

## **New York State to Adopt Some CDC Masking, Physical-Distancing Guidance**

Governor Andrew Cuomo announced today that New York would adopt elements of recent guidance from the Centers for Disease Control and Prevention (CDC) regarding mask-wearing and social distancing in most business and public settings, effective Wednesday, May 19.

In response to the CDC's May 13 guidance—which permits *fully-vaccinated* individuals to abandon masking and physical distancing in a wide variety of settings (except “where required by federal, state, local, tribal, or territorial laws, rules, and regulations, including local business and workplace guidance”)—New York State intends to remove most business-capacity restrictions, leaving only those limitations based on the ability to social-distance a minimum of 6 feet between parties of patrons. The State will also adopt CDC guidance concerning outdoor mask use, under which fully-vaccinated individuals no longer need to wear masks or face coverings outdoors except in certain crowded settings and venues.

Despite this loosening of Covid-19 precautions, the Governor's statement observed that masks would still be required on public transportation, as well as in nursing homes, homeless shelters, correctional facilities, schools and health care facilities. In addition, other indoor-masking requirements remain in place as components of State or local policy, as well as private-enterprise rules.

Businesses and employers remain relatively free to impose stricter standards regarding masking and physical distancing than the State or CDC guidance. Employers who intend to follow the new guidance, however—including managers responsible for Covid-19 prevention-measures enforcement—may be required to know which persons in their facilities are and are not vaccinated, in order to properly implement the guidance. While December 2020 guidance from the Equal Employment Opportunity Commission suggests that employers may ask employees about their vaccination status, provide proof of vaccination, and possibly even require vaccination as a condition employment or return to employment, it is important to note that there is little recent additional legal guidance on the subject, and employer vaccination inquiries and requirements should be carefully considered in light of their potential to conflict with State and federal disability- and religious-discrimination law, as well as laws and regulations governing the collection and handling of employee medical information.



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Moreover, it remains unclear how the new CDC and State guidance may interact or conflict with guidance issued in January 2021 by the Occupational Safety and Health Administration (OSHA) on mitigating and preventing the spread of Covid-19 in the workplace, which included OSHA's masking and distancing recommendations for maintaining employee and workplace safety and health. (OSHA's official website advises that it is reviewing the CDC's recent guidance, and will update its own materials accordingly.)

Employers seeking information about the most recent guidance from the State, CDC, or OSHA, or its potential impact on their current or planned health and safety compliance measures or employee policies, may contact Bolaños Lowe with any questions at (585) 643-8440 or [www.bolanoslowe.com](http://www.bolanoslowe.com).

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