

**Insights**

## **MASKS BACK ON: CDC REVISES GUIDANCE FOR FULLY VACCINATED INDIVIDUALS**

Jul 28, 2021

### **SUMMARY**

On Tuesday, July 27, 2021, the Centers for Disease Control and Prevention (“CDC”) updated its public health recommendations for fully vaccinated people to recommend that fully vaccinated individuals resume wearing masks in public indoor settings in areas of “substantial or high transmission.” The revised guidance is in response to surges in infection rates and hospitalizations in several regions across the country caused by the Delta variant.

While the CDC guidance is not a legal requirement unless state or local orders adopt it, some local governments have already initiated mask mandates, such as Los Angeles County, California, and St. Louis, Missouri, and more are expected to follow suit. It does, however, potentially create a standard of care that may prompt businesses to implement mask mandates, even in the absence of state or local regulatory requirements.

### **So What Areas Qualify as “Substantial or High Transmission” Zones?**

The simple answer is that the majority of counties in the country are in either the High or Substantial transmission levels. The CDC reports that 63.45% of counties across the country are at either the High or Substantial transmission level, and the trend towards the High transmission level is increasing rapidly, specifically by over 17% in the last seven days. The following CDC chart provides a helpful overview of the current numbers:

<b>Level of Community Transmission</b>	<b>Number of U.S. Counties at this Level</b>	<b>Percent of U.S. Counties at this Level</b>	<b>Percentage Point Difference Since 7 Days Ago</b>
High	1495	46.43%	17.11%

Level of Community Transmission	Number of U.S. Counties at this Level	Percent of U.S. Counties at this Level	Percentage Point Difference Since 7 Days Ago
Substantial	548	17.02%	0%
Moderate	876	27.2%	-9.38%
Low	300	9.32%	-7.73%

The levels are determined by total new cases per 100,000 persons in the last 7 days, and the percentage of tests that are positive within the past 7 days. The CDC has provided [a detailed description of the levels](#), and [an interactive map](#) to allow individuals and businesses to determine whether they are in a High or Substantial transmission level area.

### **So what does this mean for your business?**

As an initial matter, it is important to note that the CDC guidance applies to individual behaviour, and does not impose any regulatory obligations on businesses to require masks for employees or visitors. However, in some cases there are regulatory and/or other reasons why you may want to consider mandatory mask policies.

1. As noted above, some areas have instituted mask mandates already, and more are expected over the coming days and weeks. You should review the state, county, and municipal COVID regulations that apply to each of your facilities, and make sure that you stay current because as we have learned over the last several months, things change rapidly and businesses need to operate under the most current regulations.
2. Instead of issuing their own orders, some states have chosen to expressly adopt the CDC's COVID guidance generally as the guidance that applies to businesses. You should therefore determine whether any of the jurisdictions where you operate have expressly adopted the CDC guidance and made it mandatory.
3. The new CDC guidance arguably creates a standard of care that plaintiffs can point to in the event that there is a lawsuit based on their exposure to COVID at one of your facilities. Failure to adhere to the standard of care can increase your potential liability, so businesses should balance that increased risk against the potential challenges of implementing and enforcing a mandatory mask policy. Even if state, county, and local orders do not expressly require vaccinated

individuals to wear masks, businesses are typically allowed to adopt policies that are more protective, so you should consider whether a mandatory mask policy is something that you want to implement.

## Conclusion

The CDC has urged people to get vaccinated, “noting that the rise of cases and hospitalizations is greatest in places with low vaccination rates and among unvaccinated people.” However, regardless of your vaccination status, it may be time to dig your facemask out again.

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

## RELATED PRACTICE AREAS

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## MEET THE TEAM



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