

New Federal and State Guidance Regarding Vaccinated Employees

OSHA Adopts CDC Vaccine Guidance. On May 17, 2021, the federal Occupational Health and Safety Administration (“OSHA”) updated its online COVID-19 [portal](#) to announce that OSHA is revising its employer materials to reflect recent [interim guidance](#) from the Centers for Disease Control and Prevention (“CDC”). In the meantime, OSHA recommends that employers “refer to the CDC guidance for information on measures appropriate to protect fully vaccinated workers.” The CDC guidance, issued on May 13, 2021, applies to individuals two weeks after they receive either the second dose in a two-dose vaccine series or the single-dose Johnson & Johnson vaccine. These fully-vaccinated individuals may:

- Resume normal indoor and outdoor activities without wearing a mask or physically distancing (except where required by federal, state or local laws, including local business or workplace guidance);
- Travel domestically without obtaining a COVID-19 test or self-quarantining upon arrival;
- Travel internationally and return to the United States without testing before leaving the U.S. (unless required by the destination) or self-quarantining after arriving back to the U.S.;
- Refrain from self-quarantine and testing after being exposed to a person with suspected or confirmed COVID-19, so long as the vaccinated individual does not develop symptoms; and
- Be exempt from routine screening and testing if feasible, so long as the vaccinated individual has no COVID-19-like symptoms and no known exposure to COVID-19.

Fully-vaccinated individuals should continue to wear masks on all forms of public transportation, monitor for symptoms of COVID-19 after a known or suspected exposure and be tested if they experience symptoms, and self-quarantine for ten days if they experience symptoms or test positive. Fully-vaccinated individuals should continue to follow all applicable laws and regulations—including state and local rules—which are not superseded by the CDC’s guidance. All travelers entering the U.S. from abroad must still obtain a negative COVID-19 test before boarding their flight.

New York Adopts CDC Guidance, but with Qualifications. On May 17, 2021, New York Governor Andrew Cuomo [announced](#) that New York would adopt the new CDC guidance, effective on May 19, 2021. New York subsequently issued its own [summary document](#) implementing the CDC’s recommendations.

Businesses operating in New York may now choose whether to maintain generally-applicable masking and social distancing requirements, or follow the new CDC guidance that distinguishes between vaccinated and unvaccinated individuals. To apply the new guidance, businesses where individuals do not congregate in numbers above the state’s current gathering limits (250 people indoors and 500 people outdoors)—including most commercial offices—may either require proof of vaccination or rely on an honor system. However, the State’s “Department of Health strongly recommends masks and six feet of social distancing in indoor settings where the vaccination status of individuals is unknown.” Businesses that operate above the gathering limits must require paper or electronic proof of vaccination to rely on the CDC guidance.

The Governor further announced that New York would remove most percentage-of-occupancy limits for businesses on May 19. Businesses should continue to allow space for social distancing of six feet in any area where the vaccination status of individuals (employees or patrons) is unknown, or if the business chooses not to follow the new CDC guidance. Businesses following the CDC guidance may choose to apply its relaxed social distancing approach to either the entire establishment, or only to a designated part or area.

Consistent with the CDC guidance, New York's existing COVID-19 guidelines will continue to apply in specific settings such as public transit, schools, and nursing homes.

Implications for Employers. Governor Cuomo's announcement clarifies that New York's recommendations remain unchanged in situations where the vaccination status of individuals is not fully known. Employers who are not tracking vaccination status should maintain their current protocols. Employers who have not mandated employee vaccination (or are not otherwise tracking vaccination status) should therefore consider keeping mask mandates and social distancing measures in place in areas where employees interact or congregate. Even when the vaccination status of *employees* is known, businesses whose employees interact with patrons should keep these measures in place in public areas, unless they are also requiring patrons to present proof of vaccination upon arrival. In general, employers contemplating a broader return to the office should consider surveying employees to gauge their comfort level with eliminating or scaling back masking and social distancing policies.

As more New Yorkers continue to be vaccinated against COVID-19, we will closely monitor future guidance and developments affecting employer policies for fully-vaccinated individuals.

This alert is for general informational purposes only and should not be construed as specific legal advice. If you would like more information about this alert, please contact one of the following attorneys or call your regular Patterson contact.

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