



September 17, 2021

## **COVID-19 Updated Guidance for New Jersey Public Employers**

SARS-CoV-2, the virus that causes COVID-19, continues to mutate and create challenges for New Jersey public employers. The Safety Director provides this update that is believed to be the most up-to-date published information as of September 17, 2021.

### **CDC Latest Published Information**

On September 1, 2021, the Center for Disease Control and Prevention (CDC) published their [Interim Public Health Recommendations for Fully Vaccinated People](#). The document provides recommendations for individuals in non-healthcare settings. Healthcare employers should refer to the CDC's [Updated Healthcare Infection Prevention and Control Recommendations in Response to COVID-19 Vaccination](#). People who are fully vaccinated can:

- Participate in many of the activities that they did before the pandemic. They may choose not to wear a mask. They should consider wearing a mask in a public indoor setting if they are in an area of [substantial or high transmission](#). Fully vaccinated people might choose to mask regardless of the level of transmission, particularly if they or someone in their household is immunocompromised or at [increased risk for severe disease](#) or if someone in their household is unvaccinated.
- Resume domestic travel and do not have to test before or after travel, and they do not have to self-quarantine after the trip.

In general, [people are considered fully vaccinated two weeks after their second dose of the 2-dose Pfizer or Moderna series or two weeks after the single dose Johnson & Johnson vaccine](#). Individuals with a condition or who are taking medications that weaken their immune system may not be fully protected even if they are fully vaccinated. It is recommended they take all precautions recommended for unvaccinated people until advised otherwise by a healthcare provider.

Fully vaccinated employees should get tested if they are experiencing [COVID-19 symptoms](#). If employees come into [close contact](#) with someone with COVID-19, they should get tested 3-5 days after the date of the exposure and wear a mask in public indoor settings for 14 days after exposure or until a negative test result. They should isolate if they have tested positive for COVID-19 in the prior ten days or are experiencing COVID-19 symptoms.

In public indoor settings in [areas of substantial or high community transmission](#), unvaccinated or not-fully vaccinated people aged 2-years or older should wear a mask. Fully vaccinated people may choose to reduce their risk of becoming infected with the Delta variant and transmitting it to others by wearing a mask.

Generally, [employees do not need to wear a mask in outdoor settings](#). However, in areas with [high numbers of COVID-19 cases](#), they should consider wearing a mask in crowded outdoor settings and for activities with [close contact](#) with others who are not fully vaccinated.

This bulletin is intended for general information purposes only. It should not be construed as legal advice or legal opinion regarding any specific or factual situation. Always follow your organization's policies and procedures as presented by your manager or supervisor. For further information regarding this bulletin, contact your Safety Director at 877.398.3046.

## **White House Press Release on President Biden's Plan**

On September 9, 2021, President Joseph Biden announced [his plan](#) on national television to reduce the number of unvaccinated Americans by using the regulatory powers of the Occupational Safety and Health Administration (OSHA). OSHA will issue an Emergency Temporary Standard (ETS) requiring all employers with 100 or more employees to ensure their workforce is fully vaccinated or require any workers who remain unvaccinated to produce a negative test result on at least a weekly basis before coming to work. The ETS will also require employers with more than 100 employees to provide paid time off for the time it takes for workers to get vaccinated or to recover if they are under the weather post-vaccination.

The President's plan requires the Centers for Medicare & Medicaid Services (CMS) to require COVID-19 vaccinations for workers in most health care settings that receive Medicare or Medicaid reimbursement, including but not limited to hospitals and home health agencies. This action builds on the vaccination requirement for nursing facilities recently announced by CMS and will apply to nursing home staff as well as staff in hospitals and other CMS-regulated settings, including clinical staff, individuals providing services under arrangements, volunteers, and staff who are not involved in direct patient, resident, or client care.

*The MEL has published a [letter from the Fund's Attorney](#) on vaccination programs for New Jersey public employers. The Safety Director encourages members to review it with their attorneys. Members should visit the MEL's [COVID-19 Update page](#) for additional information and important links.*

The President's plan calls on entertainment venues like sports arenas, large concert halls, and other venues where large groups of people gather to require that their patrons be vaccinated or show a negative test for entry.

The President's plan includes vaccinations for all staff and eligible students, implementing universal indoor masking, maintaining physical distancing, improving ventilation, and performing regular screening testing for students and school staff so that schools can remain open for in-person learning.

## **OSHA Latest Guidance**

In accordance with the latest CDC guidance documents, OSHA [updated its guidance](#) for employers as recommendations to use in protecting unvaccinated workers and otherwise at-risk workers. While this guidance addresses most workplaces, many healthcare workplace settings will be covered by the mandatory *OSHA COVID-19 Emergency Temporary Standard*. All employers must comply with applicable mandatory safety and health standards and regulations issued and enforced either by OSHA or by an OSHA-approved state plan. New Jersey is an OSHA-approved state. PEOSH enforces OSHA's regulations in New Jersey public places of employment. In addition, the OSHA's General Duty Clause, Section 5(a)(1), requires employers to provide their workers with a safe and healthful workplace free from recognized hazards that are causing or likely to cause death or serious physical harm.

