

## CDC Changes Masking Guidance for Fully Vaccinated Individuals

Jul 27 2021

Practice Area: Labor and Employment

---

The Centers for Disease Control (CDC) announced on July 27, 2021 that it will adjust its advice to recommend that vaccinated people in substantial or high transmission areas of COVID-19 (defined below) wear masks in indoor public spaces. This guidance will substantially alter the CDC's May 13 guidance that largely exempted fully vaccinated individuals from the indoor mask requirement. There has been no change in the outdoor masking recommendations at this time. In changing its masking recommendations, the CDC asserts that current scientific information indicates that the delta variant can be spread despite vaccine status, warranting an adjustment to its prior guidance.

von Briesen's COVID-19 Task Force will continue to monitor the CDC guidance with an eye towards the legal implications of the guidance including the impact on employer policies and processes. Below is a summary of the updated guidance based on the media telebriefing:

- In public indoor settings in areas of substantial or high transmission, all are to wear masks - including fully vaccinated individuals.
- Recommends universal indoor masking for all teachers, staff, students, and visitors to schools, regardless of vaccination status.
- There should be a continuing effort to strongly encourage vaccination to reduce the spread of COVID-19, including the delta variant.
- Community leaders should encourage universal masking and vaccination nationwide, regardless of whether or not in a substantial or high transmission area.

Despite the updated guidance, CDC Director Dr. Rochelle Walensky emphasized that wearing a mask is a "personal choice" and no "stigma" should attach to the decision whether or not to wear a mask. Moreover, Dr. Walensky acknowledged that the renewed indoor masking requirement would "weigh heavily" with individuals who are already fully vaccinated. The White House has not provided additional comment on the CDC guidance as of this writing.

The definition of a substantial or high transmission area is based on the CDC's COVID-19 Data Tracker, which tracks the level of community transmission by county nationwide. Notably, the updated guidance does not apply to areas of moderate or low transmission.

While the CDC guidance is not mandatory, employers are advised to evaluate their workplace policies to determine the extent to which it may be prudent to alter workplace masking requirements. Additionally, states and cities are free to institute their own legally binding masking requirements, regardless of the CDC guidance. Employers are advised to closely monitor state and local developments. We also note that it is unclear what, if any, impact the CDC guidance will have on OSHA's recent healthcare emergency temporary standard for healthcare employers or its enforcement of its safe workplace standards.

---

---

von Briesen & Roper Legal Update is a periodic publication of von Briesen & Roper, s.c. It is intended for general information purposes for the community and highlights recent changes and developments in the legal area. This publication does not constitute legal advice, and the reader should consult legal counsel to determine how this information applies to any specific situation.