediately if symptoms develop during quarantine. Additionally, all absence policies should be non-punitive.
3. **Require properly worn face coverings for all employees in public indoor areas where COVID-19 spread is classified as substantial or high transmission.** If requested, employers should provide workers with face coverings or surgical masks unless their work task requires a respirator or other PPE. OSHA further recommends that employers suggest or require that unvaccinated customers, visitors, or guests wear face coverings in public, indoor settings in areas of substantial or high transmission.

In addition to the above, OSHA continues to recommend following its prior guidance related to disinfection, ventilation, physical distancing, and employee training.

OSHA's updated guidance also provides specific recommendations for higher-risk workplaces with mixed-vaccination status workers. Such workplaces include manufacturing; meat, seafood, and poultry processing; high-volume retail and grocery; and agricultural processing settings. These recommendations focus on minimizing the duration and type of contact among unvaccinated and otherwise at-risk workers and making additional use of barriers and face coverings to reduce the possibility of COVID-19 transmission.

Finally, remember that several states, including California, New York, Oregon, and Virginia, require COVID-19 safety plans. Additionally, New York's HERO Act also requires a written airborne infectious disease plan. Contact your Vorys lawyer if you have questions about federal or state workplace safety plans related to COVID-19.