

## Client Alert **Employment & Labor**

### **A Surge of Revised Government Recommendations Impacting Businesses and Employers**

In response to the recent surge of the COVID-19 Delta variant, government agencies and officials have reinstated masking recommendations, including for fully vaccinated individuals in certain circumstances, and have issued other guidance in an effort to combat the increase in coronavirus cases. On Friday, August 13, the Occupational Health and Safety Administration (“OSHA”) issued updated guidance containing recommendations to help employers and workers, which is analogous to recent recommendations made by the U.S. Centers for Disease Control and Prevention (“CDC”). Employers should be aware of the various guidelines and recommendations as they continue to evaluate the best approach for protecting their workforces of vaccinated and unvaccinated employees, many of whom may be in regular contact with high risk or unvaccinated family members. Further, effective today, August 16, New York City is mandating proof of at least one dose of a coronavirus vaccine for a variety of activities for workers and customers.

#### **OSHA’s Masking Recommendations and Updated Guidance**

On August 13, 2021, [OSHA revised its COVID-19 guidance](#) to adopt “analogous recommendations” as those issued by the [CDC on July 27](#) in order to help employers determine “appropriate control measures to implement” in the workplace. OSHA specifically references the CDC guidance that even fully vaccinated people wear masks in public indoor settings in areas of substantial or high transmission, and notes that fully vaccinated people may appropriately choose to wear masks in indoor settings regardless of the community level of transmission, particularly if they are at risk or have someone in their household who is at risk or not fully vaccinated. The OSHA guidance is intended to help protect unvaccinated and at risk workers in “most workplaces” though healthcare workplaces are covered by separate guidance. OSHA recommends that employers

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engage with workers and representatives to implement a multi-layered approach to protect workers from the spread of COVID-19, including:

- Facilitating employees getting vaccinated.
- As recommended by the CDC, instructing fully vaccinated people who have a known exposure to someone with suspected or confirmed COVID-19 to get tested 3-5 days after exposure and to wear a mask in public indoor settings for 14 days or until they receive a negative test result, and for non-vaccinated people to be tested immediately and if negative, tested again in 5-7 days after last exposure or immediately if symptoms develop.
- Implementing social distancing in communal work areas for unvaccinated or at risk workers.
- Providing face coverings to employees.
- Educating and training workers on COVID-19 policies and procedures.
- Suggesting or requiring unvaccinated customers, visitors or guests wear face coverings in public facing workplaces and in public, indoor settings in areas of substantial or high transmission.
- Maintaining ventilation systems and performing routine cleaning and disinfection.

OSHA also provides industry specific guidance aimed at workplaces that it identified to be at higher risk of transmission, such as manufacturing, high volume retail and grocery stores and other establishments. For unvaccinated and at risk employees, OSHA recommends a variety of steps for employees to take to protect themselves, including getting the COVID-19 vaccine.

### **Masking Recommendations from New York and New Jersey State and Local Officials**

Following the July 27 CDC guidance, [New Jersey Governor, Phil Murphy](#), [New York Governor, Andrew Cuomo](#) and [New York City Mayor, Bill de Blasio](#), each separately issued recommendations strongly encouraging even vaccinated people to begin wearing masks indoors, especially where there is increased risk. While these officials did not impose mandatory mask requirements for all workplaces, as of today, August 16, [New York City](#) will require proof of at least one coronavirus vaccine dose for employees and customers in a variety of establishments such as restaurants with indoor dining, gyms and entertainment centers. Enforcement of this New York City mandate will begin on September 13.

### **Takeaways**

The CDC and OSHA recommendations are advisory in nature. However, updated guidance and recommendations from the federal government, as well as state and local officials, are helpful to provide employers with information and procedures when assessing how to best provide safe workplaces to their employees.

For New York City establishments such as those with indoor dining facilities, indoor fitness facilities and indoor entertainment facilities that are covered by the new mandate, employers will be required to revise their protocols for employees and patrons. We recommend that all employers stay informed about updated guidance as they evaluate best practices for their individual workplaces.

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Attorneys in our Employment and Labor Law Practice Group  
can assist employers regarding the issues raised in this alert.

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