

Insights, News & Events

WHAT DO THE RELAXED CDC MASK GUIDELINES MEAN FOR WASHINGTON EMPLOYERS?

Insights
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Despite the CDC's recent news regarding relaxed mask recommendations, those Washington employers eager to return to business as usual must still comply with Governor Inslee's May 21 "[Safe Workers' Proclamation](#)" and Washington Labor & Industries' (L&I) related guidance. Some existing rules continue to apply, while there are some changes to consider. What do Washington employers need to know about these key components?

What Stays the Same

- Employers must still comply with the governor's [industry-specific phased-reopening guidelines specific to their business](#), which includes rules like occupancy limits, guest or customer capacity, and certain hygienic practices.
- The new guidance does not change any masking rules for healthcare settings (e.g., hospitals, long-term care centers), schools, correctional facilities, child care centers, or public transportation.
- Employers must still follow the governor's proclamation regarding high risk workers, which includes protecting employees from workplace retaliation because of requests for accommodation to avoid coronavirus exposure.
- Employers must remain prepared to engage in the interactive process when faced with employees who may request reasonable accommodations related to mask

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Catharine Morisset

Partner

206.693.5076

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wearing or other COVID-19 protocols related to a disability or a bona fide religious belief.

- Employers are not required to mandate their employees get vaccinated.
- Employers still must mandate indoor mask wearing and social distancing. The only exception, described below, is if the employer wants to relax this rule where an employee presents proof of vaccination.

What Has Changed

Most employers have the option of continuing to require masks and social distancing for all workers, or to lift that rule for employees who can prove vaccination. However, employers who choose to allow workers to go without face coverings must verify proof of vaccination and be able to demonstrate two factors to L&I:

- *Proof of Vaccination.* Acceptable documentation includes a copy or photo of a CDC vaccination card, letter from the employee's health care provider, a signed attestation from the worker, or documentation from the state immunization information system.
- *Proof of Verification.* L&I describes several methods to record proof verification of vaccination statutes. These include a log that records employees' name, date of vaccination, and date of verification, checking workers' vaccination status daily as they enter the job site, or similar method.

What Should You Do?

You may want to revisit your vaccination policy given these developments. You still have the option to mandate employees get vaccinated, keeping in mind your duty to provide reasonable accommodations, among other legal and practical considerations. For a detailed summary of your obligations and rights in this area, [please refer to our recent Insight on the subject.](#)

If you collect proof of vaccination, signed attestations, or doctors' notes, they should remain as confidential medical information. You should save them in a file separate from an employee's personnel file to comply with the ADA and other laws concerning the confidentiality of health information.

Because of healthcare privacy, disability or religious discrimination, differences in political beliefs, and other morale considerations, a prudent employer will avoid policies or practices that force employees to disclose their vaccination status and the reason for it to their co-workers. You should be careful that vaccinated individuals are not treated more favorably than individuals who remain unvaccinated for medical or religious reasons. While L&I suggests that a way to track vaccination status is by marking a workers' badge, you should consider whether that makes sense in your particular workspace or environment or if that may risk workplace morale or legal liability.

What's Next?

As we have seen throughout the pandemic, these rules can change at any time. It also is too soon to tell if the governor or state agencies will fully repeal any mask or social distancing requirements rules when all counties move to the final state of reopening, currently anticipated for June 29, 2021. You should continue to monitor for new announcements from the Governor, state Department of Health, and Labor & Industries.

Fisher Phillips will also continue to monitor for developments. To ensure you stay up to speed with the latest developments, make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information, and check out our [FP Vaccine Resource Center For Employers](#). For further information, contact your Fisher Phillips attorney or any attorney in [our Seattle office](#).