

CDC Recommends Everyone Wear Masks in Areas With Substantial or High Transmission of COVID-19

By Patricia Anderson Pryor, Jenifer M. Bologna, Katharine C. Weber & Tara K. Burke

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Meet the Authors



Patricia Anderson Pryor

Office Managing Principal
513-322-5035
Patricia.Pryor@jacksonlewis.com



Jenifer M. Bologna

Principal
(914) 872-6869
Jenifer.Bologna@jacksonlewis.com



In its latest guidance, the Centers for Disease Control and Prevention (CDC) recommends that everyone — including individuals fully vaccinated with one of the available COVID-19 vaccines — wear masks in indoor public settings in all areas with substantial and high transmission of the COVID-19 virus. It also recommends that everyone get tested following exposure to someone with a suspected or confirmed case of COVID-19.

In addition, the guidance recommends universal indoor masking for all teachers, staff, students, and visitors to K-12 schools, regardless of vaccination status.

In its latest Interim Public Health Recommendations for Fully Vaccinated People, the CDC explains that while infections happen only in a small proportion of people who are fully vaccinated (even with the highly transmissible “Delta” variant), “preliminary evidence suggest that fully vaccinated people who become infected with the Delta variant can spread the virus to others.”

In a media briefing, CDC Director Rochelle Walensky explained that the CDC made this decision based on evidence from recent investigations of outbreaks involving the Delta variant, which is now the predominant variant in the United States. These investigations have shown that on the rare occasion a vaccinated individual is infected with the Delta variant, that vaccinated person can have as much viral load as a non-vaccinated individual infected with the Delta variant.

Fully Vaccinated Individuals in Non-Healthcare Settings

The CDC recommends new steps for fully vaccinated people in non-healthcare settings to protect themselves from being infected with the Delta variant and potentially spreading it to others:

- Wear a mask in public indoor settings if they are in an “area of substantial or high transmission.” The CDC suggests that fully vaccinated people might choose to wear a mask, regardless of transmission level, particularly if they or someone in their household is immunocompromised or at increased risk for severe disease or if someone in their household is unvaccinated.
- Get tested 3-5 days following a known exposure to someone with a suspected or confirmed case of COVID-19, regardless of whether they have symptoms, and wear a mask in public indoor settings for 14 days after exposure or until they receive a negative test result.

The CDC continues to recommend that vaccinated individuals isolate and get tested if they experience symptoms of COVID-19 and isolate if they test positive.

Katharine C. Weber

Principal
(513) 898-0050
katharine.weber@jacksonlewis.com



Tara K. Burke

(She/Her)
KM Attorney
(513) 322-5027
tara.burke@jacksonlewis.com

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Healthcare industry employers should continue to follow [CDC's Healthcare Infection and Prevention Control Recommendations](#) and, where applicable, Occupational Safety and Health Administration's (OSHA) [COVID-19 Healthcare Emergency Temporary Standard](#).

Data Tracker Shows Areas With Substantial or High Transmission

The CDC's color-coded [COVID-19 Data Tracker](#) shows the level of transmission by county. Red counties have "High" transmission and orange counties have "Substantial" transmission. The Data Tracker is updated daily and is based on total new cases per 100,000 persons in the past 7 days and percentage of positive NAATs (a type of viral diagnostic test) during the past 7 days. As of this writing, 63.45% of U.S. counties have either substantial or high rates of community transmission.

Implications for Employers

The CDC information is just guidance; it does not mandate activity. However, it provides recommendations for individuals and businesses to follow and OSHA and many states base their own recommendations on information from the CDC.

In its [guidance for non-healthcare facilities, last updated on June 10, 2021](#) OSHA relied on CDC's guidance for fully vaccinated individuals when it concluded that "most employers no longer need to take steps to protect their fully vaccinated workers who are not otherwise at-risk from COVID-19 exposure" and focused its guidance on protecting unvaccinated and otherwise at-risk workers. At that time, the CDC was only recommending that non-vaccinated individuals wear face coverings. Thus, OSHA aligned its guidance with the CDC recommending that unvaccinated and otherwise at-risk workers use face coverings or surgical masks, unless their work tasks require a respirator or other personal protective equipment. Given OSHA's reliance on CDC guidance for non-healthcare workplaces, OSHA may expect such workplaces to follow the CDC's new mask recommendations and is likely to update its guidance to once again align with the CDC. Similarly, employers should be prepared for changes to state OSHA directives.

The prevalence of the Delta variant has many jurisdictions reinstating mask requirements or extending them to cover vaccinated individuals. The recent CDC shift is expected to push others to follow CDC guidance and recommend or require universal masking in indoor public settings in counties with substantial or high transmission rates as shown by CDC's tracker. Unlike CDC and OSHA "guidance," some of the state and local recommendations are mandatory. State and local authorities also may adopt the CDC's view that vaccinated individuals should be tested following exposure to someone with a suspected or confirmed case of COVID-19.

Employers should continue to carefully monitor state and local guidance, as well as the level of transmission in their geographic areas, which is evolving rapidly. The updated CDC guidance is specifically tied to areas that have substantial and high transmission rates. Since those rates are tied to the prior 7-day period, the transmission rates will continue to change for the foreseeable future, especially after holidays, when individuals naturally gather together.

For some employers reinstating mask rules for all employees, regardless of community transmission rates, it may be a preferred approach to minimize change, particularly if they have offices in multiple locations. While this type of administrative ease is tempting,

employers should keep in mind that such a policy will be unpopular with employees in areas of the country where vaccination rates are high and transmission rates are low. Currently, 36.52% of the counties in the country have low-to-moderate transmission rates and, according to CDC's tracker, those transmission rates are decreasing.

Employers choosing to tie their mask rules to the varying transmission rates should be careful in how they communicate any new masking rule, so as to avoid raising fear or distraction every time masking requirements are adjusted due to changes in the local community transmission rate.

Jackson Lewis attorneys will continue to monitor changes in COVID-19 guidance and regulations impacting the workplace. 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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