CDC and OSHA Mask Mandate Changes: Top Takeaways for HR

Following the CDC and OSHA guidance on mask wearing over the past several weeks is much like watching a tennis match. The CDC originally served guidance stating that vaccinated individuals no longer needed to wear a mask outdoors or when gathering with other vaccinated individuals. To the disappointment of many employers, OSHA did not return with a long-awaited update to the current Emergency Temporary Standard (ETS) for masking. On May 13, the CDC served up another statement saying vaccinated individuals are able to resume pre-pandemic activity, unless masks are required by a local ordinance or by individual businesses. OSHA returned a response a couple days later, stating businesses should follow CDC guidelines.

All of this has left employers in the spectator seats, wondering what to do next. Many have updated policies, while others wait to see if any additional guidance will be given. Here are five takeaways related to the newest guidance.

1) Make the safety of your employees your first priority. While the CDC has stated masks are not required for vaccinated individuals, employers should keep in mind that the CDC’s intended audience is the general public. On the other hand, OSHA has jurisdiction over employers, workplaces, and how employees are kept safe and healthy. The change for fully vaccinated employees has been addressed by OSHA, but there is no difference from what the CDC has provided. OSHA will be most concerned about providing protection to unvaccinated employees.

HR Practical Tip: When creating policies, consider all work scenarios at your company and consider the risk factors for those who have not been vaccinated. OSHA’s General Duty Clause will still apply to any COVID-19 exposures in the workplace.

2) You have options on how to apply the newest guidance. Although the CDC has lifted the mask mandate for vaccinated individuals, there is still a requirement for unvaccinated individuals to wear a mask. Employers have options when deciding how to apply this guidance in the workplace.

   1. Continue to require mask wearing for everyone while in your building(s). This option relieves employers of the obligation to check vaccination records or ask questions they may not be comfortable asking.
   2. Allow vaccinated individuals to go without masks, but still follow social distancing recommendations. This option implies that employers will ask for vaccination history, but some employers may choose to follow the honor system. If vaccination records are requested, employers should assure they are kept confidential and store them separately from employee records. Employers should also be prepared to address situations when employees are not vaccinated and are not wearing a mask.
   3. Make mask wearing optional in your building(s). This is a much risker option for businesses and requires everyone to be honest about their vaccination status. It also opens employers and businesses up to the possibility of COVID-19 exposure and recordable OSHA incidents.

HR practical tip: Know your employees and understand your work environment before implementing a new mask policy. If the environment requires employees to work closely to others, it may be a best practice to continue requiring masks for all employees. If your environment allows employees to work in private spaces, where there is little interaction with others, it may work to be more lenient. Knowing the vaccination rate of your employees may also help in making decisions.

Employees may continue to request a face mask accommodation or other accommodations after a change in policy. Consider how each request aligns with any revisions to your policy.

3) Be consistent with how you administer your policy. If you are requiring employees to wear a mask, that applies to all levels of the company. Leadership can be a great example and will set the tone for how your policy is followed.

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Also, if your company chooses to keep a record of vaccination status, have a gatekeeper for the information. Doing so will help provide consistency in gathering and maintenance of the information. Human Resources is the gatekeeper for most confidential employee information and is the recommended option for vaccination records as well.

**HR practical tip:** Being consistent will help avoid confusion. CDC and OSHA guidance may change as more information about COVID-19, vaccinations, and infection rates becomes available. Providing clear, consistent communication on your company’s policies will make it easier to administer them.

4) **Respect the choices of your employees and help protect their privacy.** The choice to be vaccinated is a personal one, as is the choice not to be vaccinated. If your policy states that unvaccinated employees are required to wear a mask, you may wish to include that vaccinated individuals may also choose to wear a mask. Doing so may help those wearing masks feel as if their vaccination status is not as obvious.

If requesting vaccination records, determine how you will record the information. Ensure employees that all records will be stored in a confidential location. Rather than approaching employees to ask for vaccination records, communicate that they are responsible for providing that information.

**HR practical tip:** Employees may be leery about providing any type of medical information to their employer. Although it is not a violation of the ADA or HIPAA to request vaccination information, employees still regard it as a personal choice. Assuring them that it will be protected will aid your efforts.

5) **Don’t forget those on the outside.** Clear communication of your mask policy to visitors is just as important as communication to your employees. Share any company policies with visitors prior to meetings so they come prepared and know what to expect.

If you have employees who work with outside customers or vendors, or who travel to different work locations, become familiar with those mask policies as well. If other companies require vaccination or masks, be sure the employees working with them understand the requirement.

**HR practical tip:** Not every business will have the same mask policy. If you work with outside companies, be prepared to make accommodations for those whose policies differ from yours. In some cases, it may be necessary to continue virtual meetings. In others, it may be necessary to have someone else call on an account until the policies change.

Although many see the change in CDC guidance as a sort of freedom, employers need to remember it may not apply to everyone. It is ultimately every employer’s responsibility to provide a safe work environment for employees and visitors and to create policies that align with that goal. For more information on the most recent CDC or OSHA guidance, please contact our 24/7 HR Hotline at 866.474.6854 or email us at InfoNow@mranet.org.