

## OSHA Revises its COVID-19 Guidance to Incorporate the CDC's Latest Recommendations

By Morris L. Hawk

On August 13, 2021, OSHA released updated guidance on mitigating and preventing the spread of COVID-19 in the workplace. The revised guidance incorporates the CDC's recommendation that vaccinated employees wear masks indoors in areas with substantial or high community transmission of the virus. Importantly, like the CDC's recommendations, OSHA's guidance for nonhealthcare workplaces is not mandatory but only advisory in nature. The following is a brief summary of OSHA's recommendations.

**Employers Should Encourage Vaccination and Consider Mandatory Vaccination.** OSHA strongly encourages employers to provide paid time off to workers for the time it takes for them to get vaccinated and recover from any side effects. OSHA also suggests that employers consider working with local public health authorities to provide vaccinations for unvaccinated workers and consider adopting policies that require workers to get vaccinated or to undergo regular COVID-19 testing if they remain unvaccinated.

**Employers Should Require All Employees to Wear Masks in Public Indoor Settings with Substantial or High Community Transmission.** OSHA recommends that even fully vaccinated employees wear employer-provided masks in public indoor settings in areas of substantial or high transmission except for those who are unable to wear a mask due to a disability or who need a religious accommodation. In addition, OSHA recommends that employers in retail or other public-facing workplaces suggest or require that customers and guests wear masks in areas of substantial or high transmission. The CDC defines substantial or high transmission as 50 or more new cases per 100,000 people over the past week or at least an 8% positivity rate. All but two Ohio counties (Ashtabula and Noble) currently fall under this designation.

**More Detailed Recommendations for Higher-Risk Workplaces with Mixed Vaccination Status Workers.** The Appendix to the Guidance provides some detailed recommendations for "higher-risk workplaces" where vaccinated and unvaccinated employees are working together. OSHA defines "higher-risk workplaces" as including manufacturing; meat, seafood, and poultry processing; high-volume retail and grocery; and agricultural processing.

For those settings, OSHA recommends that employers consider staggering arrival, departure and break times; maintain signage as a reminder to maintain physical distancing; require unvaccinated employees to wear masks (and require masking for vaccinated employees in areas of substantial or high transmission); and employ solid, impermeable physical barriers where employees cannot maintain six feet of separation. Where employer-provided buses and vans are used to transport employees, OSHA recommends that employees wear masks and that vehicle windows remain open, weather permitting.

For additional guidance regarding this topic, please contact one of the listed Roetzel attorneys.

**Doug Spiker**

Practice Group Manager  
Employment Services  
216.696.7125 | [dspiker@ralaw.com](mailto:dspiker@ralaw.com)

**Aretta Bernard**

Practice Group Manager  
Employment Litigation & Counseling  
330.849.6630 | [abernard@ralaw.com](mailto:abernard@ralaw.com)

**Karen Adinolfi**

330.849.6773 | [kadinolfi@ralaw.com](mailto:kadinolfi@ralaw.com)

**Michael Brohman**

312.582.1682 | [mbrohman@ralaw.com](mailto:mbrohman@ralaw.com)

**Amanda Connelly**

614.723.2012 | [aconnelly@ralaw.com](mailto:aconnelly@ralaw.com)

**Monica Frantz**

216.820.4241 | [mfrantz@ralaw.com](mailto:mfrantz@ralaw.com)

**Barry Freeman**

216.615.4850 | [bfreeman@ralaw.com](mailto:bfreeman@ralaw.com)

**Morris Hawk**

216.615.4841 | [mhawk@ralaw.com](mailto:mhawk@ralaw.com)

**Paul Jackson**

330.849.6657 | [pjackson@ralaw.com](mailto:pjackson@ralaw.com)

**Stephanie Olivera Mittica**

330.849.6671 | [solivera@ralaw.com](mailto:solivera@ralaw.com)

**Nancy Noall**

216.820.4207 | [nnoall@ralaw.com](mailto:nnoall@ralaw.com)

**Nathan Pangrace**

216.615.4825 | [npangrace@ralaw.com](mailto:npangrace@ralaw.com)

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