

# Honing the Manager's Edge With COVID-19 Guidance and Best Practices

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# Speakers

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**Chicago**  
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# Mask Mandates and Policies

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# Chicago and Cook County Mask Mandate

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- Everyone ages 2+ **are required** to wear a mask in public indoor settings regardless of vaccination status. This includes commercial office buildings and tenant space.
- Chicago Department of Public Health announced:
  - “Masks are required in all indoor public settings, including bars and restaurants, gyms, common areas of condos and multi-residential buildings, and private clubs. ... Additionally, masks can be removed by employees in settings that are not open to the public, **if employees are static and maintaining at least six feet from all other individuals (office cubicles, for example).**”
  - BACP Information Session: <https://www.youtube.com/watch?v=fJ2qGbdOh7I>
- Masks outdoors remain **optional** and capacity limits have not been reinstated at this time.
- All individuals who enter a Illinois state office or facility **are required** to wear a mask. All Illinois state employees must be fully vaccinated by October 4.

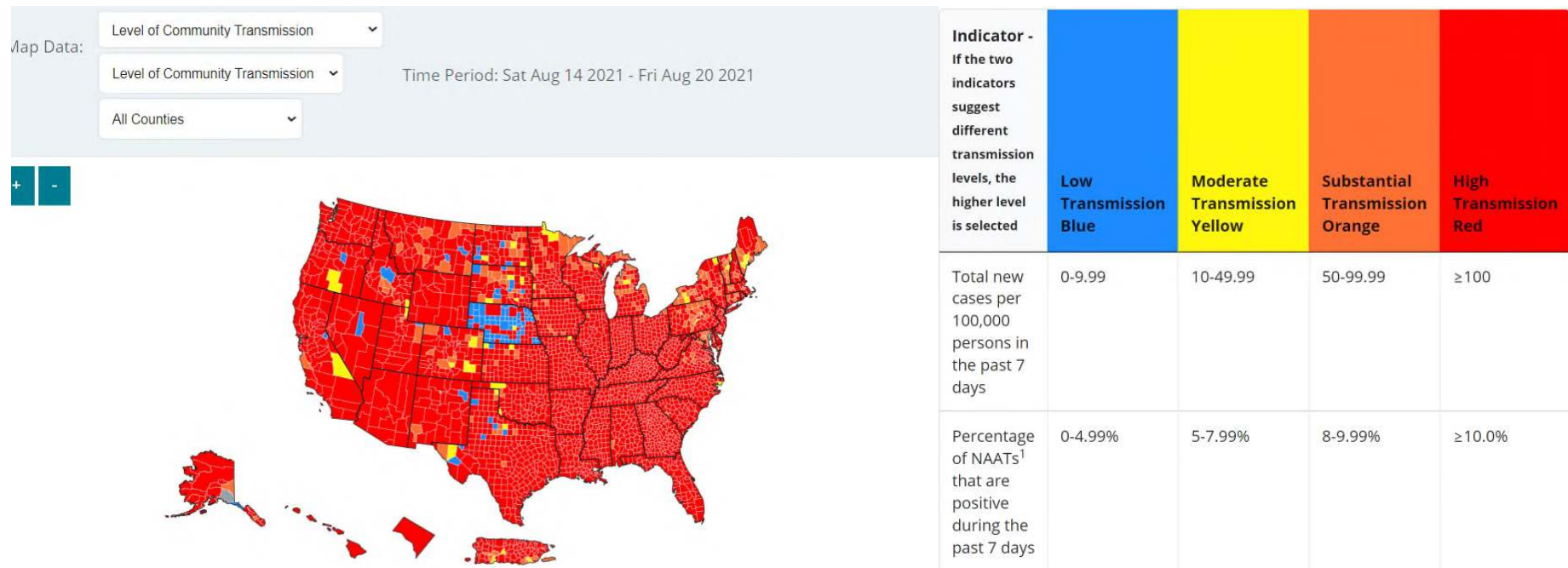


# Updated Guidelines Due to Delta Surge

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- CDC – revised guidance – July 27, 2021: recommend that all individuals wear masks in indoor public spaces whenever they are in an area of substantial or high transmission.
- OSHA – adopted CDC’s guidance – August 13, 2021: **recommending** that everyone wear a mask in indoor public settings in areas of substantial and high transmission regardless of vaccination status.
- Guidance also states, “OSHA suggests that employers consider adopting policies that require workers to get vaccinated . . . .” (more on that later)

