
Updates to Masking Requirements for Students and Employees

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The California Department of Public Health (CDPH) and the Centers for Disease Control and Prevention (CDC) recently released new guidance, which includes changes to the legal requirements for face masks and new health and safety recommendations for local educational agencies to consider.

On February 25, 2022, the CDC released new guidance describing how the CDC now measures the impact of COVID-19 on local health and healthcare systems within each U.S. county. This new guidance, called “COVID-19 Community Levels,” assigns each U.S. county one of three tier levels (low, medium, or high) and based on the assigned tier level, makes recommendations for individuals, households, and communities designed to help prevent and mitigate the spread of COVID-19. One prevention and mitigation strategy of note in the CDC’s guidance is a recommendation for individuals to wear a face mask indoors in public K-12 schools regardless of vaccination status when the COVID-19 community level is “high.” The new guidance recommends individuals in “low” or “medium” COVID-19 community level tiers wear face masks if they develop symptoms, have a positive test, were exposed to someone with COVID-19, are in a household or in social contact with someone at high risk for severe disease, or as directed by a healthcare provider.

While CDC guidance is not binding legal authority, the new CDC recommendations may help establish a standard of care for public agencies. The CDC can and does, however, issue orders which are binding, such as its January 29, 2021, order requiring masks for individuals using public transportation. Previously, the CDPH and the California Department of Education interpreted that order as requiring the wearing of face masks by individuals on California school buses. It is therefore notable that the CDC released a statement stating that, effective February 25, 2022, it would no longer be enforcing the January 29, 2021 masking order for buses operated by public school systems.

In light of these changes to the CDC's guidance and enforcement decisions, on February 28, 2022, the CDPH released an updated Guidance for the Use of Face Masks, which contains an announcement that face masks are only legally required for all individuals indoors in K-12 schools through March 11, 2022. The new CDPH guidance also states that face masks remain a requirement for individuals traveling on public transit, such as when riding buses, indefinitely. However, the CDPH clarified on March 12, 2022, that a school bus is considered a "school setting" and is therefore subject to K-12 school guidance.

Also on February 28, 2022, the Governor signed Executive Order N-5-22, modifying Cal/OSHA's Emergency Temporary Standards (ETS) to remove the legal requirement for unvaccinated employees to be masked when indoors or in vehicles with other individuals. The ETS now only requires employees to wear face masks pursuant to CDPH orders. In other words, the Governor's Executive Order aligns the legal requirements for school employees with that for students in the CDPH's revised Guidance for the Use of Face Masks, which no longer requires that face masks be worn indoors at K-12 schools after March 11, 2022.

Further, on March 9, 2022, the CDPH released updated K-12 school guidance to align with the end of the face mask mandate but requiring that local educational agencies develop protocols to provide face coverings to students who desire to use one but do not bring one to school. As a result, face masks are only strongly recommended, not legally required, indoors in K-12 schools and on school buses.

Takeaways

Given these changes, local educational agencies should review past agreements they have entered into with labor partners to determine if those agreements will continue to separately require face masks be worn indoors at K-12 schools beyond March 11, 2022.

Throughout the pandemic, the CDC has repeatedly stated that authorized COVID-19 vaccines are highly protective against severe disease, hospitalizations, and deaths, whereas other mitigation strategies can be scaled up or down depending on what is feasible, practical, and legal in evolving local situations. The recent change in CDC and CDPH guidance appears to be an exercise in scaling down mitigation strategies while tracking of the Omicron variant of COVID-19 continues to show declining case rates and hospitalizations. However, public agencies will want to be mindful of the fact that the CDPH still "strongly recommends" that individuals continue to wear face masks indoors in K-12 schools, emphasizing that face masks remain an effective and simple safety mitigation measure that can help prevent transmission of COVID-19. The CDPH has also released guidance for local educational agencies to consider in deciding whether or not to maintain or establish a face mask mandate separate from a CDPH order.

Local educational agencies should, in consultation with insurance counsel, general legal counsel, labor partners, and other stakeholders, consider updates to their COVID-19 Safety Plans in light of

the changes to CDC and CDPH guidance, including whether to keep face mask mandates in place or to align their requirements with the State's legal requirements on face masks.

If you have any questions about the new CDC guidance or the various State guidance and rules around masking or vaccines, or to discuss your agency's COVID-19 issues in general,, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also subscribe to our [podcasts](#), follow us on [Facebook](#), [Twitter](#) and [LinkedIn](#) or download our [mobile app](#).

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