

NOW & NEXT

Labor & Employment Alert

AUGUST 18, 2021

Fed/OSHA revises COVID-19 guidance; includes new recommendations for employers and workers

By Rachel Conn and Shelagh C.N. Michaud

Fed/OSHA adopts not only CDC's July 27th guidance for fully vaccinated individuals, but includes additional emphasis on employer vaccine facilitation and industry-specific guidance.



What's the Impact

- / Fed/OSHA adopts the CDC's new guidance on face coverings and quarantine protocols for fully vaccinated individuals.
- / Employers are encouraged to facilitate employees getting vaccinations.
- / Fed/OSHA also suggests that employers consider adopting policies that require workers to get vaccinated or to undergo regular COVID-19 testing.

On July 27, 2021, based on the most [recent information](#) on COVID-19 vaccines and the [new evidence](#) regarding the especially virulent Delta variant, the CDC revised its [recommendations](#) for fully vaccinated people and returned to advising people to wear face coverings in certain circumstances as risks of transmission of COVID-19 increase. Following the issuance of the new CDC guidance, on August 13, 2021, Fed/OSHA issued [new guidance](#) to implement the new CDC recommendations and to advise employers on additional measures to protect workers, particularly those that are unvaccinated and at-risk, especially in light of the Delta variant.

What didn't change?

- / The recent changes do not change the CDC's [guidance for healthcare settings](#) or Fed/OSHA's requirements under its [COVID-19 Emergency Temporary Standard for Healthcare](#).
- / The CDC continues to state that fully vaccinated¹ people can participate in activities, both work and social, similarly to how they did before the COVID-19 pandemic. However, both the CDC and Fed/OSHA also continue to recommend that the following individuals stay home from work and isolate and/or quarantine:
 - employees regardless of vaccination status who have tested positive for COVID-19 or have symptoms of COVID-19; and
 - unvaccinated employees who have had close contact with someone with COVID-19.

Both continue to advise that people who have been fully vaccinated do not need to quarantine if they have a close contact with a COVID-19 case.

- / The CDC also continues to remind people that regardless of vaccination status, people need to follow state and local guidance and requirements as well as from employers and local businesses.
- / Fed/OSHA continues to "encourage employers to take steps to make it easier for workers to get vaccinated and encourages workers to take advantage of those opportunities," including encouraging employers to grant paid time off to employees to get vaccinated and for any recovery time after vaccinations.
- / To protect unvaccinated and at risk employees, Fed/OSHA continues to recommend social distance—generally at least six feet—in all communal work areas, limited occupancy in work spaces to allow social distance, and physical barriers where social distance is not possible, as well as enhanced ventilation systems and routine cleaning and sanitization.

Fed/OSHA advises that employers should provide education and training to employees on the basic facts of COVID-19, including that "[v]accination is the key element in a multi-layered approach to protect workers," and the related workplace policies.

What changed?

- / The CDC and Fed/OSHA now advise that fully vaccinated people should wear a face covering in public indoor settings if they are in an area of "substantial or high transmission" (which the CDC now defines in a [series of maps](#)) and/or if living with or engaging with immunocompromised people, people at increased risk for severe disease, and/or unvaccinated adults or children. The CDC clarified that in addition to vaccines with EUA approval in the United States (Pfizer, Moderna, and Johnson & Johnson vaccines), its guidance for fully vaccinated people is applicable to people who have received COVID-19 vaccines which are listed for emergency use by the WHO, such as the AstraZeneca vaccine,

¹ A person is considered fully vaccinated two weeks after receiving their second dose of the Pfizer or Moderna vaccine or two weeks after receiving their single dose of the Johnson & Johnson vaccine.

which is not available in the United States, but is used in other countries.

- / Fed/OSHA also extended its recommendation that employers suggest that unvaccinated customers, visitors, or guests wear face coverings in public-facing workplaces such as stores to now advising that employers either suggest or **require** that businesses ask all customers, visitors, or guests regardless of vaccination status to wear face coverings in areas of substantial or high transmission.
- / In its new recommendations, Fed/OSHA also reiterated that cloth “face coverings,” which are the subject of the CDC guidance, are “one type of mask among other types of masks,” and are not personal protective equipment (PPE). Fed/OSHA further clarified that it differentiates cloth face coverings from the term “mask” and from respirators that meet Fed/OSHA’s Respiratory Protection Standard. It reminds employers that surgical masks are “typically cleared by the US Food and Drug Administration as medical devices and are used to protect workers against splashes and sprays (i.e., droplets) containing potentially infectious materials; in this capacity, surgical masks are considered PPE.”
- / Fed/OSHA recommends employers provide workers with face coverings or surgical masks, as appropriate, unless their work task requires a respirator or other PPE.
- / The CDC and Fed/OSHA now recommend that fully vaccinated people should get tested 3–5 days after known exposure to a person with confirmed or suspected COVID-19 and should wear a face covering when indoors for 14 days after exposure or until receiving a negative COVID-19 test. In addition, those who are not fully vaccinated or are unvaccinated should be tested immediately after exposure and again 5–7 days after the last exposure to COVID-19 or if symptoms develop during quarantine.
- / Fed/OSHA now advises employers to consider facilitating employees getting vaccinated by “working with local public health authorities to provide vaccinations in the workplace for unvaccinated workers.” OSHA also advises employers to consider adopting mandates that require employees to get vaccinated or be regularly tested for COVID-19 and continue wearing face coverings and social distancing in the workplace if they are unvaccinated.
- / In advice aimed specifically at meat, poultry, and seafood processing settings; manufacturing facilities; and assembly line operations (including agriculture), Fed/OSHA advised that businesses should ensure adequate ventilation, space out workers by at least six feet of distance, and make sure they are not working directly across from one another, and make sure that there is at least six feet of space. While Fed/OSHA specifically stated that “[b]arriers are not a replacement for worker use of face coverings and physical distancing,” if they are used when physical distancing cannot be maintained, Fed/OSHA requires that they be:
 - made of a solid, impermeable material, like plastic or acrylic
 - be easily cleaned or replaced
 - not block face-to-face pathways
 - not flap or otherwise move out of position when they are being used

What do these changes this mean for employers?

Employers should review their policies and revise them to reflect current federal, state, and local guidance and regulations. In reviewing these policies, employers should consider local transmission rates as well as the vaccination rates and any other relevant information relating to possible workplace transmission. Employers should monitor the transmission status of areas in which they have offices and consider implementing "mask" mandates when transmission rates become high or substantial.

Employers also need to stay abreast of state and local requirements relating to COVID-19. For example, Los Angeles county, Provincetown, and Philadelphia recently reinstated mask mandates regardless of vaccination status after COVID-19 rates rose in those areas.

This summary of new Fed/OSHA and CDC recommendations is just part of our response to the ever changing issues and considerations in the workplace and for employers as a result of COVID-19. Our Nixon Peabody team will continue to provide updates on issues facing employers and up-to-date and creative solutions to assist them in navigating through these turbulent times.

For more information on the content of this alert, please contact your Nixon Peabody attorney or:

[Rachel L. Conn](#)

415.984.8216

rconn@nixonpeabody.com

[Shelagh C.N. Michaud](#)

401.454.1133

smichaud@nixonpeabody.com
