

Texas Governor Lifts Mask Mandate, but Employers Must Still Comply with the Occupational Safety and Health Act

Update

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Yesterday, March 2, 2021, the Governor of Texas, Greg Abbott, issued an order lifting his previously-imposed face covering mandate effective March 10. The order also removes certain other COVID-19 mitigation requirements previously implemented by the Governor.

Under his order, the Governor allows counties qualifying as an “[a]rea with high hospitalizations” under a numerical test tied to the level of COVID-19 hospitalizations in that locality, to impose certain restrictions. Significantly, however, even in those local jurisdictions, there can be no penalty for an individual’s disregard for a local mask mandate – other than a business owner making use of trespass laws for a visitor disregarding a face covering requirement.

This action may lead other states to abandon mask mandates and loosen other COVID-19 public restrictions based upon the growing availability of vaccines and the decline in reported COVID-19 cases, hospitalizations and deaths. In fact, the Mississippi Governor announced the end of that state’s mask mandate within hours following the Texas announcement.

Governor Abbott recognizes that his new pronouncement “does not preclude businesses or other establishments from requiring employees or customers to follow additional hygiene measures, including the wearing of a face covering.”

Importantly, private sector employers in Texas should consider their obligations under the federal Occupational Safety and Health Act before doing away with face covering requirements and other COVID-19 mitigation measures. Occupational safety and health jurisdiction rests with the federal government, specifically OSHA, and not the state of Texas. Recently OSHA published its Guidance on Mitigating and Preventing the Spread of COVID-19 in the

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Workplace, which identifies face coverings as an example of a measure that will limit the spread of COVID-19 in the workplace.

President Biden, and Department of Labor officials, have signaled that tougher enforcement of workplace safety and health standards with regard to COVID-19 is coming and new COVID-19 mandatory workplace rules may be released by OSHA no later than Monday, March 15, 2021.

Accordingly, employers in Texas and elsewhere should consider maintaining and enforcing face covering requirements and other COVID-19 mitigation measures, which continue to be recommended by both the CDC and OSHA.