

THE GREAT UNMASKING? CALIFORNIA RELAXES MASKING REQUIREMENTS REGARDLESS OF VACCINATION STATUS

Insights
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In the surest sign that COVID-19 restrictions are moving to the rearview mirror once and for all, California has just relaxed its face covering requirements, regardless of vaccination status in most settings – and for most workplaces. The new mask requirements announced yesterday generally provide that face coverings do not need to be worn any longer, regardless of vaccination status. While this is welcome news to many, employers need to remember that more restrictive local orders still control, and some businesses may choose to continue masking regardless of vaccination status.

Updated CDC and State Public Health Guidance

Last week, the Centers for Disease Control (CDC) issued [new guidance](#) that generally relaxed face covering requirements for most Americans in indoor settings. The California Department of Public Health (CDPH) followed suit yesterday by issuing its own [updated guidance](#). The new CDPH guidance lifts the requirement that unvaccinated individuals mask in indoor public settings. Instead, the new guidance merely “strongly recommends” that all persons continue to mask up regardless of vaccination status.

Despite the updated CDPH guidance, universal masking – regardless of vaccination status—continues to be required in high-risk settings (schools through March 11, public transit, healthcare settings, and others). This remains true until CDPH issues further guidance.

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What Does This Mean for Workplaces Subject to Cal/OSHA's ETS?

In an effort to align Cal/OSHA's Emergency Temporary Standards (ETS) with the updated guidance, Governor Gavin Newsom swiftly issued an [Executive Order](#) lifting the general masking requirement in the ETS for those who are not fully vaccinated.

As employers know all too well, the ETS has gone through many iterations over the past three months. Until yesterday, the ETS required employers to provide face coverings for all employees who are not fully vaccinated and ensure that they wear them indoors and when in vehicles with others. In this newest Order, the Governor suspended that provision. Instead, employers will now follow orders from the CDPH or local health departments.

Though this is a welcomed change, this is not the end of face coverings. For now, masking in the following scenarios will continue across the state:

- **When Employees Voluntarily Wear a Mask:** The ETS states that employers must allow employees to wear a face covering if they voluntarily choose to do so. The only exception to this rule is when masking will create a safety hazard.
- **When There Has Been a Close Contact in the Workplace:** Employees who have been exposed to COVID-19 are required to wear a well-fitting mask around others for a total of 10 days.
- **When an Employer Chooses to Implement Their Own Masking:** Employers can choose to implement mandatory masking policies for their own workplace. In the Bay Area specifically, where many mask requirements have been lifted, some employers have chosen to require masks as a proactive step.
- **When a Local Masking Order Requires Masking:** Depending on transmission rate, local orders may continue masking requirements, regardless of vaccination status or only for those who are fully vaccinated.

Still Need to Defer to Local Masking Orders

Before getting too excited about the prospect of lifting masking requirements, it is important to remember that more



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stringent local orders control. In fact, the updated CDPH guidance specifically states, “Local health jurisdictions and entities may continue to implement additional requirements that go beyond this statewide guidance based on local circumstances.”

It is likely that many counties will move to bring their local face covering orders in alignment with the new CDPH guidance and ETS provisions. But this may take several days or weeks depending on how quickly the local public health departments act. Therefore, employers should start with local masking orders and monitor those orders closely to determine if those align with the new CDPH guidance or differ. Employers should continue to follow more strict face covering requirements when mandated by local jurisdictions.

As an example, Los Angeles County [recently announced](#) that it will maintain universal indoor masking until COVID-19 reaches a moderate level of transmission (anticipated to be later in March). In the meantime, employers in Los Angeles County have two options for relaxing indoor mask requirements for fully vaccinated people if they meet certain requirements:

- Option 1 allows fully vaccinated customers and fully vaccinated workers to unmask indoors. However, for fully vaccinated workers to be able to remove masks indoors, workers who are not fully vaccinated must be tested every three days and continue to wear a mask while indoors.
- Option 2 allows only fully vaccinated customers to unmask indoors, while all workers remain masked.

It remains to be seen whether or when Los Angeles County will move towards removing face covering requirements for individual regardless of vaccination status.

Therefore, employers in all jurisdictions (and especially those in Los Angeles County) must remember to first ensure compliance with any local face covering requirements.

Conclusion

We will monitor developments related to these regulatory changes and provide updates as warranted, so make sure that you are subscribed to [Fisher Phillips' Insights](#) to get the most up-to-date information direct to your inbox. If you have

further questions on how to comply with any of these new laws, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in any one of [our six California offices](#).