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OSHA Permits Employers to Rely on CDC Mask Guidance for Fully Vaccinated Individuals

On Monday, May 17, 2021, the Occupational Safety and Health Administration (OSHA) posted a notice on its website, addressing the recent guidelines from the Center for Disease Control and Preventions (CDC) recent guidance that fully vaccinated individuals no longer need to wear masks or practice social distancing.

OSHA's notice indicates that the agency is "reviewing the recent CDC guidance" and will update its guidance accordingly. In the meantime, OSHA has instructed employers to "refer to the CDC guidance for information on measures appropriate to protect fully vaccinated workers."

OSHA's guidance remedies an inconsistency that previously existed between the CDC's guidance and OSHA's most recent guidance, from January 29, 2021. The new OSHA guidance permits many employers to relax their mask policy. In addition, any changes to a workplace mask policy should still comply with—and not go beyond—the CDC guidance. This means that employers should allow only fully vaccinated employees to work without a mask.

Further, while OSHA's guidance may come as a relief for many employers, there are still many questions for employers to consider when assessing how to implement the CDC guidance in their specific workplace:

- State or local mask mandates: The CDC guidance does not supersede "federal, state, local, tribal or territorial laws, rules, and regulations, including local business and workplace guidance." Ensure that your workplace is not covered by a mask mandate before making a change.
- Proof of vaccination: Employers that allow vaccinated employees to stop wearing masks should consider requiring employees to provide proof of vaccination before allowing employees to come to work without a mask. Requiring proof of vaccination will ensure compliance with CDC guidance and provides a mechanism for verification and enforcement. Employers should treat this information as confidential. However, employers should stay alert for state legislation that may limit their ability to request proof of vaccination.
- Enforcing or verifying compliance: Try to prevent conflict from arising regarding a relaxation of the mask policy. Designate a supervisor or manager that will handle any concerns regarding compliance with the policy and do not permit employees to confront other employees about their wearing or not wearing a

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mask.

- Workplace unions: Changes to COVID-related policies, including mask policies, may require bargaining with labor union covering employees.
- Accommodations: Changes to COVID-19 workplace policies could trigger additional requests for workplace accommodations so ensure that requests for reasonable accommodations continue to be assessed on a case-by-case basis.

If you have questions about potential changes to your mask policies, your current procedures related to COVID-19, or need assistance putting together policies related to COVID-19, please contact Brittany Lopez Naleid, Shannon (Toole) West or your Reinhart attorney.

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