

Not So Fast! Workplace Mask Mandates May Not Be Over Just Yet

Author



Amy Robinson
Partner

amy.robinson@millernash.com
360.619.7024 (WA)
503.205.1512 (OR)
907.206.2290 (AK)
Vancouver Office

After more than a year of masking and social distancing to contain the COVID-19 pandemic, many of us are looking forward to the day when we can ditch the mask, breathe freely, and see our friends, family, and colleagues in person again. The Centers for Disease Control and Prevention (CDC) recently announced its data shows that vaccinated individuals are safe to skip masks in most situations now,¹ a good indication that we are nearing that time. However, employers and business owners should not take that announcement as a free pass to ditch the rules in their workplaces and public spaces just yet.

In particular, while it has provided a good guidepost for the best COVID-specific safety practices to date, the CDC’s [May 13, 2021](#) guidance is merely advisory and does not have the force of law in the employment context like safety regulations from the Occupational Safety and Health Administration (OSHA) and other state and federal agencies have. So far, OSHA has said they may update their guidance based on the CDC’s announcement, but has not done so—which means the [prior guidance](#) (posted January 29, 2021) is still in effect. Likewise, where state law imposes more stringent masking requirements—as both Oregon and Washington do—employers must comply with those laws to the extent they exceed federal law requirements.

- **Oregon** – The Oregon Health Authority (OHA) has now [updated its masking guidance](#) allowing workers to forego masks if they are fully vaccinated unless they are in: a setting where the employer/business owner has opted to continue to require masks, face coverings, or face shields in accordance with existing guidance; a health care setting; adult jails and correctional facilities; youth detention and correctional facilities; shelters and transitional housing; K-12 schools (which are already subject to the [Ready School, Safe Learners \(RSSLO\) guidance](#)); or in public transportation and transportation hubs such as airports and bus stations.

However, in order to allow these eligible vaccinated workers (as well as customers and visitors) to go maskless, the employer must: (1) adopt a policy

¹ Masks will still be required on planes, trains, buses and other forms of public transportation, as well as airports and other transportation hubs. See, <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated.html>.

for verifying vaccinated status, (2) request proof of vaccination status from the worker, and (3) verify the proof of vaccination before entry/admission. Acceptable means of verification include a visual inspection of the vaccination record card or a digital copy/photograph, provided that the record itself must have been “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 or dates given, depending on whether it is a one-dose or two-dose vaccine, and the name/location of the health care provider or site where the vaccine was administered.” See, <https://sharedsystems.dhsoha.state.or.us/DHSForms/Served/le3727.pdf>

In response to the new OHA guidance, Oregon OSHA [updated its own guidance](#) regarding the facial covering requirements for employers and affirmed that, provided proof of full vaccination status is confirmed, employers can choose to allow employees and visitors to forego masks and physical distancing requirements. However, if such proof is not provided, the now-standard physical distancing and mask rules continue to apply.

- **Washington** – The Department of Labor and Industries (the State of Washington’s OSHA equivalent) released updated guidance, likewise confirming that employers can allow fully vaccinated employees to forego masks and physical distancing requirements provided they have either obtained proof of vaccination status or had the employee sign a document confirming they are fully vaccinated. Employers have four options for how to document compliance: (1) creating a log of those who have verified vaccination and the date of verification, (2) checking vaccination status each day upon entry, (3) marking a badge or credential to indicate vaccinated status, or (4) the proverbial “other methods” equivalent. See <https://lni.wa.gov/forms-publications/F414-179-000.pdf>.

These limited exceptions are not allowed in health care settings like hospitals, long-term care facilities, or doctor’s offices; correctional facilities; homeless shelters; schools, child care centers, or day camps; or public transportation, including airports, bus terminals, train stations, and other hubs.

Diverging from Oregon’s rules, Washington’s updated guidance defines “acceptable documentation” of fully vaccinated status to include “a CDC vaccination card, a photo of the card, documentation from a health care provider, a signed attestation from the worker, or documentation from the state immunization information system.”

Washington’s new workplace guidance also expressly forbids employers from prohibiting anyone, including fully vaccinated employees, from wearing masks if they choose to do so.

Employers are also cautioned to check with their local health authority guidance, as there may be more stringent masking requirements in place that could apply to them. For example, in response to an uptick in new cases, King County Public Health issued a [Directive](#) on May 20, 2021, that masks should still be worn in indoor public spaces (referring to where members of the public can come and go) unless 100 percent of those present have been fully vaccinated.

- **Alaska** – With the exception of a couple of municipalities (including Anchorage) that opted to impose local masking requirements, the State of Alaska does not currently impose such a mandate on employers above and beyond the OSHA guidance. See, <https://labor.alaska.gov/lss/oshhome.htm>. The City of Anchorage, however, [just announced](#) their prior mask mandate will become advisory as of May 21, 2021.

Lastly, even where states may allow for relaxation of masking rules for vaccinated individuals, employers and business owners have the option to continue to impose a more stringent mask policy if they wish. Many are choosing that path right now for a host of reasons, including the inherent practical challenges with enforcing a two-class mask policy. As with standard workplace policies, we recommend that employers adopting a more stringent standard and enforce it uniformly and consistently, and have a protocol in place for handling requests for exceptions from those with disabilities, pregnant workers, or those with religious objections. Visit our website to see our prior [vaccine considerations alert](#) for more information, including appropriate safeguards to take when asking employees about vaccination status.

We hope this is helpful information as you continue to navigate the challenges of the COVID-19 pandemic. If our team can assist you with these issues, help develop or update your policies, or defend you should a dispute arise, please don't hesitate to call us.

About the Author

Amy Robinson represents public and private employers throughout Washington, Oregon, and Alaska in a broad range of workplace-related issues. She provides experienced counsel on compliance challenges and disputes covering the entire employment life cycle from hiring to separation, including employee classification, wage and hour issues, employee leaves and protected activities, disability and accommodation, and discrimination, retaliation, and harassment prevention. Amy is also adept at guiding employers through policy and handbook development, as well as drafting, negotiating, and enforcing employment-related contracts, such as noncompete, nonsolicitation, and nondisclosure agreements.

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