# What is Substantial or High Transmission?



Source: <https://covid.cdc.gov/covid-data-tracker/#county-view>

# Reinstating the Mask Mandate

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- Several jurisdictions have reinstated the mask mandate to require all individuals, regardless of vaccination status, to wear masks in indoor public settings.
  - **Chicago, IL** (8/20/2021); **Cook County** (8/23/2021)
  - **Charlotte, NC** (8/18/2021)
  - **Louisiana** (08/04/2021)
  - **California Bay Area Counties** (08/02/2021)
  - **Washington, DC** (07/31/2021)
  - **Nevada (substantial or high transmission counties)** (7/30/2021)
  - **Atlanta, GA** (07/28/2021)
- Many states, including New York, Illinois, Colorado, Connecticut, Massachusetts, and Washington, continue to require masks in certain settings, such as K-12 schools, healthcare and long-term care facilities, emergency shelters, prisons and on public transportation.

# What Risk?

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- Run afoul of Chicago/Cook County recent indoor mask mandate
  - Violations could lead to citations and closures by the BACP, CPD, or CDPH
- Employers run a potential risk of violating OSHA's "general duty clause" if they do not follow OSHA's new guidance
- Serious illness or death leads to lawsuit for negligence



## Are OSHA Inspections Likely?

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- No – unless you operate in an industry like meat processing or restaurants or other industries that are still included in OSHA's National Emphasis Program and subject to programmed inspections by OSHA.
- No – unless employee complains that workplace is unsafe.
- As of the end of July, OSHA had received approximately 4,754 complaints from workers about the lack of mask rules in the workplace. Very few of those complaints have resulted in inspections or citations against employers.

## Employer Options with Mask Mandate

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- Can mandate masks for everyone in all indoor public spaces
- Can define “public spaces” to exclude closed rooms and 6-foot spaced cubicles
- Can (and may have to) re-align the office layout

# Mandatory Vaccination Policies

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# We are Seeing a Trend

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## Healthcare & Pharmaceuticals

**As Delta surges, U.S. military braces for mandatory COVID-19 vaccines**

Phil Stewart, Idrees Ali

**New Vaccine Mandates Are Coming For Government Employees And Health Care Workers**

Updated July 27, 2021 - 8:27 PM ET ⓘ

## National

**Disney and Walmart mandate that employees be vaccinated as covid-19 cases spike nationwide**



# Federal Contractor Mandate

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- Announcement from President (July 29, 2021):
- “Every federal government employee and onsite contractor will be asked to attest to their vaccination status. Anyone who does not attest to being fully vaccinated will be required to wear a mask on the job no matter their geographic location, physically distance from all other employees and visitors, comply with a weekly or twice weekly screening testing requirement, and be subject to restrictions on official travel.”
- “President Biden is directing his team to take steps to apply similar standards to all federal contractors.”

# Legal Update

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- Methodist Hospital decision (Texas federal court) - Case dismissed June 12, 2021
- Dept. of Justice Opinion on Application of Emergency Use Authorization to Employers – July 6, 2021
- Indiana University decision (Indiana federal court) – Case dismissed July 20, 2021 – Affirmed by Seventh Circuit Court of Appeals, August 1, 2021

(Slip Opinion)

**Whether Section 564 of the Food, Drug, and Cosmetic Act Prohibits Entities from Requiring the Use of a Vaccine Subject to an Emergency Use Authorization**

Section 564(e)(1)(A)(ii)(III) of the Food, Drug, and Cosmetic Act concerns only the provision of information to potential vaccine recipients and does not prohibit public or private entities from imposing vaccination requirements for a vaccine that is subject to an emergency use authorization.

July 6, 2021

MEMORANDUM OPINION FOR THE  
DEPUTY COUNSEL TO THE PRESIDENT

# Can Employers Mandate Vaccines?

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- According to the EEOC, yes, but...

