

## Blog Post

# What the CDC's New Guidance on Fully Vaccinated Individuals Means for Employers

May 24, 2021

With the CDC's May 13 [announcement](#) lifting the mask mandate for fully vaccinated individuals in most non-healthcare settings, many Americans are excited at the thought of a return to normalcy. However, employers should consider these questions before lifting their own mask requirements for workers who are fully vaccinated.

## What Do Local and State Rules and Regulations Require?

The CDC has made it clear that its new guidance does not supersede federal, state, local, tribal, or territorial laws, rules or regulations, including local business and workplace guidance. Employers should pay special attention to state and local rules, as many are more restrictive. For example, the California Department of Health has issued its own [announcement](#) advising that fully vaccinated people still wear a mask indoors and when attending crowded outdoor events. As a result, employers with offices or locations across the nation may still have to implement a mask requirement in their California locations, but not in Georgia or Texas, where mask mandates have been lifted. Therefore, it is very important for employers to look into whether there are any applicable city, county, or state mask requirements. In the alternative, just because an employer has employees in a location that has

---

### Related Work

Employment Training  
and Compliance  
Labor and Employment

---

### Related Offices

Los Angeles

---

### HR Defense

Akerman Perspectives  
on the Latest  
Developments in Labor  
and Employment Law

[Visit this Akerman blog](#)

completely lifted the mask mandate, does not mean the employer has to – or should – modify its mask requirements as well. Private employers are still well within their rights to maintain a mask mandate for their employees.

### What Does OSHA Require?

When it comes to easing restrictions for fully vaccinated workers, the Occupational Safety & Health Administration (OSHA) has not yet updated its guidance on the issue. While OSHA is working on revising its guidance, it has advised on its [website](#) to “refer to the [CDC guidance](#) for information on measures appropriate to protect fully vaccinated workers.” As a result, employers currently are left interpreting the CDC guidance in deciding whether and under what circumstances fully vaccinated workers may forgo masks, even though the CDC guidance is not directed specifically at the workplace. Employers that choose to follow the CDC guidelines by allowing fully vaccinated individuals to unmask in circumstances advisable under those guidelines likely will not face OSHA violations, but must still abide by state and local laws and their respective state OSHA directives.

### What Makes an Individual Fully Vaccinated?

The CDC’s lift on the mask mandate only applies to *fully vaccinated individuals*. Therefore, employers must know how to determine what makes a person fully vaccinated. People are considered fully vaccinated for COVID-19 two weeks after they have received the second dose in a 2-dose series (such as the Pfizer-BioNTech or Moderna vaccine), or two weeks after they have received a single-dose vaccine (such as the Johnson & Johnson/Janssen vaccine). There is currently no post-vaccination time limit on fully vaccinated status. This means a person is still unvaccinated even if they have received their first dose of the Pfizer or Moderna vaccine. Note that the term “unvaccinated individuals” refers to individuals of all ages, including children, who have not

completed a vaccination series or received a single-dose vaccine.

### May I Ask If an Employee is Fully Vaccinated?

Yes, except for most employers in Montana. The U.S. Equal Employment Opportunity Commission (EEOC) has stated that simply requesting proof of the COVID-19 vaccination is not a disability-related inquiry. Thus, employers (except most employers in Montana) may ask if an employee is fully vaccinated. However, it's best to simply ask for a "yes or no" answer since subsequent questions surrounding the individual's vaccination status may elicit information about a disability or genetic information, which could run afoul of the Americans with Disabilities Act or Genetic Information Non-Discrimination Act. As a precaution, employers should warn employees not to provide any medical information when providing proof of vaccination and during any inquiries about vaccination status. Supervisors and managers should also be instructed not to ask an unvaccinated worker why they are not vaccinated.

Ultimately, employers should first seek to align their workplace practices with applicable state and local guidelines before lifting mask mandates for fully vaccinated workers based on the CDC's latest recommendations. If you have any questions or for further assistance with compliance, contact your Akerman attorney.

---

This information is intended to inform firm clients and friends about legal developments, including recent decisions of various courts and administrative bodies. Nothing in this Practice Update should be construed as legal advice or a legal opinion, and readers should not act upon the information contained in this Practice Update without seeking the advice of legal counsel. Prior results do not guarantee a similar outcome.