

Saying Goodbye to Mask Mandates – Practical Tips for Employers

by Ryan E. Mick

On May 13, 2021, the U.S. Centers for Disease Control and Prevention (“CDC”) revised its COVID-19 guidance to reflect that “fully vaccinated” individuals no longer need to wear masks, whether indoors or outdoors, except in limited circumstances (such as on a plane). Following suit, on May 14, 2021, Minnesota Governor Tim Walz officially ended the state’s mask mandate.

Both the CDC’s recommendation and the repeal of Minnesota’s mask mandate apply to businesses and workplaces. Accordingly, subject to local laws and ordinances, Minnesota employers may now choose whether to require employees (and customers) to wear masks at the workplace. With mask mandates being eased or lifted in other states and local jurisdictions as well, employers in Minnesota and across the nation now face the practical challenge of maintaining a safe and compliant workplace in an increasingly open environment. Several important factors should be considered in making these decisions.

First, the CDC guidance applies only to “fully vaccinated” persons—both the CDC and Minnesota Department of Health still encourage non-vaccinated persons to continue wearing masks, whether indoors or out. Under CDC guidance, an individual is “considered fully vaccinated for COVID-19 [following] 2 weeks after they have received the second dose in a 2-dose series (Pfizer-BioNTech or Moderna), or [following] 2 weeks after they have received a single-dose vaccine (Johnson and Johnson [J&J]/Janssen).” [Interim Public Health Recommendations for Fully Vaccinated People | CDC](#).

As such, employers deciding whether to eliminate masking requirements in the workplace should carefully consider whether and how they will ask employees to provide proof of vaccination, and they must be aware of relevant legal considerations if making those inquiries. For example, several jurisdictions have implemented (or are considering) laws banning employers and other institutions from requiring “vaccine passports” or other methods of requiring individuals to provide proof of vaccination to gain access, entry, or

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Similar to considerations made in deciding whether to mandate employee vaccinations (see: Mandating COVID-19 Vaccinations in the Workplace: Practical Considerations for Employers), employers also should be mindful that employees may choose not to be vaccinated for religious or medical reasons. Employees should not be treated in such a way that they feel discriminated against for those reasons. Employers who choose to selectively lift masking requirements only for individuals who have been vaccinated may face risks of discrimination claims on those bases. Proper planning is important to mitigate those risks.

Second, employers should be sure to check for local masking requirements which may still be in effect. For example, the city of Minneapolis has announced plans to maintain its indoor mask mandate for the time being. St. Paul also announced it will maintain its mask mandate on the heels of Minnesota lifting its mandate. Accordingly, employers with operations in Minneapolis, St. Paul, or other jurisdictions still enforcing a mask mandate should continue to abide by applicable local requirements.

Employers must also continue to comply with other applicable federal and state agency guidance or requirements regarding mask mandates. Notably, OSHA announced it is “reviewing the recent CDC guidance and will update our materials ... accordingly,” while recommending employers refer to the CDC’s updated guidance “for information on measures appropriate to protect fully vaccinated workers.” (link: <https://www.osha.gov/coronavirus/safework>). Although OSHA’s guidance will be updated soon, until it is, employers may wish to continue requiring employees—regardless of vaccination status—to wear a mask and/or physically distance in any indoor setting. Similarly, Minnesota employers must still establish and implement a COVID-19 Preparedness Plan, which addresses topics such as hygiene procedures (including wearing face coverings where appropriate) and physical distancing in the workplace. Businesses and Employers: COVID-19 Preparedness Plan Overview COVID-19 - Minnesota Dept. of Health (state.mn.us).

Third, even with state and local mask mandates ending, employers may ultimately choose to implement their own mask mandates at the workplace, provided they are acting in accordance with applicable state or local law. (see: Vaccine Status is a Protected Trait in Montana). For workplaces choosing not to mandate masks, however, employers should consider encouraging employees to act within their own comfort level and to continue wearing a mask at the workplace if desired.

Dorsey is here to help. Since the beginning of the COVID-19 pandemic, Dorsey & Whitney lawyers have been guiding and advising companies of all sizes on COVID-19 related developments across the country. If you have questions about how changes in mask mandates apply to you, your employees, or your customers, Dorsey & Whitney’s attorneys are ready to assist you. In addition, if you are planning on bringing employees back to the office, Dorsey & Whitney’s attorneys have been guiding employers through the legal and practical issues involved in that process.