**K.1. Under the ADA, Title VII, and other federal employment nondiscrimination laws, may an employer require all employees physically entering the workplace to be vaccinated for COVID-19?**

*(5/28/21)*

The federal EEO laws do not prevent an employer from requiring all employees physically entering the workplace to be vaccinated for COVID-19, subject to the [reasonable accommodation provisions of Title VII and the ADA and other EEO considerations discussed below](#). These principles apply if an employee gets the vaccine in the community or from the employer.

- “It is beyond the EEOC’s jurisdiction to discuss the legal implications of EUA or the FDA approach ... The EEOC’s jurisdiction is limited to the federal EEO laws.”

# Accommodation Requests

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- Categories of potentially permissible requests include religion, disability and pregnancy.
- **Common Questions:**
  - What does a valid religious exception entail? What if it is a boilerplate and conclusory request?
  - What documents can an employer request?
  - What are some possible accommodation options?
  - What if it is an undue hardship to accommodate?



# What Does “Mandate” Mean?

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- “Soft Mandate” option used by California and other jurisdictions allow option to mask and undergo regular COVID testing in lieu of vaccination
- Some employers are not terminating unvaccinated employees but instead are requiring vaccinations to:
  - Return to the office
  - Travel
  - Meet with customers



# Unionized Workplaces

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- For Employers: Mandatory vaccination is a mandatory subject of bargaining (unless already addressed in CBA) and will need to be negotiated with a union before implementation.
- For Tenants: Employers subject to Tenant or Client policy must still bargain with union over the “effects” of the Tenant or Client’s decision.

Coronavirus - COVID-19 August 3, 2021

## Teamsters’ Pension Lawsuit Could Thwart Vaccine Mandates

*The union says its pension fund’s mandatory vaccine policy violates collective bargaining agreements.*



## Summary: What Are Risks of Mandating Vaccination?

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- Accommodations for religious and medical needs are areas of risk and disputes could lead to litigation.
- Employee Morale and turnover
- Unions: Bargaining obligations and concerted activity in opposition to a vaccine policy could be legally protected
- Un-level playing field: States may pass laws prohibiting mandatory employer vaccination policies. Bills have been introduced in South Carolina, Florida, Kentucky, Missouri, Tennessee and Washington. Montana was the first state to pass such a law.

# Health Screening and Responding to Positive Tests





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# Employee Health Screening Inquiries

Employers may continue to inquire into specific COVID-19 related symptoms.

Common COVID-19 symptoms include:

- **Coughing**
- **Shortness of breath**
- **Fever**
- **Chills**
- **Fatigue**
- **Aches and pains**
- **Sore throat**
- **Headaches**
- **New loss of taste or smell**

Symptoms	Coronavirus	Flu	Cold
 Fever	Common	Common	Rare
 Cough	Common	Common	Mild
 Loss of taste and smell	Sudden	Rare	Sometimes
 Fatigue	Sometimes	Common	Sometimes
 Headaches	Sometimes	Common	Rare
 Aches and pains	Sometimes	Common	Common
 Runny/stuffy nose	Rare	Sometimes	Common
 Sore throat	Sometimes	Sometimes	Common
 Sneezing	No	No	Common
 Shortness of breath	Sometimes	No	No
 Diarrhoea	Sometimes for children	Sometimes, especially for children	No

Source: WHO, CDC

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# Screening Applicants/New Hires

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- **C.1. If an employer is hiring, may it screen applicants for symptoms of COVID-19?**
  - Yes. An employer may screen job applicants for symptoms of COVID-19 after making a conditional job offer, as long as it does so for all entering employees in the same type of job. This ADA rule applies whether or not the applicant has a disability.
- **C.2. May an employer take an applicant's temperature as part of a post-offer, pre-employment medical exam?**
  - Yes. Any medical exams are permitted after an employer has made a conditional offer of employment. However, employers should be aware that some people with COVID-19 do not have a fever.

