

Updated CDC and OSHA Guidance for Fully Vaccinated Individuals

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Practice Area: Labor and Employment

On May 13, 2021, the Centers for Disease Control and Prevention (CDC) issued interim Public Health Recommendations for Fully Vaccinated People (“updated guidance”). The updated guidance relaxes the previous masking and social distancing requirements: Individuals fully vaccinated against COVID-19 no longer need to wear a mask or physically distance in most settings. However, these relaxed standards do not apply to healthcare¹ settings where fully vaccinated employees are still subject to the masking and social distancing requirements in many instances. This *Legal Update* will provide an overview of the CDC’s guidance, along with a summary of other workplace health and safety guidance from OSHA.

Overview of the CDC Updated Guidance

Under the CDC Guidance, individuals are considered “fully vaccinated” 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.² Individuals who do not meet these requirements are not considered fully vaccinated: They are still subject to the prior masking and social distancing requirements. The CDC stated that individuals with compromised immune systems still may not be fully protected after vaccination.

After individuals are fully vaccinated, they may resume activities that were conducted prior to the pandemic. This can be done without wearing a mask or staying six feet apart, except where required by federal, state, local, tribal or territorial laws, rules, and regulations, including local business and workplace guidance.

With respect to travel for fully vaccinated individuals, travel within the United States does not require testing before or after the travel, and self-quarantine is not necessary after travel. With regard to international travel, prior testing is not required before leaving the United States, unless required by the destination. However, unlike domestic travel, a negative COVID-19 test result or documentation of recovery from COVID-19 is required before boarding an international flight to the United States. Testing is still recommended 3-5 days after international travel, but self-quarantine is not needed in such situations.

With respect to close contacts, fully vaccinated individuals do not need to get tested or isolate/quarantine if they have had close contact with individuals with COVID-19, with an exception for residents and employees of correctional and detention facilities and homeless shelters, where testing (but not quarantine) is still recommended following an exposure to someone with COVID-19.

Fully vaccinated employees still need to watch out for symptoms of COVID-19, especially in circumstances where there has been an exposure to someone who is sick. Even if fully vaccinated, individuals who become symptomatic should still get tested and stay home and away from others consistent with prior guidance.

While the COVID-19 vaccine is effective at preventing COVID-19 disease, especially severe illness and death, and reduces the risk of people spreading COVID-19, the CDC is still gathering information to determine how effective the vaccines are against variants, how well the vaccines protect individuals with weakened immune systems, and how long the COVID-19 vaccines provide protection.

As the CDC learns more, it will continue to update its guidance for both vaccinated and unvaccinated individuals.

Occupational Safety and Health Administration (OSHA) and Workplace Safety

In its January 29, 2021 Guidance on Mitigating and Preventing the Spread of COVID-19 in the Workplace, OSHA required that employees wear masks and physically distance in the workplace, including fully vaccinated employees. OSHA's guidance at the time was based on the lack of information that the vaccines were effective at preventing the spread of COVID-19. The updated CDC guidance finding that the vaccines are effective against reducing the risk of spreading COVID-19 is a game-changer. OSHA has recognized this new reality and has advised that it is currently reviewing and updating its guidance and materials. Pending the update to its materials, OSHA has advised employers "to refer to the CDC guidance for information on measures appropriate to protect fully vaccinated workers." As such, it would appear that OSHA has deferred to the CDC on masking and social distancing for fully vaccinated employees, pending further specific guidance.

Impact on State and Local Orders

The CDC's Guidance specifically exempts situations where a state or local order still requires masks and social distancing even for fully vaccinated individuals. Many states and municipalities still require masking, social distancing and capacity limits.

There is currently no mask mandate or social distancing requirement for Wisconsin on the statewide level. However, many counties and municipalities still require mask use and social distancing. For example, Dane County announced that it will not issue any new COVID-19 restrictions after its current public health order expires on June 2; similarly, Milwaukee County's public health order requires masking through June 1. Other counties and municipalities are expected to meet in the coming weeks to make decisions concerning current ordinances and orders.

Practical Considerations for Employers

Employers will continue to wrestle with how to balance the necessity of ensuring a safe and compliant workplace as the re-opening and recovery progresses. Following are some considerations that are important for employers to address in light of this rapidly changing situation in order to provide for a safe, healthy, effective, and compliant workplace consistent with the CDC, OSHA, and other relevant authorities:

1. Monitor CDC and OSHA websites to keep current with forthcoming anticipated guidance;
2. Consider instituting or updating company-wide COVID-19 vaccination policies;
3. Determine whether to mandate the vaccine and other avenues for increasing vaccination rates, such as incentivization;
4. Healthcare employers must continue to abide by prior masking and social distancing standards in most settings;
5. Consider whether any vaccine incentives need reasonable accommodations for disabled employees;
6. Update COVID-19 policies to determine which employees will be subject to masking and social distancing in light of the CDC Guidance;
7. Unionized workplaces and employers with employees subject to collective bargaining agreements must consider any bargaining obligations with the Union prior to instituting or modifying vaccination policies;
8. Review prior EEOC guidance to determine how to accommodate employees with disabilities or religious objections to the vaccine;
9. Keep employee vaccination status as confidential medical information;
10. Keep informed of any local public health rules and regulations requiring masking;
11. Review and update policies to follow current OSHA Guidelines;
12. Train supervisors and managers on COVID-19 policies.

Employers can benefit from consulting with experienced labor and employment counsel to craft solutions to these challenging issues.

¹ Healthcare settings refers to places where healthcare is delivered and includes, but is not limited to, acute care facilities, long term acute care facilities, inpatient rehabilitation facilities, nursing homes and assisted living facilities, home healthcare, vehicles where healthcare is delivered (e.g., mobile clinics), and outpatient facilities, such as dialysis centers, physician offices, and others.

² The CDC notes that the updated guidance also applies to any vaccines authorized for emergency use by the World Health Organization, such as AstraZeneca/Oxford

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