

INSIGHTS

## Latest CDC Mask/Testing Guidance Requires Employers to Evaluate Workplace Rules

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*The COVID-19 Delta variant has prompted a u-turn by the Centers for Disease Control and Prevention (“CDC”) on certain of its previous recommendations. In response, employers should take note that their workplace policies may require some re-routing.*

In announcing the latest mask and COVID-19 testing guidance yesterday afternoon, Dr. Rochelle Walensky, CDC Director, explained that her agency has “seen new scientific data from recent outbreak investigations showing that the Delta variant behaves uniquely differently from past strains of the virus.” Walensky concluded that “this new science is worrisome and unfortunately warrants an update to [the CDC’s] recommendations.”

The agency’s updated Interim Public Health Recommendations for Fully Vaccinated People now includes a “recommendation for fully vaccinated people to wear a mask in public indoor settings in areas of substantial or high transmission.” The agency provides a link to a “tracker” page where individuals and employers can readily determine which counties in the United States have “substantial” or “high” transmission levels. That search page can be found [here](#).

Additionally, the CDC has adopted a “recommendation for fully vaccinated people who have a known exposure to someone with suspected or confirmed COVID-19 to be 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.”

These new recommendations are important to employers focused on assuring that their business provides a safe and healthful work environment as required by the Occupational Safety and Health Act (“OSH Act”). Employers will note that the Occupational Safety and Health Administration, specifically in connection with its updated June 10, 2021, guidance for employers, repeatedly cites to the CDC guidance on COVID-19 mitigation infection measures. (For more information, please see Bracewell’s prior alert [OSHA’s Revised COVID-19 Guidance Highlights Employer Duties for Unvaccinated and At-Risk Workers](#)).

Notably, the updated CDC guidance comes at a time when some major public and private sector employers have adopted more aggressive measures to ensure that unvaccinated employees do not represent an unreasonable threat to the health and safety of others. For instance, the City of New York and the State of California have announced new programs requiring certain employees to either be vaccinated or undergo periodic COVID-19 testing. Additionally, the Department of Veterans Affairs has announced that its medical facility employees will be

required to receive the COVID-19 vaccine. President Biden has suggested his administration is considering a broader mandate for federal employees to be vaccinated or submit to regular testing.

These developments, along with the most recent CDC recommendations, signal employers should consider whether any modifications to their COVID-19 infection prevention measures are warranted based on the growing threat of the Delta variant.