<https://www.eeoc.gov/wysk/what-you-should-know-about-COVID-19-and-ada-rehabilitation-act-and-other-eeo-laws>

# Screening Applicants/New Hires

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- **C.3. May an employer delay the start date of an applicant who has COVID-19 or symptoms associated with it?**
  - Yes. According to current CDC guidance, an individual who has COVID-19 or symptoms associated with it should not be in the workplace.
- **C.4. May an employer withdraw a job offer when it needs the applicant to start immediately but the individual has COVID-19 or symptoms of it?**
  - Based on current CDC guidance, this individual cannot safely enter the workplace, and therefore the employer may withdraw the job offer.
- **C.5. May an employer postpone the start date or withdraw a job offer because the individual is 65 years old or pregnant, both of which place them at higher risk from COVID-19?**
  - No. The fact that the CDC has identified those who are 65 or older, or pregnant women, as being at greater risk does not justify unilaterally postponing the start date or withdrawing a job offer. However, an employer may choose to allow telework or to discuss with these individuals if they would like to postpone the start date.

# Compensability of Time Spent Undergoing Health Screenings

- ***In re Amazon.com Inc. Fulfillment Ctr. FLSA Litig. , No. 43 EAP 2019, 7/21/21*** - The Supreme Court of Pennsylvania held that the time Amazon employees spent on their employer's premises "waiting to undergo, and undergoing, mandatory security screening" was compensable time under the Pennsylvania Minimum Wage Act (PMWA).
- Pennsylvania joins a growing number of courts (California, New Jersey, New Mexico) which also found that time spent waiting to undergo and actually undergoing the check or screening may be compensable under state law.

BRIEF

## Walmart workers seek back pay for COVID-19 screening time

Published March 29, 2021

By [Lisa Burden](#)  
Contributor





# Continued Work From Home Requests

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# Work From Home

- Growing trends show that many companies will continue to allow employees to work from home even after the pandemic
  - Companies like Twitter, Square, Facebook, Shopify, Coinbase, Dropbox, Quora, Reddit, Slack, and Spotify have announced plans to allow some or all of their employees to telework permanently or at least several days a week
  - The Salesforce “Work From Anywhere” Approach
- Many employees may request to continue working from home as reasonable accommodations



# Employee Concerns

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- Can Employees Insist on Working Remotely?
  - No, there is no requirement that employers allow remote work.
  - Remote work as a reasonable accommodation
  - Disability that places employee at greater risk from COVID-19
  - Preexisting mental health conditions
  - Religious beliefs or practices

<https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>

- Fear of contracting COVID-19 is not a “serious health condition.” But, a serious health condition may include:
  - A serious illness caused by COVID-19
  - Pre-existing physical conditions exacerbated by COVID-19
  - Anxiety or other legitimate mental health conditions could qualify as a serious health condition

# American Rescue Plan Act 2021

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- Extends and expands the tax credits for employers who provide paid leave under the Families First Coronavirus Relief Act (FFCRA).
- FFCRA: Requirement to provide paid leave expired December 31, 2020
- Employers with 500 or fewer employees
- Does NOT require paid leave
- Availability of payroll tax credits extended from April 1, 2021 through September 30, 2021
- Again, no requirement to provide paid leave, but tax credits are available for employers who choose to provide paid FFCRA leave

# FFCRA: Refresher for Back to School

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- Two major provisions:
  - Emergency Expansion of the Family Medical Leave Act (“EFMLA”)
    - Private employers with fewer than 500 employees and some public employers had to provide up to 12 weeks of paid family leave for employees unable to work because their child’s school was closed or childcare provider was unavailable due to coronavirus
  - Emergency Paid Sick Leave (“EPSL”)
    - Private employers with fewer than 500 employees and some public employers had to pay sick leave of up to 80 hours (10 days) to employees who needed to take leave for certain COVID-19 related reasons:
      - Employee was subject to federal, state, or local quarantine order;
      - Employee advised to self-quarantine;
      - Employee experiencing COVID-19 symptoms/seeking diagnosis;
      - Employee caring for individual subject to quarantine;
      - Employee caring for child who’s school or child care provider is unavailable

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We are happy to answer additional questions  
at this time.

Thank You!