

CDC Removes Mask Requirement For Fully Vaccinated In Some Settings – What Should Your Business Do?

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In a surprise move today, CDC followed the lead of the various states that have lifted their masking and physical distancing recommendations. However, CDC's new recommendations come with a twist. The CDC's recommendations only apply to fully vaccinated people in non-healthcare settings. Here's what your business should consider as it decides whether to "unmask."

The May 13, 2021 CDC [Interim Public Health Recommendations for Fully Vaccinated People](#) states that fully vaccinated people no longer need to wear a mask or physically distance in any non-health care setting (except prisons and homeless shelters and public transportation), except where required by federal, state, local, tribal, or territorial laws, rules, and regulations, including local business and workplace guidance. According to the CDC, [prevention measures](#) (including masks and physical distancing) are still recommended for unvaccinated people.

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

- Check 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 OSHA rules (e.g., VA, MI, CA, OR) or recently enacted laws such as New York's Hero Act which we discussed [here](#). Employers must follow all applicable state and local laws and standards regardless of CDC's relaxed recommendations.
- OSHA has yet to come out with new guidance and currently recommends that all employees must continue to follow protective measures such as wearing a face mask and remaining

physically distant regardless of vaccination status. However, this guidance was issued on January 29, 2021, so it is now several months old. It is unclear whether OSHA will change this guidance given the CDC's position.

- Determine whether removing mask and physical distancing requirements makes sense given your employee populations and preferences. Many employees may be reluctant to return to work without masking and physical distancing rules in place. Assess whether removing such requirements is likely to help or hurt the effort to return employees to work. 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 impact your customers. You may also want to maintain a consistent practice across all your locations so that you are not dealing with a patchwork of state and local COVID-19 requirements. To the extent you decide not to relax your requirements, you may need to accommodate customers who have medical conditions that make wearing a mask unsafe.
- Consider whether it makes sense to continue to require or encourage physical distancing (regardless of masking) until more is learned, for everyone's comfort and to avoid isolating unvaccinated individuals who may have protected reasons for being unvaccinated or who may fall into a protected classification, or where any isolation or exclusion may set back diversity efforts. And, of course, if an individual needs an accommodation in connection with masking for religious or medical reasons, engage in the interactive process.
- 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 and/or employee observance of other COVID-19 safety practices.
- Consider whether and how the company 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. To enforce such a rule, employers will need to know who is vaccinated. If such information is gathered, the best practice is to treat this information as confidential. Make sure it is securely maintained with limited access. Employers may also consider having all employees certify that if they are not fully vaccinated they will continue to wear masks and physical distance.
- If you choose to relax your mask and physical distancing requirements, make clear that fully vaccinated employees should make their own personal decision regarding whether to wear a mask and physically distance at work. In this manner, if an employee chooses not to wear a mask, it will be the employee who is disclosing his or her vaccinated status.
- Consider adopting a formal policy or issuing a communication clarifying the company's policy and position on these issues so that everyone knows your expectations.

- If you have a union, consider whether you need to bargain with the union over changes to your COVID-19 policy and practices.

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