

**Frequently Asked Questions:  
Communications with Employees Regarding Mask Wearing and COVID-19 Vaccinations**

**FAQs re Mask Wearing**

**1. Can employers exempt fully vaccinated employees from any mask wearing or social distancing policies?**

Yes. Based on the latest guidance from the CDC and New York State, fully vaccinated individuals no longer need to wear masks or socially distance, except in certain locations. Individuals in Pre-K to 12 Schools, Public Transit, Homeless Shelters, Correctional Facilities, Nursing Homes, and Healthcare Settings must continue to wear masks regardless of vaccination status.

**2. Can employers continue to require all employees to wear masks and abide by social distancing and other sanitation guidelines?**

Yes. Employers can be more restrictive than CDC or New York State and City guidelines, and may require all employees continue to wear masks and socially distance.

**3. What are employer best practices in implementing new exemptions from mask wearing for fully vaccinated employees?**

Employers should clarify their masking policy in light of this new guidance. If employers choose to adopt this new guidance and allow fully vaccinated individuals to be unmasked, employers must update their policies, and provide employees with a point-of-contact to coordinate employee inquiries/responses.

If an employee chooses to be unmasked and their employer policy permits it, then the employee must submit competent proof of vaccination (i.e. the employee's Covid-19 Vaccination Record Card or a letter from the employee's medical provider confirming the employee's full vaccination status) to the employer's designated contact. These fully vaccinated employees will then be granted an exemption to any mask wearing requirements. Employers must follow the guidance below on requesting information on employee vaccination status. Individuals who do not submit proof of vaccination will still need to comply with all mask and social distancing requirements.

**4. If an employee is exempted from receiving a vaccination due to a medical or religious accommodation, can they be exempted from any mask wearing requirements?**

No. According to CDC and New York State Guidance, employees are only exempted from mask wearing requirements if they have been fully vaccinated.

**5. May a fully vaccinated employee continue to wear a mask after it is no longer required by the Employer's policy?**

Yes. Any employee who wishes to continue wearing a mask may do so, even if no longer required by Employer policy.

**FAQs re Employee Vaccinations and Related Information**

**1. When are employees considered fully vaccinated, for purposes of determining who is exempt from the mask requirement?**

Individuals are considered fully vaccinated 2 weeks after their second dose in a two-dose series (Pfizer or Moderna), or 2 weeks after a single-dose vaccine (Johnson & Johnson/Janssen). Until fully vaccinated, individuals must keep taking all mask and social distancing precautions.

**2. For the purpose of determining whether an employee may work without a mask, can employers ask employees to certify whether or not they have received a COVID-19 vaccine, and if so, when the vaccine was administered?**

Yes, this question is permissible and employees who seek to not wear a mask may be asked for the documentation in No. 3 below. The Americans with Disabilities Act (“ADA”) has restrictions on when and how much medical information an employer can obtain from an employee or applicant. For current employees, the ADA requires that “disability-related inquiries” – which are defined as questions that are likely to elicit information about a disability – be “job-related and consistent with business necessity.” The EEOC has said, however, that asking employees about their vaccine status is not “likely to elicit information about a disability” and is therefore permissible without having to show that the inquiry is “job-related and consistent with business necessity.”

**3. Can employers require employees to provide proof of vaccination status, such as a copy of their COVID-19 Vaccination Record Cards?**

Yes. Either the CDC COVID-19 Vaccination Record Card or a letter from a physician confirming that the employee is fully vaccinated are examples of vaccination records that will be accepted as competent evidence of vaccination. However, employers collecting proof of vaccination status should warn employees not to provide any other medical or genetic information as part of the proof.

**4. What confidentiality rules apply to information that employers receive about an employee's vaccination status?**

The ADA requires that any medical information provided in response to a disability-related inquiry be: (1) kept confidential, and (2) stored in a file separate from the employee's personnel records. These rules apply to any follow-up questions regarding why an employee did not receive a vaccination and to any information received in connection with a request for a reasonable accommodation under the ADA.

Any other information collected regarding an employee's vaccination status should be kept confidential as a best practice, despite that this information may not be subject to the ADA's heightened confidentiality rules.

Employers may also share evidence of an employee's vaccination with the Union, if the Union requests such information for representational purposes.

**5. Can employers ask employees who are unwilling to be vaccinated to provide their reason for refusing vaccination?**

It is generally not advisable to ask this question, but if you believe it is necessary to do so, you should contact counsel to discuss.

**6. What should I do if an employee volunteers disability or religious information?**

Such information should be maintained confidential. If the information is shared for the purpose of requesting an accommodation, the employer should consider the request to determine whether the requested accommodation is reasonable and/or presents an undue hardship on the employer's operations.