

CDC Removes Mask Requirement for Fully Vaccinated in Some Settings – What Should Your Business Do?

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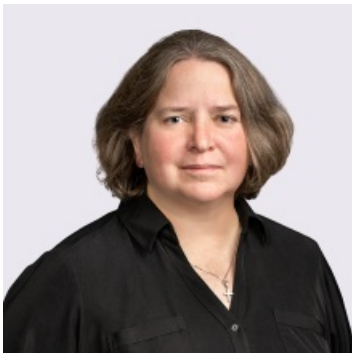


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The Centers for Disease Control and Prevention (CDC) has lifted its COVID-19-related masking and physical distancing recommendations for fully vaccinated people in non-healthcare settings.

CDC Guidance

The May 13, 2021, CDC [Interim Public Health Recommendations for Fully Vaccinated People](#) states that, aside from prisons, homeless shelters, and public transportation, fully vaccinated people no longer need to wear a mask or physically distance in any non-healthcare setting, except where required by federal, state, local, tribal, or territorial laws, rules, and regulations, including local business and workplace guidance. The CDC has separate guidance for [healthcare settings](#) and, on May 15, [advised schools](#) to continue to use the current COVID-19 prevention strategies, including masks for everyone for the remaining weeks of the 2020-2021 school year.

According to the CDC, [prevention measures](#) (including masks and physical distancing) are still recommended for unvaccinated people.

Considerations

Employers who are interested in relaxing workplace mask requirements should consider the following:

- Check the relevant state and local laws and orders. If a state executive order or local order requires employers to have employees wear masks or impose physical distancing requirements, employers should follow those rules. In addition, keep in mind that some states have their own occupational safety and health rules (*e.g.*, [California](#), Michigan, Oregon, and Virginia) or recently enacted laws, such as [New York's HERO Act](#). In addition, some states are considering bills that would limit an employer's ability to treat employees and customers differently based on vaccination status. The governor of Montana recently signed such a law. In the end, employers must follow all applicable state and local laws and standards regardless of the CDC's relaxed recommendations.
- Be on the lookout for new guidance from the Occupational Safety and Health Administration (OSHA). OSHA issued [guidance](#) on January 29, 2021, stating that all employees must continue to follow protective measures, such as wearing a face mask and maintaining physical distancing practices, regardless of vaccination status. OSHA has [updated its website](#) advising that it is reviewing the recent CDC guidance and will update its materials accordingly. Meanwhile, OSHA directs employers to refer to CDC's guidance "for information on measures appropriate to protect fully vaccinated workers."
- Determine whether removing mask and physical distancing requirements makes

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sense given your employee populations and preferences, while remaining in compliance with state and local laws and orders. Many employees may be reluctant to return to the worksite without masking and physical distancing rules in place. Assess whether removing such requirements is likely to help or hurt the business's objectives. Generally, employers can choose to continue to require masks and physical distancing regardless of vaccination status.

- Consider how removing mask and physical distancing requirements will affect customers. Businesses that want to avoid having to deal with a patchwork of state and local COVID-19 requirements may maintain a consistent practice of requiring masks across all locations. If the decision is not to relax requirements, customers who have medical conditions that make wearing a mask unsafe may need to be accommodated.
- Consider whether it makes sense to continue to require or encourage physical distancing (regardless of masking) until more is learned. This may be for everyone's comfort, to avoid isolating unvaccinated individuals who may have protected reasons for being unvaccinated or may be in a protected class, or where any isolation or exclusion may set back diversity efforts. Of course, engage in the interactive process if an individual needs an accommodation in connection with masking for religious or medical reasons.
- Clarify that fully vaccinated employees and customers are permitted to wear masks or face coverings.
- Reinforce that employees must respect employee and customer decisions to wear masks and engage in physical distancing regardless of their vaccination status.
- Avoid actions that would suggest a correlation between vaccination status and mask wearing or employee observance of other COVID-19 safety practices. As an example, if relaxing mask and physical distancing requirements in the workplace, make clear that fully vaccinated employees should make their own personal decision regarding whether to wear a mask and physically distance at work. If an employee chooses not to wear a mask, then it will be the employee who is disclosing their vaccinated status.
- Consider whether and how the business will monitor whether unvaccinated employees are properly wearing masks and engaging in physical distancing practices. It is lawful to ask employees if they are vaccinated, however, asking employees why they are not vaccinated may implicate the Americans with Disabilities Act. If employers ask employees if they are vaccinated, the best practice is to treat any record of their status as confidential and make sure it is securely maintained with limited access. As an alternative to tracking who is vaccinated, employers may wish to consider having all employees certify that, if they are not fully vaccinated, they will continue to wear masks and physical distance.
- Consider adopting a formal policy or issuing a communication clarifying the business's policy and position on these issues.
- If the workplace is unionized, consider whether bargaining over changes to COVID-19 policy and practices is required. Even if you do not have an obligation to bargain, keep in mind that the CDC's guidance may not be universally well-received by all unions. In fact, the United Food and Commercial Workers International Union (UFCW), which represents 1.3 million essential food and retail workers, raised concerns about the new CDC guidance that fully vaccinated people no longer need to wear masks indoors. On the CDC's guidance, [UFCW International President Marc Perrone said](#), "While we all share the desire to return to a mask-free normal, [the]

CDC guidance is confusing and fails to consider how it will impact essential workers who face frequent exposure to individuals who are not vaccinated and refuse to wear masks.”

Isolation and Quarantine

Although the CDC has relaxed many of its recommended restrictions with respect to vaccinated individuals, one critical recommendation remains in place. According to the CDC, fully vaccinated people who experience symptoms of COVID-19 should continue to “isolate themselves from others, be clinically evaluated for COVID-19, and tested for SARS-COV-2 if indicated.” However, under CDC guidelines, fully vaccinated people are relieved of the obligation to quarantine after close contact with someone who has COVID-19, as long as the fully vaccinated individual shows no symptoms.

Jackson Lewis attorneys are closely monitoring updates and changes to legal requirements and guidance and are available to help employers weed through the complexities, including with state-specific or multistate-compliant plans.

If you have questions or need assistance, please reach out to the Jackson Lewis attorney with whom you regularly work, or any member of our COVID-19 team.

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