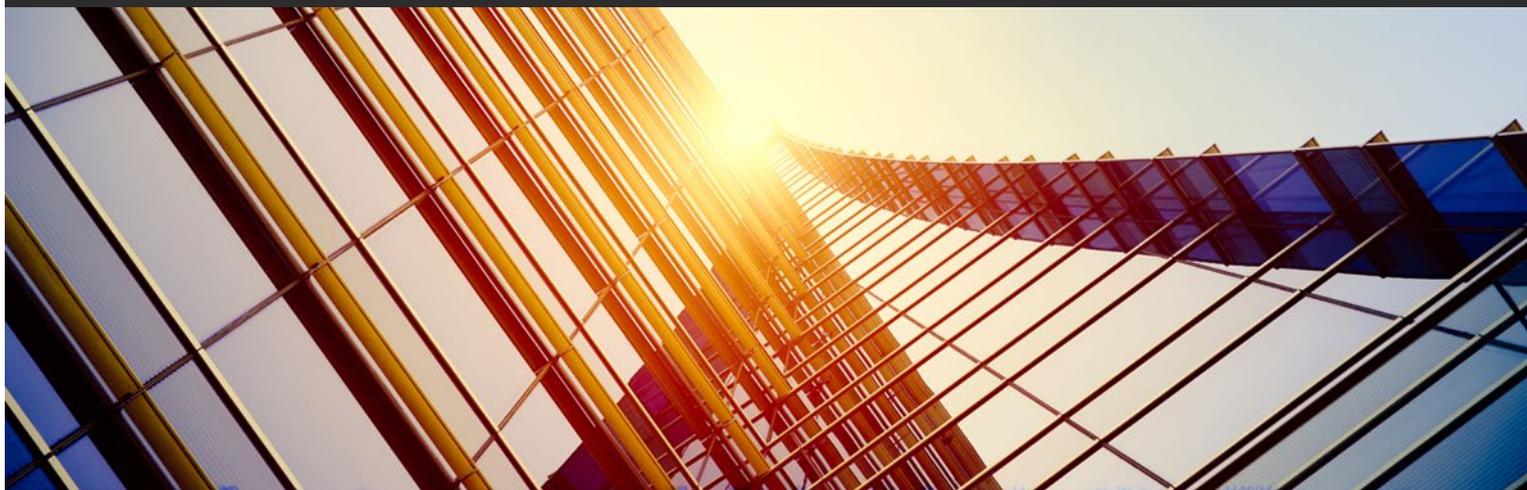


**Alert | Health Emergency Preparedness Task Force:
Business Continuity Amid COVID-19**



June 2021

Employer Considerations for Returning Employees to Work

With the wide availability of COVID-19 vaccines and as COVID-19 cases continue declining, employers face questions as to returning workers safely to the workplace. In making these decisions, companies should be mindful of current guidance relating to masks, social distancing, and other health and safety measures.

CDC guidance (last updated May 2021) still encourages mask-wearing and social distancing for unvaccinated employees, and states that those who are **fully vaccinated** can resume activities without wearing a mask or physically distancing, except where otherwise required by applicable requirements – including local business and workplace guidance. The CDC’s guidance has thus left some questions about how employers should craft their policies for returning workers to offices. Requirements for individual employers remain dependent upon applicable state and local regulations. For example, Oregon requires employees to wear face masks and distance at work, even if an individual is fully vaccinated. California had similar requirements until June 15, when the recent public health order dropped social distancing rules and capacity limits except for “Mega Events.” On the other end of the spectrum, states such as **Arizona**, **Florida**, and **Texas** have forbidden mask mandates through executive orders. Texas Gov. Greg Abbott **explained** that “Texans, not government, should decide their best health practices.”

As with mask-wearing, employers must also exercise caution when considering vaccine requirements and ensure compliance with both **federal guidelines** and applicable state and local requirements. The **EEOC guidance** has taken the position that mandatory vaccination policies do not violate federal anti-

discrimination laws so long as the employer applies the policy equally under Title VII of the Civil Rights Act of 1964 (Title VII) and allows reasonable accommodations, as required by Title VII and the Americans with Disabilities Act, among others, for workers with a recognized disability, religious reason, and pregnancy issues. At the state level, some states have pending legislation prohibiting COVID-19 vaccine requirements or a “vaccination passport” confirming the individual’s vaccination status as a condition of employment. For example, in Georgia, Gov. Kemp’s [Executive Order](#) banning “vaccine passports” as it pertains to employment with state entities, prohibits state employers from making employment decisions based upon an individual’s COVID-19 vaccination status because doing so would, among other things, “restrict individual liberty.” Most recently, Montana enacted [Montana H.B. 702](#), the first law of its kind, designating vaccination status as a protected class and prohibiting employers from requiring vaccination as a condition of employment or requiring any vaccine that is only emergency use-authorized or undergoing safety trials, such as the currently available COVID-19 vaccines. Additionally, employers can encourage or even require COVID-19 diagnostic testing for employees at the expense of the employer. The [CDC](#) provides little guidance, noting that screening is an optional strategy for employers to use, though the CDC does not recommend utilizing antibody tests to determine whether employees can work. COVID-19 screening is generally permissible, so long as the employer’s practices are consistent with Fair Labor Standards Act and other applicable wage and hour requirements. For instance, California requires employers to develop and implement a process for COVID-19 screening and responding to employees with COVID-19 symptoms. In contrast, Georgia only requires high-risk industries to screen for COVID-19.

Additionally, employers navigating returning employees to work should be mindful of occupancy limits, which would impact social distancing and differ based on jurisdiction. The majority of states, including Colorado, New York, Connecticut, Massachusetts, and Georgia, have no occupancy limits. But some jurisdictions still have capacity requirements. For example, in Los Angeles, California, unless all staff are fully vaccinated, occupancy is capped to 75% total capacity and in-person meetings limited to 50% of a space’s capacity, or a maximum of 50 people, whichever is fewer. Similarly, Washington also imposes a statewide occupancy limit of 50% total capacity for indoor office spaces.

Going forward, employers should consult both federal and state guidance when implementing, or updating, any policy relating to COVID-19, particularly those involving masks, social distancing, and vaccinations. Employers may wish to strongly encourage, rather than require, these measures. Employers should also continue practices of enhanced cleaning and disinfection of facilities, supply necessary items for good hygiene practices, and continue physical distancing in communal work areas.

For more information and updates on the developing situation, see [GT ALERT on EEOC Guidance](#), [GT’s Health Emergency Preparedness Task Force: Coronavirus Disease 2019](#), and [Business Continuity Amid COVID-19 page](#).

Author

This GT Alert was prepared by:

- [Keshia M. Tiemann](#) | +1 678.553.2153 | tiemannk@gtlaw.com
- [Colyer F. Montgomery](#) | +1 678.553.2473 | Colyer.Montgomery@gtlaw.com

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