

CDC Issues Guidance Allowing Fully Vaccinated Individuals to Go Without Masks

On Thursday, May 13, 2021, the Centers for Disease Control and Prevention (CDC) abruptly issued guidance stating fully vaccinated individuals can, subject to certain exceptions, resume activities without wearing a mask or physically distancing. The non-binding guidance comes as more than half of eligible adults in the United States have received at least one dose of the COVID-19 vaccine.

An individual is considered "fully vaccinated" either:

- Two weeks after their second dose in a two-dose series, such as the Pfizer or Moderna vaccines; or
- Two weeks after a single-dose vaccine, such as Johnson & Johnson's Janssen vaccine.

The guidance is not without exceptions. Fully vaccinated individuals must still wear masks and follow social distancing guidelines when required by federal, state, local, tribal or territorial laws, rules and regulations, including local business and workplace guidance.

While this new guidance may prompt employers to reconsider their mandatory mask policies, employers should not immediately abandon their current mask policy. First, many employers remain subject to federal, state and local mandatory mask mandates. Second, given the CDC's surprising announcement, it is not clear how other federal agencies, including the Occupational Safety and Health Administration (OSHA) and the Equal Employment Opportunity Commission (EEOC), will interpret this guidance as it applies to employers.

Under OSHA's current COVID-19 guidance, employers are encouraged to require face coverings and social distancing and to not distinguish between vaccinated and unvaccinated employees. Until OSHA provides additional or updated guidance, employers could be penalized for allowing employees to go without masks in the workplace despite the CDC's indication that there is little to no risk for fully vaccinated individuals.

The other difficulty for employers who would like to permit employees and customers who are fully vaccinated to forego masks is how to logistically

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implement such a policy. Employers are essentially either required to use an "honor system" or determine and stay apprised of the vaccination status of all employees and others who enter the workplace. Each of these approaches has weaknesses. For companies using the honor system, this may lead to potentially warranted safety concerns if, for example, employees who cannot be vaccinated know or reasonably believe that other unvaccinated individuals are not wearing a mask. For those employers requiring proof of vaccination, this may be a time consuming approach, particularly for larger employers, and still lead to questions of how supervisors can consistently enforce the policy short of memorizing the list of vaccinated employees. How employees should deal with customers in determining vaccination status also can lead to both logistical and safety concerns.

For the time being, employers may be best served to take a wait-and-see approach until clearer guidance is provided by OSHA or state and local agencies. Employers can let employees know that they are aware of the changes to CDC guidance, but that it is still subject to mask policies at, among other places, workplaces.

If you have questions about the new CDC guidance or your current procedures related to COVID-19, or need assistance putting together a COVID-19 preparedness plan, please contact Brittany Lopez Naleid, [Shannon Toole](#) or your Reinhart attorney.

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