

California Suspends Indoor Mask Mandate for Unvaccinated Employees

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Effective today, unvaccinated employees are no longer required to wear a face mask in most California workplaces. Late last night, Governor Newsom issued Executive Order N-5-22 (“Executive Order”), which suspends part of the Cal/OSHA Emergency Temporary Standards (“ETS”).

This change reflects updated guidance issued by the Center for Disease Control (“CDC”) late last week. On or about February 25, 2022, the CDC announced that indoor masking is not necessary in geographic areas where the risk of COVID-19 transmission is “low” or “medium.”¹ According to the CDC, the majority of the country is in a low- or medium-risk area, which is designated by county.

In response to the CDC’s new guidelines, the California Department of Public Health (“CDPH”) updated its indoor masking guidance on Monday, February 28, 2022. CDPH’s order states that “the requirement that unvaccinated individuals mask in indoor public settings will move to a strong recommendation that all persons, regardless of vaccine status, continue indoor masking.” Notably, the universal indoor mask mandate remains in place for certain high-risk settings, such as healthcare and congregate settings.

The ETS and related guidance incorporate CDPH orders and guidelines, particularly as they relate to masking requirements. However, the ETS also includes an indoor mask mandate for unvaccinated employees that is independent of any CDPH order or guidance. (8 CCR § 3205(c)(6)(A).) Therefore, the Executive Order suspends that ETS provision to bring the ETS into alignment with CDPH guidance.

The swift action by CDPH and Governor Newsom is helpful for employers, who have been forced to navigate rapidly changing and sometimes inconsistent regulations from the federal, state, and local levels. However, employers still may have to grapple with uncertainty, including whether and how local governments will respond. Counties in California remain authorized to issue more stringent requirements than those required by CDPH or Cal/OSHA.² In addition, there is no indication of how long the suspension on indoor masking requirements for

¹ Prior CDC guidelines classified COVID-19 transmission risk into four categories: low, moderate, substantial, or high. The latest guidance uses three risk categories: low, medium, or high.

² According to CDC data, the majority of California’s counties currently have high community transmission levels. (See “COVID-19 by County” page, available at <https://www.cdc.gov/coronavirus/2019-ncov/your-health/covid-by-county.html> (last visited March 1, 2022).)

unvaccinated employees will last—the state could renew that requirement at any time, such as in response to another spike in cases or a new variant.

Takeaways, Impacts, and Next Steps

- Effective March 1, 2022, the Cal/OSHA indoor mask mandate for unvaccinated workers is indefinitely suspended, except for certain high-risk settings (e.g., healthcare workplaces).
- Indoor masking remains strongly recommended for all persons, regardless of vaccination status.
- All other aspects of the Cal/OSHA ETS remain in effect.
- Employers should monitor local guidance and updates regarding indoor masking.
- Employers remain free to implement or continue more stringent COVID-19 prevention practices than those required by law.
- Communicate any changes in policies and practices to employees promptly.
- Consider updating COVID-19 policies, such as a COVID-19 Prevention Program.

Boutin Jones attorneys are available to assist employers on compliance with, and to answer any other questions regarding, these new laws or other related COVID-19 employment laws. Please contact an attorney in our Employment Law Group by phone at (916) 321-4444 or via email:

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