



New York's Mask Mandate Faces Uncertain Future After Court Decisions

Insights

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Although a New York State Supreme Court judge just overturned the statewide mask mandate as unconstitutional, that decision was almost immediately paused by an Appellate Judge pending the results of the state's appeal. Accordingly, **New York State's mask mandate remains in effect – for now.** All businesses in New York must continue to require employees and customers to wear a mask indoors unless the business implements a vaccine requirement for everyone entering the premises until further notice. Here is what New York employers need to know. **[Ed. Note: Governor Hochul announced on February 9 that the state mask mandate would not be extended beyond February 10.]**

What Is Happening?

In response to the rapid spread of the omicron variant, Governor Hochul announced in mid-December that New York would be instituting a mask-or-vaccine mandate. The state's Commissioner of Health subsequently issued a regulation on indoor masking. Effective December 13, 2021, all persons over the age of two are required to wear a face covering in any indoor public place, including workplaces, that did not require proof of vaccination as a condition of entry. The regulation also mandated masks in other locations, such as schools.

The mask mandate was originally set to expire on January 15, 2022. On December 31, 2021, however, Governor Hochul announced an extension of the mandate. On January 13, the Commissioner of Health issued another determination extending the mandate a further two weeks until February 1, 2022.

A number of parents of school-age children filed suit challenging the legality of the mask mandate. What started as a challenge by parents to the requirement that masks be worn in schools had a farther-reaching effect, possibly rendering null and void the mask mandate in its entirety. On January 24, a New York State Supreme Court judge issued a decision holding that the mask mandate violated the state's constitution and public health law since it lacked legislative backing from the state legislature. In addition, absent any non-conclusory proof of an emergency, the judge ruled that the mask mandate did not abide by the state Administrative Procedure Act's emergency rule requirements. Accordingly, the judge held that the mask mandate was unenforceable. The mask mandate was permanently enjoined from enforcement pending the results of an appeal or legislative action

decision.

The State quickly filed an appeal and sought an emergency stay of the decision and order that would press pause on matters and retain the mask mandate pending the outcome of the appeal, which was almost immediately granted. Litigation of the mandate is likely to work its way through the state's appeals courts in the coming weeks for a final decision on its legality. Litigation could, however, be rendered moot should the mandate expire on February 1 without further extension. **[Ed. Note: The Commissioner of New York's Department of Health extended the mask mandate to February 10.]**

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What Should You Do?

For now, the state's mask mandate remains in effect. Accordingly, you must continue to require employees, patrons, and anyone else who enters your indoor premises wear a mask, unless your business requires everyone who comes on site to be fully vaccinated. Stay tuned for further developments, as this is a fluid situation.

Conclusion

There are likely to be more twists and turns in this mask mandate saga. We will continue to monitor developments impacting New York employers, so make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information. If you have questions about the mask mandate, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in our [New York City office](#).

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