



Nevada Rolls Out New Guidelines on Mask Policies for Vaccinated Employees

Insights

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Employers nationwide rejoiced when the CDC proclaimed last month that fully vaccinated individuals are no longer required to wear a mask or physically distance in any setting. Within a matter of hours, Nevada's Health Response – a task force organized to share information and resources regarding COVID-19 within the State of Nevada – issued guidance adopting the CDC's recommendations. The guidance announced that the State of Nevada does not require or prohibit private businesses from confirming the vaccination status of individuals.

The CDC's and Nevada's Health Response guidelines both include an important caveat regarding the mask and social distancing requirements: employers may still be subject to federal, state, or local laws that may be more restrictive than either the CDC or Nevada's Health Response guidelines. And healthcare employers in particular are still required to follow the CDC's prior guidance relating to face coverings and social distancing regardless of the employee or patient's vaccination status.

Since the CDC's announcement, Nevada's Occupational Safety & Health Administration (NV OSHA) has provided enhanced guidance to employers that should be considered before implementing any no-mask policies in the workplace. Below is an overview of several considerations you should contemplate before easing workplace COVID-19 restrictions, as well as our guidance on how to begin easing workplace mask restrictions for Nevada workplaces.

Considerations for Nevada Employers Hoping to Implement No-Mask Policies

On May 14, the day after the CDC's announcement, Nevada's Occupational Safety & Health Administration (NV OSHA) provided its own guidance to employers and businesses. While the guidance eased the mask restrictions for vaccinated employees, NV OSHA still requires employers to promote and enforce workplace policies to prevent the spread of COVID-19.

There are several important takeaways from NV OSHA's guidance that you should consider before rolling back any mask requirements, social distancing rules, or easing any other workplace restrictions:

- **Preparing a Written COVID-19 Prevention Plan** - NV OSHA has also expressed its own requirement that each employer with more than 10 employees prepare a written COVID-19 Prevention Program. The prevention plan should include a job hazard analysis, measures to limit

the spread of COVID-19 in the workplace, rules to ensure workers who are infected with COVID-19 are separated from other employees or sent home, and a reminder that employees are protected from retaliation for raising COVID-19 concerns. You should ensure you train your employees on the prevention program policies, practices, and protocols to address the spread of COVID-19 in the workplace.

- ***Implementing Policies to Encourage Vaccination*** – The guidance encourages employers to implement incentives for employees to get their vaccine, including on-site vaccination clinics, paid leave for employees to get vaccinated, posting promotional flyers/posters about COVID-19 vaccinations, and posting articles about the importance of COVID-19 vaccination. Thanks to recent EEOC guidance, you now have two clear options to provide vaccination incentives, which can be found here. The Nevada guidance also recommends you post signs and distribute information about the latest state and federal guidance. While you transition to a workplace with fewer masks, NV OSHA encourages you to close or limit access to common areas where employees are likely to congregate and require face coverings for all unvaccinated employees in those areas.
- ***Retaining Mask Restrictions for Non-Vaccinated Employees*** – Although masks are no longer required for fully vaccinated employees, NV OSHA requires employers maintain mask restrictions for unvaccinated employees – and, in particular, unvaccinated employees in the food-service business. Unvaccinated employees are still required to wear face coverings or masks and socially distance themselves in any space used by the general public or as required by the Nevada Health Response’s prior guidance. Additionally, masks are still required for unvaccinated employees in any place where food is prepared, packaged, for sale, or generally distributed.
- ***Maintaining COVID-19 Sanitation Procedures*** – You are still required to maintain regular housekeeping and sanitation practices, including routinely disinfecting surfaces and equipment.
- ***Providing Daily Health Surveys, PPE, and Water to Employees*** – The guidance also encourages you to provide daily health surveys to employees to monitor employee health conditions. Employers of first responders are required to provide personal protective equipment (PPE) to their employees, and all other employers are encouraged to provide PPE for use at work. You are also required to provide potable and sanitary water to workers.

What’s Next for Nevada Employers?

Getting back to a new normal may take some time, but Nevada employers have several options before lifting mask requirements. We have provided some prior guidance on whether to implement a no-mask policy for vaccinated employees and provide three options in light of OSHA’s recent unmasking announcement, which can be found here. If you choose to ask employees for verification of their vaccination status, you need to be very cautious not to discuss or ask about any medical conditions as that may be construed as an invasion of privacy.

If you allow vaccinated employees to dispose of their masks during working hours, you should also be cognizant of possible religious and medical accommodations that may be necessary for certain employees, and keep those employees in mind when company policies are modified. Finally, you need to take steps to make it clear that employees that are required to continue wearing masks are not subjected to mistreatment by other employees or supervisors.

Fisher Phillips will continue to monitor the rapidly developing COVID-19 situation and provide updates as appropriate. Make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information. For further information, contact your Fisher Phillips attorney, the author of this Insight, or any attorney in [our Las Vegas office](#).

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