



PHILLIPS LYTLE LLP CLIENT ALERT

LABOR & EMPLOYMENT

DECEMBER 2021



New York State Announces New COVID-19 Face Covering/Mask Mandate

On Friday, December 10, 2021, New York State Governor Kathy Hochul announced that effective Monday, December 13, 2021, all persons over two (2) years of age who are able to medically tolerate a face covering/mask, regardless of vaccination status, must wear a face covering/mask while in any NYS indoor public place, unless such place requires proof of full COVID-19 vaccination from all persons five (5) years of age or older, including staff, patrons, visitors and guests, as a condition of entry. The face covering/mask mandate is in effect until January 15, 2022, at which time the State said it will re-evaluate its next steps.

Like prior COVID-19-related gubernatorial announcements, the Governor's announcement did not provide much guidance about the details of the face covering/mask mandate or its implementation. For example, the Governor's announcement did not define what places would qualify as an indoor public place, leaving businesses not open to the public to wonder whether the mandate applied to them. This lack of guidance, however, was later rectified when the New York State Department of Health issued a [Commissioner's Determination on Indoor Masking](#) ("Determination") and [Frequently Asked Questions](#) (FAQs). Most significantly, the Determination defines an indoor public place as "any indoor space that is not a private residence." And the FAQs state that an indoor public space includes publicly or privately owned businesses, including office buildings and common areas in residential buildings. Thus, it is now clear that the face covering/mask mandate applies to all public and private employers and that the only exception to it is limiting entry to fully vaccinated persons.

In places where face coverings/masks are required, they may be removed when eating or drinking or when alone in an enclosed room. Businesses cannot have a "combination" requirement, such as implementing a policy whereby vaccinated people can be unmasked while unvaccinated people must wear a face covering/mask.

For employers covered by the New York Health and Essential Rights Act (NY HERO Act), the Determination constitutes NYS Department of Health guidance related to face coverings, meaning that employers must ensure their employees adhere to its masking requirements or require proof of vaccination from all persons as a condition of entry into the business.

Persons 12 years of age and older are considered fully vaccinated if at least 14 days have passed since receiving the first dose of a one-dose vaccine (such as the Johnson & Johnson vaccine) or since receiving the second dose of a two-dose vaccine (such as the Pfizer-BioNTech or Moderna vaccine). Persons between the ages of 5–11 need only show proof of having had at least one dose of any COVID-19 vaccination.

Violations of the mandate are punishable by criminal and civil penalties as provided for by law, including a \$1,000 fine for each day that a business operates in a manner inconsistent with the face covering/mask mandate.

Employers should also remember that they may have to exempt from the face covering/mask mandate employees who request a medical or religious accommodation.

New York State businesses should immediately take all steps necessary to comply with the face covering/mask



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mandate and ensure that all persons over two (2) years of age entering their premises wear a face covering/mask or that all persons entering their premises who are eligible to be vaccinated are fully vaccinated against COVID-19 as required for their age.

Additional Assistance

For further assistance, please contact any of the attorneys on our Labor & Employment Practice Team or the Phillips Lytle attorney with whom you have a relationship. ■



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