

Masks Off? Not So Fast....

By Jessica Summers

This blog was originally published on May 14, 2021 and was last updated May 17, 2021.

On Thursday, May 13, 2021, the Centers for Disease Control and Prevention (CDC) made big news by announcing that, subject to certain exceptions, “fully vaccinated people can resume activities without wearing a mask or physically distancing.”

However, as businesses scramble to answer questions for themselves and their employees about what this will mean, it is critically important to recognize that there is a huge caveat to the CDC’s guidance. Per the CDC, this new lifting of restrictions applies “except where required by federal, state, local, tribal, or territorial laws, rules, and regulations, including local business and workplace guidance.” In other words, as has been the case throughout the pandemic, the CDC guidance simply sets the floor. States, localities, and private businesses continue to be free to impose requirements above and beyond what is recommended by the CDC, which many have elected to do.

The bottom line is that before lifting any COVID-19 safety precautions, including mask requirements, employers should first confirm that their actions will comply with all state and local laws.

So where do things stand around our region?

Maryland – The day before the release of the CDC’s new guidance, Maryland Governor Larry Hogan announced that the state would be lifting all capacity limits effective May 15 but that its indoor mask mandate would remain in effect until “70% of Maryland adults receive at least one dose of a COVID-19 vaccine.” However, following the CDC’s announcement, the Governor changed course and ordered that, as of May 15, vaccinated individuals may “resume activities as normal”. Consistent with CDC recommendations, masks will still be required for everyone in Maryland on public transit and in schools, child care settings and health care settings. Additionally, it is important to note that despite the Governor’s order, not all counties in the state have immediately followed suit to lift local mask mandates. While some counties have announced that they will follow the state’s lead others, like Baltimore City, have specifically indicated that they will keep their indoor mask requirements in place for the time being, and still others have simply not yet decided how they plan to respond. Accordingly, employers in Maryland we need to account not only for the Governor’s order but how their specific county has responded. Individual businesses in Maryland also remain free to impose their own requirements (including mask wearing requirements) beyond those being mandated by the state or county.

Virginia – Virginia Governor Ralph Northam also announced that, in light of the CDC’s new guidance, the Commonwealth would be lifting its universal indoor mask mandate effective May 15. Unfortunately, the phrasing and rollout of this new policy has created a distinct lack of clarity for employers in Virginia. The Governor’s latest Order, states that individuals in the Commonwealth need to wear masks indoors “as described and recommended by the CDC.” Thus, the Order implies, but does not expressly state, that, as the CDC no longer recommends masks for fully vaccinated individuals indoors in most settings, Virginia will, in turn, no longer require masks in these instances. However, the Governor’s order makes no mention of the Commonwealth’s Final Permanent Standard on workplace safety which remains in effect. The Final Permanent Standard requires Virginia employers to take a wide range of actions depending on the nature of their workforce to prevent the spread of COVID 19 in the workplace including imposing mask and other PPE requirements. The Final Permanent Standard is set to remain in effect indefinitely. However, once the Governor lifts Virginia’s COVID-19 state of emergency (currently set to expire on June 30, 2021), the Virginia Safety and Health Codes Board will have 14 days to start the process of reviewing whether there is a continued need for the Final Permanent Standard if it has not taken such action already. Until there is further clarity, employers in Virginia should make sure that they are still complying with the Final Permanent Standard’s provisions on mask wearing.

District of Columbia – D.C. Mayor Muriel Bowser reacted to the news from the CDC by announcing that the District will be reviewing the latest guidance and considering appropriate actions going forward but District has not yet announced any change of course to date. The Mayor just recently issued an updated mask Order on May 1 which, unless replaced by a future order, will extend through May 20 or the last day of DC's COVID-19 state of emergency, whichever is later. The latest Order eases restrictions on masks for fully vaccinated people participating in outdoor activities and private gatherings. However, the Order provides that everyone must still follow DC Health Guidance on indoor mask wearing which currently provides that everyone must wear masks inside any place of business (unless exceptions apply).

The big takeaway for employers in the DMV is that, depending on where the employer has locations, indoor mask requirements may still apply even for vaccinated employees. It will be important for employers to stay aware to state and local developments before lifting any mask requirements. Given the lack of public clarity following the release of the CDC guidance, employers are well advised to communicate with their employees to help them understand the situation and the rules that will continue to apply to them going forward.