

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. On July 27, 2021, the CDC lobbed its [Interim Public Health Recommendations for Fully Vaccinated People](#). This newest guidance is specific to when fully vaccinated individuals should wear masks and seems contrary to guidance we have received in the past.

All of this volleying 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 provided guidance on when fully vaccinated and unvaccinated individuals should wear masks, employers should keep in mind that the CDC's intended audience is the general public and not the workplace. OSHA has jurisdiction over employers, workplaces, and how employees are kept safe and healthy while at work. OSHA updated its Emergency Temporary Standard (ETS) on June 21, 2021, to include a focus on the health care industry. General language is also included that applies to all industries.

HR practical tip: *When creating policies, consider all work scenarios at your company and consider the risk factors in your community. 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. The CDC has issued guidance on when both vaccinated and unvaccinated individuals should wear masks. There may also be requirements by federal, state, local, and tribal or territorial laws, rules, and regulations, as well as those set by an industry or business you work with. While employees should follow those requirements when conducting business outside the workplace, employers have options when deciding how to apply this guidance in the workplace.

- a. 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.
- b. 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.
- c. Make mask wearing optional in your building if your workplace is not in an area designated as being at [substantial or high risk](#) by the CDC. This is a much riskier 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 and local transmission status 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.

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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.

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.*

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.