Ohio Jumps Aboard CDC's Masking Guidance for Those Fully Vaccinated: What Businesses Need To Know

Insights
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Following last week's recommendation from the Centers for Disease Control and Prevention (CDC) that fully vaccinated people are no longer required to wear a mask or socially distance in most settings, the Ohio Department of Health just issued a new Health Order to conform to the CDC's guidance. What do Ohio employers – especially retail establishments – need to know about the May 17 Revised Health Order?

Revised Health Order, Summarized

On Monday, May 17, the Ohio Department of Health amended its Order for Social Distancing, Facial Coverings, and Non-Congregating. Specifically, the Order states that people who are fully vaccinated may resume activities without wearing a mask or socially distancing. It also states that unvaccinated people must continue to wear masks and practice social distance protocols. A person is considered fully vaccinated two weeks after receiving the second dose of a two-dose vaccine (Pfizer-BioNTech or Moderna) or two weeks after receiving a single-dose vaccine (Johnson and Johnson/Janssen). Consequently, Ohio businesses may now choose to continue requiring masks and social distancing on their premises.

This Order will remain in effect until 12:01 AM on Wednesday, June 2, 2021 – the date in which the Ohio Department of Health will remove the majority of its pandemic-related health orders.

What Does This Mean For Ohio Businesses?

With the Revised Health Order in place, you should be prepared to address possible risks if you choose to relax or eliminate mask mandates and social distancing protocols for employees and guests who are fully vaccinated. Regarding employees, Fisher Phillips has developed a seven-point plan for a mask-less workplace, which includes:

1. Understanding Your State and Local Regulations;
2. Understanding the Risk You Face From OSHA (OSHA just stated that, until it provides an update in response to the CDC's announcement, employers should follow the CDC's guidance for information on measures appropriate to protect fully vaccinated workers);
3. Understanding Your State OSHA Plan Requirements;

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4. If You Mandate the Vaccine, Bearing the (Slight) Risk of a Lawsuit;
5. Tracking Vaccine Status Raises Privacy and Other Concerns;
6. Offering Religious and Medical Accommodations; and
7. Protecting Masked Workers from Mistreatment.

Regarding guests, the Revised Health Order left one important question unanswered: how can businesses determine whether its guests are fully vaccinated and cleared for a mask-less and social distanced-free experience? Fisher Phillips has recommended three options for businesses: (1) require all guests to wear masks; (2) give guests the option of showing proof of vaccination (i.e., vaccine card) or keep masks on; or (3) follow the honor system.

Conclusion

This latest step by Governor DeWine provides clear guidance that businesses may now choose for themselves whether to continue requiring fully vaccinated employees and guests to wear masks and practice social distancing in their premises.

Fisher Phillips will continue to monitor the rapidly developing COVID-19 situation and provide updates as appropriate. Make sure you are subscribed to Fisher Phillips' Insight System to get the most up-to-date information. For further information, contact your Fisher Phillips attorney or any attorney in our Cleveland or Columbus offices.

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