

Michigan Employers Must Continue to Require Masks (For Now)

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The Centers for Disease Control and Prevention (“CDC”) released the Interim Public Health Recommendations for Fully Vaccinated People late last week, which provides: “[F]ully vaccinated people can resume activities [in indoor and outdoor settings] without wearing a mask or physically distancing, except where required by federal, state, local, tribal, or territorial laws, rules, and regulations, including local business and workplace guidance.” The Michigan Department of Health and Human Services (“MDHHS”) followed suit, issuing an updated Epidemic Order, effective May 15, 2021, in accordance with which “[t]he requirement to wear a face mask” typically does not apply to individuals who are “fully vaccinated persons.”

Regardless of the CDC guidance and MDHHS directive, Michigan employers are still subject to the Emergency Rules issued by the Michigan Occupational Safety and Health Administration (“MIOSHA”), as well as guidance from the federal Occupational Safety and Health Administration.

Of note, the Emergency Rules currently mandate the following:

- Rule 7(5): “The employer shall require face coverings to be worn when employees cannot consistently maintain 6 feet of separation from other individuals in the workplace.”
- Rule 7(6): “The employer shall require face coverings in shared spaces, including during in-person meetings and in restrooms and hallways.”
- Rule 9(3): Retail stores must generally “[r]equire patrons to wear a face covering.”
- Rule 9(4): Restaurants and bars must generally “[r]equire patrons to wear a face covering except when seated at their table or bar top.”
- Rule 9(7): Businesses that provide personal-care services must generally “[r]equire employees and customers to wear a face covering at all times.”
- Rule 9(8): Places of public accommodation must generally “[r]equire patrons to wear a face covering.”

MIOSHA updated its website to state as follows: “MIOSHA is in the process of reviewing both the emergency rules and draft permanent rules. The agency has the flexibility it needs to ensure consistency with public health guidelines and will continue to protect Michigan workers as we work toward ending this pandemic.”

OSHA’s most recent guidance, dated January 29, 2021, advises against distinguishing between vaccinated and non-vaccinated employees: “Workers who are vaccinated must continue to follow protective measures, such as wearing a face covering and remaining physically distant.” However,

unlike MIOSHA, OSHA has explicitly communicated an intent to adopt the CDC’s recommendation for vaccinated individuals: “OSHA is reviewing the recent CDC guidance and will update our materials on this website accordingly. Until those updates are complete, please refer to the CDC guidance for information on measures appropriate to protect fully vaccinated workers.”

While it is likely that MIOSHA will soon revise its Emergency Rules, until MIOSHA does so, Michigan businesses must generally require *all* of their employees and patrons to wear masks. A failure to comply with the Emergency Rules may result in citations and fines.

Employers must watch for MIOSHA updates and proceed carefully in the interim.

Employers should contact any member of **Bodman’s Workplace Law Group** to discuss the effectiveness and compliance of their COVID-19 policies and procedures. Bodman cannot respond to your questions or receive information from you without first clearing potential conflicts with other clients. Thank you for your patience and understanding.

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