

A Brave New (Maskless?) World: Worker Safety After the Health Orders are Lifted

By: Daniel Burke on May 20, 2021 on graydon.law

Good news abounds for employers and employees alike! The CDC, as well as Ohio and Kentucky, have relaxed masking and social distancing requirements for vaccinated workers in most settings. Both Ohio and Kentucky have said that all emergency health orders related to Covid, with some exceptions, will be lifted in June. OSHA, for its part, has said that employers should follow the CDC's new guidance for now, while OSHA reviews the situation further.

So, what does this mean for employers once they are no longer under governmental mandates to require masks and social distancing at work? You know what I'm going to say, don't you: It Depends!

Employers should consider a number of factors in deciding how to operate their businesses in this period before the Ohio and Kentucky health orders are lifted and once the mandates have been lifted, including:

Considerations applicable to fully vaccinated employees:

- need not wear masks or socially distance in the workplace, except as otherwise required by client- or site- specific protocols when working at other sites
- need not quarantine if exposed to someone who tests positive for Covid
- if feeling sick (Covid symptoms or otherwise), use common sense and work from home until you feel better
- if exhibiting symptoms of Covid, report to HR, stay home, and follow company's protocols for quarantining and testing, etc.

Considerations applicable to unvaccinated employees:

- Until health orders are lifted - Ohio (June 2), Kentucky (June 13) -
 - must continue to follow masking and social distancing protocols currently in place for workplace and follow all client- or site- specific protocols when working at other sites
 - if exposed to someone who tests positive for Covid, must quarantine per CDC

guidelines and company protocols

- if feeling sick (not Covid symptoms), use common sense and work from home until you feel better
- if exhibiting symptoms of Covid, report to HR, stay home, and follow company's protocols for quarantining and testing, etc.

After Ohio's and Kentucky's health orders are lifted:

- It's up to each company to decide whether to require masking and social distancing for unvaccinated employees within the context of its obligation to provide a safe workplace.
- The conservative approach is to continue to require unvaccinated employees to follow all masking and social distancing protocols, in light of the fact that (as of this writing at least) the CDC continues to recommend that unvaccinated individuals wear masks and socially distance in indoor settings.
- An alternative approach is to do a more fact-specific analysis of your workforce that takes into consideration a number of factors including, for example, the percentage of your workforce that is vaccinated, whether your workforce interacts regularly with the public, and, in particular, with more vulnerable populations, and how rigorous your health and safety protocols are.
- Whatever decision you make, it will be important to continue to monitor your workforce for any Covid infections and workplace spread and to be prepared to beef up or reinstate masking and social distancing protocols if warranted.

Welcome to the (hopefully soon) brave new post-Covid world!