Engage PEO Client Alert:

CDC Guidance: Vaccinations, Face Masks and Social Distancing Guidance - FAQs

On May 13, 2021, the Centers for Disease Control and Prevention (CDC) announced that anyone who is fully vaccinated against COVID-19 no longer needs to practice social distancing or wear a face mask or other facial covering in any environment. Although welcome news, there is confusion among employers on how to implement this latest guidance in the workplace.

The following are some questions and answers that help clarify the CDC's guidance and its impact on businesses.

Can private businesses still require employees to wear facemasks and socially distance while at work?

The CDC's announcement serves as guidance, not law. Thus, **private businesses are still allowed to implement their own health and safety protocols as long as those measures are not discriminatory on their face or in their implementation**. Ultimately, employers can use the CDC's guidance to create new safety protocols in line with the recent guidance or enforce policies requiring face coverings and social distancing.

Can an employer ask an employee if they have been vaccinated?

The EEOC has stated employers can ask employees whether they have been vaccinated against COVID-19. However, questions about vaccinations should be framed to solely elicit a yes or no response and not require the employee to provide any information about their medical condition or medical history. Additionally, employers must ensure employee responses are kept confidential and proper accommodations are made for those employees who are exempt from receiving the vaccine. For example, some employees may be unable to obtain the vaccine due to medical or religious reasons, and the employer has a duty to keep that information confidential. The employer may also need to offer a reasonable accommodation to the individual if it is necessary for religious or medical reasons.

What risks will employers face if they allow employees to return to the worksite without face coverings and eliminate social distancing?

Employers should evaluate the risk of a Workers' Compensation claim in the event an individual contracts COVID-19 in the workplace. If you have a highly distributed or distanced workforce, the risk may be low, whereas if you have a lot of shared space, the risk may be higher. Additionally, the Occupational Safety and Health Administration (OSHA) has not changed its workplace standards and safety protocols related

to COVID-19[1]. Thus, employers should be aware of the OSHA standards still in effect and their state equivalent. Ultimately, eliminating face coverings and social distancing requirements can lead to an increased risk of employees being exposed to COVID-19.

What other factors should employers consider when shaping a new COVID-19 protocol?

It is essential to consider how the majority of your employees will feel about the change. Some may feel more unsafe and lack trust in their colleagues regarding whether they are truthful about their vaccination status. It is important to be ready to address both supporters and opponents of a maskless workplace in your corporate communications.

Further, employers must be prepared to implement protocols for those who are either not vaccinated, partially vaccinated, or whose vaccination status cannot be determined. Additionally, employers must ensure that any COVID-19 protocols in place do not result in disparate treatment amongst employees particularly due to religious or Americans with Disabilities Act (ADA) covered reasons.

[1] Protecting Workers: Guidance on Mitigating and Preventing the Spread of COVID-19 in the Workplace | Occupational Safety and Health Administration (osha.gov)