

## Checklist for Employers Mulling Relaxing COVID-19 Safety Rules for Fully Vaccinated Employees

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On May 13, 2021, the Centers for Disease Control and Prevention (CDC) announced that persons in non-healthcare settings and who are fully vaccinated with the COVID-19 vaccine, can go without masks and social distancing. A few days later, OSHA made a brief [announcement](#) that it is reviewing the CDC guidance and will update its website accordingly, and that until those updates are complete, employers should refer to the CDC guidance for measures appropriate to protect fully vaccinated workers. Assuming the guidance OSHA has promised to release in the near term is consistent with all (or some) of the CDC guidance, employers in non-healthcare businesses in federal OSHA states should prepare to incorporate the guidance in their workplaces.

The following is a checklist of issues employers should consider before relaxing any COVID-19 safety rules for fully vaccinated employees in the workplace:

- **Comply with state (including state OSHA plans) and local laws and guidance:** The CDC guidance is subject to all applicable laws and guidance including state, federal and local laws, rules, and regulations, and other local business and workplace guidance, some or all of which may not have caught up with the CDC guidance or may otherwise disallow relaxing of the safety measures. For example, California is specifically going through rulemaking as to when it will relax safety controls under its COVID-19 Emergency Temporary Standard, and until that is complete, California employers are required to continue to follow the current COVID-19 safety standards in the state.
- **Determine “fully vaccinated” status:** To be eligible for relaxation in COVID-19 safety requirements, a person needs to be fully vaccinated. An employee should only be considered fully vaccinated:
  - 2 weeks after their second dose in a 2-dose series, such as the Pfizer or Moderna vaccines, or
  - 2 weeks after a single-dose vaccine, such as Johnson & Johnson’s Janssen vaccine.

Until the employee meets one of these criteria, he/she is not fully vaccinated, and should be required to follow all workplace COVID-19 safety rules.

- **Track vaccination status:** To be able to take advantage of relief from the safety measures, employers need to track vaccination status of the employees, which may require requesting employees to present their vaccination cards. Vaccination cards should be treated as a confidential medical record. While employers may choose to not retain the vaccination cards or copies of the cards to avoid triggering any recordkeeping obligations, it might be prudent to have a system in place to facilitate accurate tracking of the employees’ vaccination status, which could be as simple as a spreadsheet or a tool added to the employer’s electronic HR management system.
- **Limit request for information to vaccination cards:** While employers should request employees to present their vaccination cards, employers should not seek any additional medical or family history information from the employees, which could result in disclosure of disability-related information. Employers should affirmatively inform the employees that no additional information is being sought or required. Additionally, employers should not ask any follow-up questions such as adverse reactions to the vaccinations that could trigger obligations under the ADA or similar laws.
- **Monitor workplace for compliance:** There needs to be a system in place to ensure that only the fully vaccinated persons are relieved from the mask-wearing and social distancing requirements. Additionally, fully vaccinated persons should still be required to watch out for symptoms of COVID-19, especially if they

have been around someone who is sick. If a fully vaccinated employee has COVID-19 symptoms, he/she should get tested and quarantine according to the current guidance.

- **Protect unvaccinated employees from COVID-19:** Employees who are unable to receive the COVID-19 vaccine due to religious or medical reasons, may remain subject to mask-wearing and physical distancing controls despite the CDC guidance. Any workplace policy that involves relaxing of COVID-19 rules should take into account the safety of such employees.
- **Protect unvaccinated employees from retaliation:** Care should be taken to protect the unvaccinated from potential retaliation, harassment and mistreatment. Managers should be trained to ensure that unvaccinated employees are not treated differently than vaccinated employees. The information regarding employees' vaccination status should be restricted and accessible only on an extremely limited need-to-know basis so that unvaccinated employees are not subjected to mistreatment or derision by decision-makers or coworkers due to not being vaccinated. For the same reasons, employers should not require publicly displayed proof or "badges" of vaccination status (for example, for entry into a company gymnasium or cafeteria).
- **Protect third-parties in the workplace:** As the vaccination status of third-parties such as customers, clients, and contractors in the workplace may be unknown, employees should be required to continue mask-wearing and physical distancing regardless of the CDC recommendations when interacting with these parties. Employers should also note that the CDC guidance requires fully vaccinated persons to wear a mask on planes, buses, trains, and other forms of public transportation. Employees using public transportation when travelling for work should abide by this guidance.
- **Consider encouraging but not mandating vaccination:** While the EEOC is not against a requirement by employers that employees be vaccinated, considering the uncertainty caused by the Emergency Use Authorization status of the current COVID-19 vaccines, and the potential for litigation, employers should carefully consider their comfort level with the potential risk of litigation before mandating vaccination. If vaccination is mandated, it should be noted that vaccination prescreening questions may violate the ADA by eliciting disability-related information. To prevent that circumstance, it might be prudent to allow employees to get vaccinated from a third-party, outside of the work environment.

In sum, while the guidance from the CDC regarding relaxation of mask-wearing and social distancing requirements is good news, employers should consider the above-checklist prior to relaxing any COVID-19 safety controls in the workplace.

## Related Alerts:

- [Update on OSHA's COVID-19 National Emphasis Program and Enforcement](#) – 03/30/2021
- [OSHA Announces New National Emphasis Enforcement Program on COVID-19](#) – 03/15/2021
- [OSHA Issues Revised COVID-19 Guidance for Workplaces](#) – 02/02/2021
- [OSHA Reminds Employers to Continue Assessing Employee Safety Regarding COVID-19 Hazards, While Also Not Neglecting Common Workplace Hazards](#) – 6/17/2020
- [COVID-19 and OSHA: Why Employers May See More Inspection Activity and More Injuries and Illnesses Being Recorded as Work-Related](#) – 05/21/2020
- [Checklist Part II: OSHA and Safety Issues Regarding COVID-19 When Returning to Work](#) – 05/09/2020
- [Protecting Your Company from Coronavirus-related Premises Liability Claims](#) – 04/27/2020
- [Checklist for Return to Work \(or Reinstatement\) for Employees Impacted by COVID-19](#) – 04/21/2020
- [Federal OSHA's New COVID-19 Enforcement Guidance](#) – 04/15/2020
- [OSHA Relaxes Requirement for Work-related Assessment for COVID-19 Recordkeeping for Certain Employers](#) – 04/13/2020

- [CARES Act Relief Checklist: Considerations in Deciding What Relief is Right for Your Business](#) – 04/06/2020
- [Employers Providing Face Masks Should Review Their Health and Safety Obligations](#) – 04/06/2020
- [Relief for Employers and Workers under the CARES Act](#) – 03/29/2020
- [COVID-19 OSHA Guidance: Hazard Assessments at Workplaces Considered Essential Businesses Under Shelter in Place Orders](#) – 03/25/2020; Last Updated – 03/29/2020
- [COVID-19 Restructuring and the WARN Act](#) – 03/25/2020
- [FFCRA - Temporary Non-Enforcement - Employer Payroll Tax Credit](#) – 03/23/2020
- [Employment Issues under the Families First Coronavirus Act of 2020](#) – 03/19/2020
- [New York Enacts COVID-19 Sick Leave Act](#) – 03/19/2020
- [Employer Checklist for Responding to a Positive COVID-19 Test](#) – 03/18/2020
- [COVID-19 and Discrimination Issues](#) – 03/18/2020
- [COVID-19 and the American With Disabilities Act](#) – 03/18/2020
- [COVID-19 and OSHA](#) – 03/18/2020

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