

Insights

NEW CDC GUIDANCE: THE VACCINATED ARE FREE(R)

May 14, 2021

On May 13th the Centers for Disease Control and Prevention (“CDC”) announced that “[f]ully vaccinated people can resume activities without wearing a mask or physically distancing, except where required by federal, state, local, tribal, or territorial laws, rules, and regulations, including local business and workplace guidance.”

In the wake of the CDC announcement, states and other agencies have had varied reactions. Some have lifted face covering mandates while others have advocated caution, further underscoring the need for businesses to review state and local requirements. For example, on May 17th the Occupational Safety and Health Administration (“OSHA”) acknowledged the new guidance from the CDC and indicated that it would update its guidelines accordingly, but in the meantime, indicated that businesses should “refer to the CDC guidance for information on measures appropriate to protect fully vaccinated workers.”

The reduced restrictions are both a positive indicator for the Country’s overall path to recovery, and a potential incentive for further adoption of the vaccines.

I. What Does This Mean For Your Business?

A. Possibly Not Much At All

The CDC explicitly states that the new guidance does not supersede any state or local rules or regulations, so in jurisdictions that have existing state or local face covering requirements, the new CDC guidance may not result in any changes. It is still essential for businesses to check what their state, county, and/or municipality requires, and comply with those requirements, rather than simply relying on the new CDC guidance.

B. Consider the Policies of Your Business

The CDC provides non-binding recommendations that are advisory. As a result, even in jurisdictions where there are no face covering regulations or orders, your business can decide whether to adopt the CDC guidance or implement a more conservative approach. For example, businesses may want to consider the following questions:

1. Whether to continue requiring all employees to wear a mask regardless of their vaccination status?
2. Should fully vaccinated people still be counted when considering how many people should be allowed to occupy a space?
3. Should everyone who enters your place of business be required to wear face coverings except when actively eating, drinking, or if there is a medical reason for not wearing one, regardless of whether people are vaccinated?
4. Should everyone practice social distancing, regardless of whether they are vaccinated?

Businesses still need to provide accommodations for anyone who needs medical exceptions (e.g., a vaccinated person who has trouble breathing with a mask on during the warm weather months), but otherwise should consider how they want to approach face coverings after considering state and local requirements, as well as their internal culture and policies. The answers to these questions may have employment law implications, so businesses should consider involving employment counsel to evaluate the policies that they plan to implement. Businesses should also consider the expectations and risk tolerance of their employees, customers, vendors, and community when making any decisions.

C. Public Transit

If your employees use public transit to commute to and from work, consider reminding them that under the new CDC guidance face coverings are still required “on planes, buses, trains, and other forms of public transportation traveling into, within, or out of the United States, and in U.S. transportation hubs such as airports and stations.”

II. Conclusion

BCLP is carefully monitoring COVID-19 regulations and orders across the country, including the response to the new CDC guidance. Our [COVID-19 Reopening Team](#) would be happy to discuss any questions regarding your particular business.

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