Employers should engage with workers and their representatives to determine how to implement multi-layered interventions to protect unvaccinated and otherwise at-risk workers and mitigate the spread of COVID-19, including:

1. **Facilitate employees getting vaccinated.** Employers should grant paid time off for employees to get vaccinated and recover from any side effects. The Department of Labor and OSHA, as well as other federal agencies, are working diligently to ensure access to COVID-19 vaccinations. On July 6, 2021, the U.S. Department of Justice's Office of Legal Counsel issued an opinion concluding that Section 564 of the Food, Drug, and Cosmetic Act, 21 U.S.C. § 360bbb-3 does not prohibit public or private entities from imposing vaccination requirements while vaccinations are only available pursuant to Emergency Use Authorization

Employers should also consider working with local public health authorities to provide vaccinations in the workplace for unvaccinated workers. Finally, OSHA suggests that employers consider adopting policies that

require workers to get vaccinated or undergo regular COVID-19 testing – in addition to mask-wearing and physical distancing – if they remain unvaccinated.

2. **Instruct any workers who are infected, unvaccinated workers who have had close contact with someone who [tested positive for SARS-CoV-2](#), and all workers with COVID-19 symptoms to stay home from work.** As [recommended by the CDC](#), fully vaccinated people who have a known exposure to someone with suspected or confirmed COVID-19 should get tested 3-5 days after exposure and should wear a mask in public indoor settings for 14 days or until they receive a negative test result. People who are not fully vaccinated should be tested immediately after being identified, and, if negative, tested again in 5–7 days after last exposure or immediately if symptoms develop during quarantine. Ensure that absence policies are non-punitive. Eliminate or revise policies that encourage workers to come to work sick or when unvaccinated workers have been exposed to COVID-19.
3. **Implement physical distancing in all communal work areas for unvaccinated and otherwise at-risk workers.** A key way to protect such workers is to physically distance them from other such people, such as coworkers or customers. Generally at least 6 feet of distance is recommended, although this is not a guarantee of safety, especially in enclosed or poorly ventilated spaces. In a workplace, workers often are required to work in close proximity to each other and/or customers or contractors for extended periods of time. Maintaining physical distancing at the workplace for such workers is an important control to limit the spread of COVID-19.

Employers could also limit the number of unvaccinated or otherwise at-risk workers in one place at any given time, for example by implementing flexible worksites (e.g., telework); implementing flexible work hours (e.g., rotate or stagger shifts to limit the number of such workers in the workplace at the same time); delivering services remotely (e.g., phone, video, or web); or implementing flexible meeting and travel options, for such workers.

At fixed workstations where unvaccinated or otherwise at-risk workers are not able to remain at least 6 feet away from other people, transparent shields or other solid barriers can separate these workers from other people. Barriers should block face-to-face pathways between individuals in order to prevent direct transmission of respiratory droplets, and any openings should be placed at the bottom and made as small as possible. The height and posture (sitting or standing) of affected workers, directional airflow, and fire safety should be considered when designing and installing barriers, as should the need for enhanced ventilation.

4. **Provide [workers with face coverings](#) or surgical masks, as appropriate, unless their work task requires a respirator or other PPE.** In addition to unvaccinated and otherwise at-risk workers, CDC recommends that even fully vaccinated people wear masks in public indoor settings in areas of [substantial or high transmission](#) and notes that fully vaccinated people may appropriately choose to wear masks in public indoor settings regardless of community level of transmission, particularly if they are at risk or have someone in their household who is at risk or not fully vaccinated.

Workers should wear a [face covering](#) that covers the nose and mouth to contain the wearer's respiratory droplets and to help protect others and potentially [themselves](#). Face coverings should be made of at least two layers of a tightly woven breathable fabric, such as cotton, and should not have exhalation valves or vents. They should fit snugly over the nose, mouth, and chin with no large gaps on the outside of the face.

Employers should provide face coverings to workers who request them at no cost (and make replacements available to workers when they request them). Under federal anti-discrimination laws, employers may need to provide [reasonable accommodations](#) for any workers who are unable to wear or have difficulty wearing certain types of face coverings due to a disability or who need a religious accommodation under Title VII of

the Civil Rights Act of 1964. In workplaces with employees who are deaf or hard of hearing, employers should consider acquiring masks with clear coverings over the mouth to facilitate lip-reading.

Unless otherwise provided by federal, state, or local requirements, workers who are outdoors may opt not to wear face coverings unless they are at risk, for example, if they are immunocompromised. Regardless, all workers should be supported in continuing to wear a face covering if they choose, especially in order to safely work closely with other people.

When an employer determines that PPE is necessary to protect unvaccinated and otherwise at-risk workers from exposure to COVID-19, the employer must provide PPE in accordance with [relevant mandatory OSHA standards](#) and should consider providing PPE in accordance with other [industry-specific guidance](#). Respirators, if necessary, must be provided and used in compliance with 29 CFR [1910.134](#) (e.g., medical determination, fit testing, training on its correct use), including certain provisions for voluntary use when workers supply their own respirators, and other PPE must be provided and used in accordance with the applicable standards in 29 CFR part 1910, Subpart I (e.g., [1910.132](#) and [133](#)).


