

Clarifications concerning the CDC's current mask guidance

With little advance warning, the U.S. Centers for Disease Control and Prevention updated its mask and physical distancing guidance for anyone who is fully vaccinated. This change left other agencies and states scrambling to respond. It also raised more questions than answers for businesses left wondering about the meaning for employees and customers.

Updated guidance

The CDC stated that fully vaccinated people in non-health care settings can resume activities without wearing masks or physically distancing, except where required by other law or workplace guidance.

An individual is fully vaccinated two weeks after receiving a second dose in a two-dose series (Pfizer or Moderna) or two weeks after receiving a single-dose vaccine (Johnson & Johnson). Anyone who does not meet these requirements, regardless of age, is NOT fully vaccinated and should continue to follow guidance for unvaccinated people; this includes wearing a mask, maintaining six feet from others outside their household, and getting vaccinated.

Regardless of vaccination status, everyone must still wear masks when traveling on public transportation (planes, buses and trains) and when visiting nursing homes and long-term care facilities.

Oregon's response

On the same day as the CDC announcement, Gov. Kate Brown stated that Oregon would follow the CDC guidance and that fully vaccinated individuals no longer need to wear a mask or physically distance in most public spaces. Exceptions include public transportation, hospitals and health care clinics, correctional facilities, and long-term care facilities.

The governor's announcement understandably left businesses and the public



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confused as Oregon OSHA's permanent rule on COVID-19 safety measures for workers had just gone into effect the week prior. That rule specifically mandates masks and physical distancing, subject to limited exceptions, for all individuals in the workplace, including customers and patrons, and does not distinguish based on vaccination status. Fortunately, the rule specifically notes that Oregon OSHA expects mask requirements to evolve as circumstances of the pandemic change, including as more Oregonians are vaccinated, and that it will issue interpretive guidance or make changes to its rules as appropriate to provide employers with accurate and complete information about what is required.

After a weekend of confusion and conflicts, on May 18, the Oregon Health Authority updated its guidance, clarifying that all businesses and employers must continue to apply and enforce mask and physical distancing requirements UNLESS they:

- have a policy for checking for proof of vaccination status of individuals; and
- request proof of vaccination status from each individual; and
- review each individual's proof of vaccination prior to entry or admission.

Essentially, businesses were given two choices: 1, continue to apply and enforce mask and physical distancing requirements to all individuals, regardless of vaccination status, or 2, develop

a policy and request and review proof of vaccination prior to entry or admission. A business does not have the option of allowing an individual to go without a mask if he or she has not provided proof of vaccination.

Proof of vaccination includes documentation provided by a tribal, federal, state or local government, or a health care provider, that includes an individual's name, date of birth, type of COVID-19 vaccination given, date(s) given, and the name/location of the health care provider or site where the vaccine(s) were administered. Documentation may include, but is not limited to, the COVID-19 vaccination record card or a copy or digital picture of the vaccination record card.

On May 19, Oregon OSHA issued a statement that aligned with OHA's guidance and stated that "an employer who requests and reviews verification of vaccination may permit fully vaccinated individuals with such proof of vaccination to go without a mask, face covering or face shield, and does not need to enforce physical distancing requirements for such individuals." The statement clarifies that, if an individual who claims to be vaccinated but refuses to provide verification of vaccination status, the employer need take no further action but must enforce physical distancing and facial covering requirements without regard to the exemption. Oregon OSHA emphasized that all other requirements of the permanent rule remain in place and are not affected by this vaccination exemption.

Best practices

• Businesses choosing to allow fully vaccinated individuals to enter their facilities without a mask or physical distancing must have a policy describing the process for verifying vaccination status.

• Businesses with such a policy should use signage and post updates on their websites to alert customers and other visitors that they will be asked to provide proof of vaccination if they want to forgo masks and physical distancing.

• Businesses do not need to keep copies of documents reviewed regarding the vaccination status of customers and visitors. If documentation is kept, it should be limited to a "yes" or "no" determination, the name of the individual verified, and who performed the verification.

• Employers should share with employees their policies for fully vaccinated employees and customers. Employers should invite employees to submit proof of vaccination if they wish to be exempt from mask and physical distancing requirements. Employers should avoid asking why an employee is not vaccinated. Employers should record who verified the employee's vaccination status and the date on which the employee is fully vaccinated. They do not need to keep a copy of the proof of vaccination.

• Employers with workers subject to a collective bargaining agreement should evaluate any obligation to discuss with union representatives the effects of implementing a vaccine exemption for employees or customers.

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