

CDC Updates Guidance for Fully-Vaccinated Individuals: Is it Time to Shed the Face Mask and Relax Social Distancing?

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The U.S. Centers for Disease Control and Prevention (CDC) updated its [guidance](#), titled Interim Public Health Recommendations for Fully Vaccinated People, on May 13, 2021, rolling back recommendations for wearing face masks, social distancing, and other protective measures for those who have been fully vaccinated against COVID-19. Based on its findings that “[i]ndoor and outdoor activities pose minimal risk to fully vaccinated people,” the CDC states that “fully vaccinated people no longer need to wear a mask or physically distance in any setting, except where required by federal, state, local, tribal, or territorial laws, rules, and regulations, including local business and workplace guidance.” Importantly, the CDC cited to “a [growing body of evidence](#) [that] suggests that fully vaccinated people are less likely to have asymptomatic infection or transmit SARS-V-2 to others.” Employers and employees alike are immediately contemplating how this new guidance affects the workplace.

Can employers eliminate all mask requirements?

It is likely that employers will not be able to eliminate all mask requirements yet, or at least not everywhere. The updated guidance eliminates prior CDC recommendations regarding the use of masks and other protective measures by fully-vaccinated individuals—which form the basis for similar recommendations or requirements by many state and local public health authorities. It is possible that some state and local jurisdictions will continue to require the use of masks and other measures by fully-vaccinated employees notwithstanding the new CDC guidance. Thus, employers may want to continue to follow any applicable mask and distancing requirements in each state.

If local and state guidelines or orders still require wearing masks or face coverings in the workplace, employers in those jurisdictions may need to wait until those requirements are likewise updated to align with the new CDC guidelines. In jurisdictions without specific mask and distancing requirements, or jurisdictions that simply reference current CDC guidelines, the revised CDC guidance means that most employers may now begin to allow fully-vaccinated employees to choose not to wear masks when at work, even indoors when around unvaccinated people. If local and state guidelines and orders permit eliminating mask requirements for fully-vaccinated employees, employers may wish to consider the practical impact of such changes and how to effectively manage

them.

How should employers effect this new guidance?

Each employer will need to consider what works best for its workplace within the confines of any state and local requirements. For some employers, and where permitted by applicable law, it may make sense to ask employees about their vaccination status or require employees to provide proof of vaccination status before allowing them to enter the workplace without masks. Other employers may wish to allow employees to affirm, in writing, that they have been fully vaccinated in order to avoid taking the protective measures required of unvaccinated persons. Some employers may choose to rely on the honor system, as nothing in the CDC guidance imposes an obligation on employers to verify vaccination status. Finally, some employers may opt to continue to require the use of masks and distancing protocols for all employees. In all cases, employers may wish to permit employees to continue to wear masks if they prefer, as some employees may desire the added protection due to personal or family medical risks.

Despite this new guidance, some employers may prefer to move slowly toward any changes in the workplace. The U.S. Occupational Safety and Health Administration (OSHA) is expected to issue a long-awaited COVID-19 emergency standard by the end of May 2021, and it is unclear to what extent the new OSHA standard may address safety distinctions with fully-vaccinated employees. [Current OSHA guidance](#) simply states that “[w]orkers who are vaccinated must continue to follow protective measures, such as wearing a face covering and remaining physically distant, because at this time, there is not evidence that COVID-19 vaccines prevent transmission of the virus from person-to-person.” While it seems likely OSHA’s position will be refined based on the latest CDC guidance, some employers may wish to wait for the OSHA standard before making significant changes to their COVID-19 mitigation protocols.

What should employers do right away?

The updated CDC guidance presents a new opportunity for employers to further encourage and incentivize employees to get vaccinated against COVID-19. Many employees will likely perceive a significant benefit in the workplace to being vaccinated as masks and other measures are phased out for vaccinated workers. However, as noted above, employers may want to first check applicable state and local guidance and take caution if eliminating mitigation measures that may still be required at the state or local level. Still, even in those jurisdictions with stricter mitigation measures than the CDC’s, employers can begin considering how their current workplace policies may need to change if and when local requirements align with the new CDC guidance. For employee relations reasons, many employers may want to begin communicating with employees that the company is aware of the new guidance and is evaluating what changes may be made to workplace rules and procedures in each jurisdiction.

What should employers do with respect to unvaccinated employees?

The updated CDC guidance allows for greater flexibility with fully-vaccinated employees, but it does not remove recommended precautions for unvaccinated employees. Some employers may wish to use the new CDC guidance as an incentive for unvaccinated employees to consider getting the vaccine. Regardless, employers may want to continue requiring unvaccinated employees to follow all appropriate mitigation measures, including wearing masks, staying physically distanced, and undergoing any company screening requirements. Employers may also find that some vaccinated

employees will prefer to continue wearing masks due to personal or family medical reasons or other concerns, and employers may want to continue to permit all employees to take such measures when not in conflict with legitimate operational requirements.

Finally, while the new CDC guidance draws a clear distinction between appropriate measures for vaccinated and unvaccinated persons, employers may want to remain mindful of accommodation obligations under the Americans with Disabilities Act (ADA) and Title VII of the Civil Rights Act of 1964. In addition, employers may want to safeguard generally against making distinctions between employees in such a way that might lead to unlawful harassment, bullying, discrimination, or other inappropriate conduct.

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