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Wisconsin's Mask Mandate Repealed and Then Re-Issued on the Same Day

On February 4, 2021, the Wisconsin legislature voted to repeal Wisconsin's statewide mask mandate that has been in effect since August 1, 2020. Within an hour, Gov. Evers reinstated the mask mandate for the State of Wisconsin (by declaring a public health emergency via Executive Order 105 and the corresponding Emergency Order 1). Substantively, the mask mandate is the same as the mandate repealed. Full details on the requirements of the mandate can be found in our alert on the initial mask mandate. The Emergency Order is effective immediately and will expire March 20, 2021 (unless extended, or repealed). Several legal challenges to the mask mandate are pending and we will provide an update as decisions are issued.

While the legislature and Gov. Evers go back and forth on the mask mandates while waiting for the Wisconsin Supreme Court to weigh in on the legality of the mandates, it is important to remember that the legislature's action did not affect local authority for municipalities or counties to issue their own mask mandates. For example, the City of Milwaukee and Dane County continue to implement their own mask mandates regardless of the status of the statewide mandate. Moreover, those mandates may be more stringent than the statewide mandate, such as the Dane County mask mandate, which requires masks in certain outdoor settings.

On the federal level, OSHA, in recently issued guidance for employers on COVID-19, recommends that employers provide all workers with face coverings (unless they wear a respirator) and that employers require that anyone visiting the workplace, including customers and other non-employees) wear a face covering. OSHA is currently considering whether to implement an Emergency Temporary Standard related to COVID-19, which could include face covering requirements. If such a standard is passed, it is expected next month and we will provide guidance on its requirements.

Finally, in addition to new recommendations from the Centers for Disease Control and Prevention (CDC) for masks to be worn in public transportation and transportation hubs, the CDC recently issued guidance on how to ensure that a mask or face covering is most effective. The recommendations include:

- Wearing a mask with a nose wire for a closer fit;

POSTED:

Feb 17, 2021

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- Wearing a mask with a filter or brace;
- Wearing a mask that fits snugly over the mouth and nose;
- Either double masking with one surgical mask and a cloth mask or a cloth mask with multiple layers; or
- Knotting the ear loops of a mask and folding the unneeded material to improve the fit and reduce gaps.

These recent changes to the statewide mask mandate and continued issuance of new recommendations from entities such as the CDC or OSHA underscore the importance of staying up to date on the recommendations and requirements for employers as they continue to grapple with COVID-19 prevention and precautions in the workplace.

If you have questions about your current procedures related to COVID-19 or need assistance in reviewing or putting together your COVID-19 preparedness plan, please contact Brittany Lopez Naleid or your Reinhart attorney.

Please visit Reinhart's Coronavirus Resource Center for additional up-to-date information.

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