5. **Educate and train workers on your COVID-19 policies and procedures.** Train managers on how to implement COVID-19 policies. Communicate supportive workplace policies clearly, frequently, and via multiple methods to promote a safe and healthy workplace.
6. **Suggest or require that unvaccinated customers, visitors, or guests wear face coverings in public-facing workplaces and that all customers, visitors, or guests wear face coverings in public, indoor settings in areas of [substantial or high transmission](#).** This could include posting a notice or [otherwise suggesting](#) or requiring that people wear face coverings, even if no longer required by your jurisdiction. Individuals who are under the age of 2 or are actively consuming food or beverages on-site do not need to wear face coverings.
7. **Maintain Ventilation Systems.**
8. **Perform routine cleaning and disinfection.** If someone who has been in the facility within 24 hours is [suspected of having or confirmed to have COVID-19](#), follow the [CDC cleaning and disinfection recommendations](#).
9. **Record and report COVID-19 infections and deaths as required by OSHA 29 CFR part 1904.**

## **NEW JERSEY COVID UPDATE**

New Jersey is still under a State of Emergency as per [Executive Order No. 244](#) (June 4, 2021).

[Executive Order No. 253](#) (August 23, 2021) requires all public, private, and parochial preschool programs and elementary and secondary schools, including charter and renaissance schools ("covered settings") to maintain a policy that requires all covered workers to either provide adequate proof to the covered setting that they have been fully vaccinated or submit to COVID-19 testing at minimum one to two times weekly. This requirement shall take effect on October 18, 2021, at which time any "covered workers" that have not provided adequate proof that they are fully vaccinated must submit to a minimum of weekly or twice weekly testing on an ongoing basis until fully vaccinated.

"Covered workers" shall include all individuals employed by the covered setting, both full and part-time, including, but not limited to, administrators, teachers, educational support professionals, individuals providing food, custodial, and administrative support services, substitute teachers, whether employed directly by a covered setting or otherwise contracted, contractors, providers, and any other individuals performing work in covered settings whose job duties require them to make regular visits to such covered settings, including volunteers.



Covered workers do not include individuals who visit the covered setting only to provide one-time or limited duration repairs, services, or construction.

[Executive Order No. 252](#) (August 6, 2021) requires covered health care and high-risk congregate settings ("covered settings") to maintain a policy that requires covered workers to either provide adequate proof that they have been fully vaccinated or submit to COVID-19 testing at a minimum one to two times weekly. This requirement shall take effect on September 7, 2021, at which time any covered workers that have not provided adequate proof that they are fully vaccinated must submit to weekly or twice weekly testing on an ongoing basis until fully vaccinated.

"Covered settings" shall be defined as follows: Health care facilities including acute, pediatric, inpatient rehabilitation, and psychiatric hospitals, including specialty hospitals, and ambulatory surgical centers; long-term care facilities; intermediate care facilities; residential detox, short-term, and long-term residential substance abuse disorder treatment facilities; clinic-based settings like ambulatory care, urgent care clinics, dialysis centers, Federally Qualified Health Centers, family planning sites, and Opioid Treatment Programs. It also includes community-based healthcare settings, including Program of All-inclusive Care for the Elderly, pediatric and adult medical daycare programs, and licensed home health agencies, and registered health care service firms operating within the State. High-risk congregate settings include State and county correctional facilities, secure care facilities operated by the Juvenile Justice Commission;=, licensed community residences for individuals with intellectual and developmental disabilities ("IDD") and traumatic brain injury ("TBI"), licensed community residences for adults with mental illness, and certified day programs for individuals with IDD and TBI.

[Executive Order No. 251](#) (August 6, 2021) requires all school districts to maintain a policy regarding the mandatory use of face masks by staff, students, and visitors in the indoor portion of school district premises. The Order allows for exemptions from mask-wearing when "doing so would inhibit the individual's health," "when the individual has trouble breathing," and when a student's documented medical condition or disability precludes the use of a face mask.

[Executive Order No. 249](#) (August 4, 2021) modifies E.O. No. 106 to be consistent with Senate Bill No. 3691 for the moratorium of evictions in very low-, low-, or moderate-income housing. It directs sheriffs, court officers, and their agents to refrain from acting to remove individuals from residential properties through the eviction or foreclosure processes during the time the protections extended under Executive Order No. 106 (2020) are in effect, unless the court determines on its own motion or motion of the parties that enforcement is necessary in the interest of justice.

[Executive Order No. 246](#) (June 14, 2021) extends the grace period for the discontinuance of gas, electric, water or internet service until December 31, 2021. During the grace period, no gas or electric public or municipal utility or privately or publicly owned water system shall discontinue any gas, electric, or water service to New Jersey residents, which includes all residential accounts and any accounts primarily serving residential customers, due to nonpayment unless the disconnection is to prevent or ameliorate a risk to public health or safety.

---