

# BARSAMIAN & MOODY

A Professional Corporation

Attorneys at Law

1141 West Shaw Avenue, Suite 104

Fresno, California 93711-3704

Tel: (559) 248-2360

E-mail: laborlaw@theemployerslawfirm.com

Fax: (559) 248-2370

## CDPH Updates Masking Guidance

California state-wide mask mandates expired February 15, 2022. But don't throw your masks out just yet! In updated guidance issued on February 16, 2022, the California Department of Public Health (CDPH) detailed the instances in which face coverings remain required, and they are slightly revised. This update to the CDPH guidance means there is also an update to the Cal/OSHA Emergency Temporary Standard (ETS), as Cal/OSHA is obligated to conform to CDPH guidelines. Specifically, the ETS requires employers to provide and ensure face coverings are worn by all employees:

- **When required by CDPH;**
- **When an employee had COVID-19 or had close contact with a COVID-19 case and returns to work following proper return to work requirements; and**
- **When riding in employer provided transportation except where all employees are fully vaccinated.**

The ETS also requires employers to provide and ensure that employees that are not fully vaccinated properly wear their face covering when indoors and in vehicles.

The CDPH guidance indicated that, effective February 16, "only unvaccinated persons are required to mask in all indoor public settings." This includes all businesses and all workplaces, "**regardless of whether they serve the public or are open to the public.**" **However, masks may be removed if the workplace consists of a single employee, or an employee is alone in a closed office or room.** Where masks are required only for unvaccinated individuals, the CDPH has indicated that business owners may verify who is required to comply with the mask requirements by:

1. Providing information to all customers, guests and attendees regarding vaccine requirements and allow vaccinated individuals to self-attest that they are complying prior to entry;
2. Require proof of vaccination; or
3. Require all patrons to wear masks.

For businesses choosing the self-attestation method, the business may consider a person to have self-attested to being vaccinated or meeting a mask exemption, if the business has prominently posted signage prior to entry explaining the requirements for unvaccinated individuals to wear a mask and the individual enters the premises without wearing a mask. **At this time, this method of self-attestation should not be considered applicable to the employer / employees setting. If an employee is**

**unmasked, the employer is obligated to ascertain their vaccination status as per the ETS.**

The CDPH continues to require universal masking, regardless of vaccine status, on public transit, indoors at childcare facilities and K-12 school, in emergency shelters including heating and cooling shelters, in healthcare settings, homeless shelters, long term care settings and adult / senior care facilities, and in state a local correctional facilities and detention centers. The CDPH still recommends that fully vaccinated individuals continue to wear face masks in indoor settings where “the risk may be high.”

**What This Means for Employers:**

Yet , employers are left to navigate the cross over between CDPH guidance and Cal/OSHA ETS requirements. The ETS requirements, which are broader, should be considered the employer requirements, unless the CDPH guidelines clearly indicate otherwise. This means that employers should require the following employees to wear face masks in the following situations absent an applicable exemption:

- When an employee had COVID-19 or had close contact with a COVID-19 case and returns to work following proper return to work requirements regardless of vaccine status;
- When riding in employer provided transportation unless all employees in the vehicle are vaccinated;
- Employees that are not fully vaccinated when they are indoors and in vehicles.

Of course, these things are ever changing and Barsamian & Moody will continue to update you as the various powers (Cal/OSHA, CDPH, CDC, Governor Newsom, etc.) provide further guidance and make changes.

*The goal of this article is to provide employers with current labor and employment law information. The contents should neither be interpreted as, nor construed as legal advice or opinion. The reader should consult with Barsamian & Moody at (559) 248-2360 for individual responses to questions or concerns regarding any given situation.*