
Face Coverings Still Required in Certain Circumstances under New Rules

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Written by:

Karen M. Rezendes
Partner
Walnut Creek, Sacramento,
San Diego

Joshua Whiteside
Associate
San Luis Obispo

The past two weeks have seen a flurry of changing guidance regarding the use of face masks at workplaces and schools. On June 17, 2021, the California Occupational Safety and Health Standards Board adopted revised [COVID-19 workplace rules](#) and the Governor signed [Executive Order N-09-21](#) making these rules effective immediately. The same day, the Centers for Disease Control and Prevention (CDC) updated its [guidance](#) for fully vaccinated individuals to address changing rules on face masks when using public transportation. These waves of changes come in the wake of the new California Department of Public Health (CDPH) [Guidance](#) for the Use of Face Coverings which went into effect on June 15, 2021.

Generally, the new CDPH guidance states, with limited exceptions, that face masks are no longer required for fully vaccinated people, except indoors at K-12 schools, on public transit, and in healthcare settings, detention centers, homeless shelters, emergency shelters, and cooling centers. The CDPH guidance provides that face masks are still required for unvaccinated individuals in indoor public settings and businesses.

Face Masks for TK-12 Students

For TK-12 students at school, this means that masks will no longer be required [outdoors](#), but will still be required [indoors](#). Notably, on June 3, 2021, CDPH updated its COVID-19 [guidance for schools](#), to remove specific language that face masks are required to be worn “at all times” and instead now refers directly to CDPH’s Guidance for the Use of Face Coverings. The previous face mask exemptions remain in place. Also, masks are still [required](#) on school buses.

Face Coverings for Employees

In addition to CDPH’s guidance as it applies to employees, employers must also follow restrictions implemented by the California Department of Industrial Relations’ (DIR) Division of Occupational Safety and Health (better known as Cal/OSHA). Cal/OSHA originally posted COVID-19 Emergency Temporary Standards (ETS) on December 1, 2020, and recently adopted a revised ETS on June 17, 2021. The ETS provides that “face coverings” are still required by employees that are not fully vaccinated when indoors and in vehicles. Face coverings are not required for fully vaccinated

employees, except in certain circumstances such as when employees are part of a group exposed to COVID-19, unless the employer chooses to require face coverings or the workplace is one of the defined places (i.e. schools and transportation) where face coverings are still required. Additionally, face coverings are required to be provided to employees who are not fully vaccinated and upon request to those who are fully vaccinated. Further, respirators – such as N-95 masks – are required to be given upon request to not fully vaccinated employees in certain circumstances. An employer cannot retaliate against an employee who voluntarily chooses to wear a face covering unless it would create a safety hazard.

Requirement Before Employees Remove Face Coverings

Cal/OSHA has also issued [FAQ's](#) for the new ETS. The FAQ's state that fully vaccinated employees must provide documentation that they are fully vaccinated before working without a face covering indoors. Employers must also “record the vaccination status for any employee not wearing a face covering indoors and this record must be kept confidential.” Acceptable options for documenting employee vaccination status include:

- Employees provide proof of vaccination (vaccine card, image of vaccine card or health care document showing vaccination status) and employer maintains a copy.
- Employees provide proof of vaccination. The employer maintains a record of the employees who presented proof, but not the vaccine record itself.
- Employees self-attest to vaccination status and employer maintains a record of who self-attests.

We hope this e-blast provides clear, critical information regarding the rapid changes occurring within State guidance and standards as they pertain to face coverings. The Cal/OSHA changes include more than just those discussed here so we encourage you to seek legal counsel on issues of testing, quarantine, and other COVID-19 mitigation measures. Also, we expect to see more changes – specifically for schools – as CDC and CDPH issue new guidance in the coming weeks for the 2021-2022 school year.

If you would like more information or assistance on how to respond to these changes, including whether face masks are required at school district or county office of education offices, or at Board meetings, and how else the new Cal/OSHA rules may apply to your agency, please contact an attorney at one of our [eight offices](#) located statewide. You can also subscribe to our [podcast](#), follow us on [Facebook](#), [Twitter](#) and [LinkedIn](#) or download our [mobile app](#).

As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.